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Clerk – Gregory M. Gray, Charleston
Sergeant-at-Arms – George McClaskie, Charleston
Doorkeeper – Tom Hively, Chesapeake

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<td>Josh Stowers (D)</td>
<td>Alum Creek</td>
<td>79th - 81st</td>
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<td>Joshua Nelson (R)</td>
<td>Danville</td>
<td>81st</td>
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<td>Rupert Phillips, Jr. (D)</td>
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<td>Teddy &quot;Ted&quot; Tomlin (D)</td>
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MEMBERS OF THE HOUSE OF DELEGATES - Continued

<table>
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<td>Linda Goode Phillips (D)</td>
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<td>Marty Ganoheart (R)</td>
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<td>John H. Shott (R)</td>
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<td>Lynne Carden Arvon (R)</td>
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<td>Denise L. Campbell (D)</td>
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<td>Randy E. Smith (R)</td>
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<td>Allen V. Evans (R)</td>
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<td>Isaac Sponaugle (D)</td>
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<td>Ruth Rowan (R)</td>
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<td>Daryl E. Cowles (R)</td>
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<td>Larry W. Faircloth (R)</td>
<td>Inwood</td>
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<td>Jason Barrett (D)</td>
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<td>John Ovesington (R)</td>
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<td>Michael &quot;Mike&quot; Folk (R)</td>
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<td>Tiffany E. Lawrence (D)</td>
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<td>Paul Espinosa (R)</td>
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<td>Stephen Skinner (D)</td>
<td>Shepherdstown</td>
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</tbody>
</table>

(D) Democrats – 54
(R) Republicans – 46
Total – 100
### OFFICERS

**President** – Jeffrey V. Kessler, Glen Dale  
**Clerk** – Joseph M. Minard, Clarksburg  
**Sergeant-at-Arms** – Howard Wellman, Bluefield  
**Doorkeeper** – Anthony Gallo, Charleston

### Districts and Members

<table>
<thead>
<tr>
<th>District</th>
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<th>Legislative Service</th>
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<tr>
<td>First</td>
<td>Robert J. Fitzsimmons (D)</td>
<td>Wheeling</td>
<td>Appt. 12/26/12, 81&quot;</td>
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<td>Jack Yost (D)</td>
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<td>New Martinsburg</td>
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<td>Jeffrey V. Kessler (D)</td>
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<td>App' 1/1997,73&quot;, 74&quot; - 81&quot;</td>
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<td>Donnie J. Boyle (R)</td>
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<td>App' 5/14/85, 67&quot;, 68&quot; - 81&quot;</td>
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<td>David C. Nohe (R)</td>
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<td>Mitch B. Carmichael (R)</td>
<td>Ripley</td>
<td>(House 75&quot;, 80&quot;, 81&quot;)</td>
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<td>Mike Hail (R)</td>
<td>Winfield</td>
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<td>Robert H. Plymale (D)</td>
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<td>Bill Cole (R)</td>
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<td>Gregory A. Tucker (D)</td>
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<td>Douglass Faceniere (D)</td>
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<td>Robert D. Beach (D)</td>
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<td>Corey Palumbo (D)</td>
<td>Charleston</td>
<td>(House 76&quot;, 78&quot;)</td>
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(D) Democrats - 25  
(R) Republicans - 9  
Total - 34
HOUSE OF DELEGATES COMMITTEES

COMMITTEES OF THE HOUSE OF DELEGATES
Regular Session, 2013

STANDING

AGRICULTURE

Walker (Chair), Manypenny (Vice Chair), Boggs, Diserio, Eldridge, Guthrie, Paxton, L. Phillips, M. Poling, Sponaugle, Swartzmiller, Wells, Williams, A. Evans (Minority Chair), Canterbury (Minority Vice Chair), Ambler, Anderson, Border, Folk, Hamilton, Ireland, Miller, Overington and Romine.

BANKING AND INSURANCE

Moore (Chair of Banking), Ferns (Vice Chair of Banking), Guthrie (Chair of Insurance), Hartman (Vice Chair of Insurance), Barrett, Hunt, Iaquinta, Manchin, Morgan, Perry, R. Phillips, Reynolds, Tomblin, Azinger (Minority Chair of Banking), E. Nelson (Minority Vice Chair of Banking), Ashley (Minority Chair of Insurance), Walters (Minority Vice Chair of Insurance), Andes, Frich, McCuskey, O’Neal, Pasdon, Shott and Westfall.

CONSTITUTIONAL REVISION

Fleischauer (Chair), Ferro (Vice Chair), Caputo, Fragale, Guthrie, Hunt, Lawrence, Manchin, Marshall, Moore, Morgan, Poore, Reynolds, Skinner, Overington (Minority Chair), Romine (Minority Vice Chair), Anderson, Andes, Armstead, Ellem, Householder, Kump, Lane, J. Nelson and O’Neal.

EDUCATION

M. Poling (Chair), Stowers (Vice Chair), Barill, Barrett, Campbell, Fragale, Lawrence, Perry, Pethtel, Tomblin, Walker, Williams, Young, Pasdon (Minority Chair), Sumner (Minority Vice Chair), Ambler, Butler, Cooper, Espinosa, D. Evans, Hamrick, Raines, Rowan and Westfall.

[XXI]
HOUSE OF DELEGATES COMMITTEES

ENERGY, INDUSTRY AND LABOR,
ECONOMIC DEVELOPMENT
AND SMALL BUSINESS


FINANCE

White (Chair), Reynolds (Vice Chair), Craig, Guthrie, Laquinta, Marshall, Moye, Perdue, Pethel, L. Phillips, R. Phillips, D. Poling, Skaff, Williams, Anderson (Minority Chair), E. Nelson (Minority Vice Chair), Andes, Ashley, Canterbury, Cowles, A. Evans, Gearheart, Miller, Storch and Walters

GOVERNMENT ORGANIZATION

Morgan (Chair), Stephens (Vice Chair), Caputo, Diserio, Eldridge, Ferns, Hartman, Jones, Lynch, Paxton, P. Smith, Staggers, Swartzmiller, Howell (Minority Chair), Border (Minority Vice Chair), Arvon, Azinger, Cadle, Faircloth, Folk, Kump, J. Nelson, Romine and R. Smith.

HEALTH AND HUMAN RESOURCES

Perdue (Chair), Perry (Vice Chair), Campbell, Diserio, Eldridge, Ferns, Fleischauer, Lawrence, Marshall, Moore, Moye, Poore, Staggers, Ellington (Minority Chair), Householder (Minority Vice Chair), Arvon, Border, Cowles, Faircloth, Lane, Miller, Pasdon, Rowan and Sobonya.
HOUSE OF DELEGATES COMMITTEES

JUDICIARY

Miley (Chair), Manchin (Vice Chair), Ferro, Fleischauer, Hunt, Longstreth, Manypenny, Marcum, Moore, Pino, Poore, Skinner, Sponaugle, Wells, Ellem (Minority Chair), Lane (Minority Vice Chair), Frich, Hamilton, Householder, Ireland, McCuskey, O'Neal, Overington, Shott and Sobonya.

NATURAL RESOURCES

Craig (Chair), Pino (Vice Chair), Eldridge, Guthrie, Jones, Manypenny, Moore, Moye, L. Phillips, R. Phillips, Sponaugle, Swartzmiller, Tomblin, Wells, Hamilton (Minority Chair), Ireland (Minority Vice Chair), Anderson, Butler, Canterbury, Ellem, A. Evans, Romine, Shott, R. Smith and Walters.

PENSIONS AND RETIREMENT

Pethtel (Chair), Jones (Vice Chair), Craig, Lynch, Stowers, Canterbury and Kump.

POLITICAL SUBDIVISIONS

Hunt (Chair), Lawrence (Vice Chair), Barill, Ferns, Fragale, Hartman, Jones, Marcum, Morgan, Moye, Perry, Sponaugle, Williams, Sumner (Minority Chair), Cowles (Minority Vice Chair), Cooper, Espinosa, Folk, Gearheart, Hamilton, Hamrick, Lane, McCuskey and Pasdon

ROADS AND TRANSPORTATION

Staggers (Chair), L. Phillips (Vice Chair), Barill, Boggs, Longstreth, Lynch, Marcum, D. Poling, Skaff, P. Smith, Stephens, Stowers, Walker, Wells, Cowles (Minority Chair), Gearheart (Minority Vice Chair), Ambler, Butler, Cadle, Ellington, Espinosa, D. Evans, Hamrick, Howell and Shott.
HOUSE OF DELEGATES COMMITTEES

RULES

Thompson (Chair), Boggs, Caputo, Marshall, Miley, Morgan, Paxton, M. Poling, Swartzmiller, White, Anderson, Armstead, Ashley, Cowles, Lane, Overington, Sobonya and Sumner.

SENIOR CITIZEN ISSUES

Williams (Chair), Moye (Vice Chair), Campbell, Ferro, Manypenny, Marshall, Moore, Perdue, Perry, Pethtel, Pino, Stephens, Young, Rowan (Minority Chair), O'Neal (Minority Vice Chair), Arvon, Ashley, Border, Faircloth, Householder, Raines, R. Smith, Sobonya, Sumner and Westfall.

VETERANS' AFFAIRS AND HOMELAND SECURITY

Iaquinta (Chair of Veterans' Affairs), Longstreth (Vice Chair of Veterans' Affairs), Paxton (Chair of Homeland Security), Eldridge (Vice Chair of Homeland Security). Barill, Campbell, Ferro, Fleischauer, Jones, Pethtel, P. Smith, Staggers, Stephens, Azinger (Minority Chair of Veterans' Affairs), Rowan (Minority Vice Chair Veterans' Affairs), Ashley (Minority Chair Homeland Security), Storch (Minority Vice Chair Homeland Security), Armstead, Cadle, Cooper, D. Evans, Howell, Ireland, E. Nelson and J. Nelson.

ENROLLED BILLS

Wells (Chair), Barill (Vice Chair), Ferro and Overington.
SENATE COMMITTEES

COMMITTEES OF THE SENATE
Regular Session, 2013

STANDING

AGRICULTURE AND RURAL DEVELOPMENT

Miller (Chair), Williams (Vice Chair), Beach, Cann, Cookman, D. Hall, Laird, Tucker, Carmichael, Nohe and Sypolt.

BANKING AND INSURANCE

Tucker (Chair), Fitzsimmons (Vice Chair), Chafin, Facemire, Green, D. Hall, Jenkins, McCabe, Palumbo, Prezioso, M. Hall, Nohe and Walters.

CONFIRMATIONS

Green (Chair), Facemire (Vice Chair), Chafin, Miller, Plymale, Snyder, Yost, Cole and Sypolt.

ECONOMIC DEVELOPMENT

Williams (Chair), Cann (Vice Chair), Beach, Cookman, Kirkendoll, McCabe, Prezioso, Snyder, Stollings, Wells, Barnes, Blair, Sypolt and Walters.

EDUCATION

Plymale (Chair), Wells (Vice Chair), Beach, Chafin, Edgell, D. Hall, Laird, Stollings, Tucker, Unger, Barnes, Boley, Carmichael and Cole.

ENERGY, INDUSTRY AND MINING

Facemire (Chair), Kirkendoll (Vice Chair), Beach, Cann, Green, Jenkins, Plymale, Snyder, Stollings, Yost, Barnes, Nohe and Sypolt.
SENATE COMMITTEES

ENROLLED BILLS

Cookman (Chair), Edgell, Fitzsimmons, Palumbo and Cole.

FINANCE

Prezioso (Chair), Facemire (Vice Chair), Chafin, Edgell, Green, Laird, McCabe, Plymale, Stollings, Unger, Wells, Yost, Barnes, Blair, Boley, M. Hall and Sypolt.

GOVERNMENT ORGANIZATION

Snyder (Chair), Miller (Vice Chair), Cann, Cookman, Fitzsimmons, Green, Jenkins, Kirkendoll, Williams. Yost, Blair, Boley, Cole and Sypolt.

HEALTH AND HUMAN RESOURCES

Stollings (Chair), Jenkins (Vice Chair), Kirkendoll, Laird, Miller, Palumbo, Plymale, Prezioso, Tucker. Yost, Boley, M. Hall and Walters.

INTERSTATE COOPERATION

Kirkendoll (Chair), Cookman (Vice Chair), D. Hall, Palumbo, Wells, Blair and Nohe.

JUDICIARY

Palumbo (Chair), Tucker (Vice Chair), Beach, Cann, Cookman, Fitzsimmons, D. Hall, Jenkins, Kirkendoll, Miller, Snyder, Unger, Williams, Carmichael, Cole, Nohe and Walters.

LABOR

Yost (Chair), D. Hall (Vice Chair), Chafin, Facemire, Fitzsimmons, McCabe, Miller, Wells, Barnes, Blair and Walters.
SENATE COMMITTEES

MILITARY
Wells (Chair), Yost (Vice Chair), Edgell, Fitzsimmons, Jenkins, Laird, Tucker, Boley and Carmichael.

NATURAL RESOURCES
Laird (Chair), Edgell (Vice Chair), Beach, Cookman, Facemire, Green, McCabe, Prezioso, Snyder, Williams, M. Hall, Nohe and Walters.

PENSIONS
Jenkins (Chair), McCabe (Vice Chair), Cann, Chafin, Edgell, Carmichael and M. Hall.

RULES
Kessler (Chair), Edgell, Palumbo, Plymale, Prezioso, Snyder, Stollings, Unger, Barnes, Boley and M. Hall.

TRANSPORTATION AND INFRASTRUCTURE
Beach (Chair), Kirkendoll (Vice Chair), Facemire, Fitzsimmons, McCabe, Plymale, Williams, Barnes and Cole.
AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §18B-4-10, relating to providing for uniform course completion for certain higher education students performing certain military service; requiring the Higher Education Policy Commission and the West Virginia Council for Community and Technical College Education to promulgate a joint rule; setting forth elements the rule is to address; and providing a definition for the term “called to military duty”.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §18B-4-10, to read as follows:

ARTICLE 4. GENERAL ADMINISTRATION.

§18B-4-10. Course completion for students called to military duty; rule required.

1 (a) As used in this section, “called to military duty” means called or ordered to state or federal active service, inactive-duty training or annual training in any active duty or reserve component of the Armed Forces of the United States or of the National Guard of this state or any other state.
(b) In accordance with the provisions of article three-a, chapter twenty-nine-a of this code, the commission and council jointly shall propose and implement a rule providing for uniform course completion for students who are enrolled at the state institutions of higher education under their respective jurisdictions when those students are called to military duty.

(1) The rule shall be as uniform among the institutions as is practicable and shall take into consideration the unique conditions or circumstances of each institution.

(2) The intent of the rule is to ensure that enrolled students who are called to military duty are afforded a fair and efficient procedure of withdrawing from classes, completing course work or securing a leave of absence from course attendance, when feasible. The rule also shall provide for maintaining the academic integrity of the course work in a manner that is reasonably accommodating to the student under the circumstances.

(3) The commission and council shall consider and include the following elements when developing the rule:

(A) Discipline appropriate options which allow a student to withdraw from courses without penalty; earn credit for work completed in a course; receive an incomplete grade and make up the course work at a later time; or secure a leave of absence from course attendance;

(B) For students who withdraw from classes during an academic term and who do not receive full credit for completing classes in which they are enrolled, provision for obtaining a full or partial refund of tuition, fees and room and board fees paid to the institution; and
(C) Other measures as the commission and council consider necessary or effective to support, accommodate and encourage the students to continue and successfully complete their education programs.

(c) The rule required by this section is superseded by and may not conflict in any way with the following provisions:

(1) Educational leave of absence for active duty National Guard or other reserve components of the Armed Forces as set forth in section one-a, article one-f, chapter fifteen of this code for students who are subject to these provisions; and

(2) Applicable federal laws, rules or regulations.

CHAPTER 97

(H. B. 3104 - By Delegates M. Poling and Stowers)

[Passed April 9, 2013; in effect from passage.]
[Approved by the Governor on April 18, 2013.]

AN ACT to amend and reenact §18B-17-2 and §18B-17-3 of the Code of West Virginia, 1931, as amended, all relating to authorizing certain legislative rules regarding higher education; authorizing legislative rules for the Higher Education Policy Commission regarding authorization of degree granting institutions and human resources administration; and authorizing legislative rules for the Council for Community and Technical College Education regarding authorization of degree granting institutions and human resources administration.
Be it enacted by the Legislature of West Virginia:

That §18B-17-2 and §18B-17-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 17. LEGISLATIVE RULES.


(a) The legislative rule filed in the State Register on October 15, 2004, relating to the Higher Education Policy Commission (Underwood-Smith Teacher Scholarship Program rule) is authorized.

(b) The legislative rule filed in the State Register on October 15, 2004, relating to the Higher Education Policy Commission (West Virginia Engineering, Science and Technology Scholarship Program rule) is authorized.

(c) The legislative rule filed in the State Register on October 15, 2004, relating to the Higher Education Policy Commission (Medical Education Fee and Medical Student Loan Program rule) is authorized.

(d) The legislative rule filed in the State Register on October 27, 2005, relating to the Higher Education Policy Commission (Authorization of degree-granting institutions) is authorized.

(e) The legislative rule filed in the State Register on August 23, 2006, relating to the Higher Education Policy Commission (West Virginia Higher Education Grant Program) is authorized.

(f) The legislative rule filed in the State Register on January 4, 2008, relating to the Higher Education Policy Commission (Providing Real Opportunities for Maximizing In-state Student Excellence - PROMISE) is authorized.
(g) The legislative rule filed in the State Register on August 25, 2008, relating to the Higher Education Policy Commission (Research Trust Program) is authorized.

(h) The legislative rule filed in the State Register on January 8, 2009, relating to the Higher Education Policy Commission (Guidelines for Governing Boards in Employing and Evaluating Presidents) is authorized.

(i) The legislative rule filed in the State Register on September 10, 2008, relating to the Higher Education Policy Commission (Medical Student Loan Program) is authorized, with the following amendment:

On page 2, subsection 5.1, following the words “financial aid office” by inserting a new subdivision 5.1.3 to read as follows: “United States citizenship or legal immigrant status while actively pursuing United States citizenship.”

(j) The legislative rule filed in the State Register on December 1, 2008, relating to the Higher Education Policy Commission (West Virginia Higher Education Grant Program) is authorized.

(k) The legislative rule filed in the State Register on January 26, 2009, relating to the Higher Education Policy Commission (Accountability System) is authorized.

(l) The legislative rule filed in the State Register on May 20, 2009, relating to the Higher Education Policy Commission (Energy and Water Savings Revolving Loan Fund Program) is authorized.

(m) The legislative rule filed in the State Register on January 27, 2010, relating to the Higher Education Policy Commission (Providing Real Opportunities for Maximizing In-state Student Excellence - PROMISE) is authorized.
(n) The legislative rule filed in the State Register on December 8, 2010, relating to the Higher Education Policy Commission (Authorization of Degree Granting Institutions) is authorized.

On page 28, subsection 9.1.b, following the words “Good cause shall consist of” by inserting the words “any one or more of the following”.

(o) The legislative rule filed in the State Register on December 12, 2011, relating to the Higher Education Policy Commission (Tuition and Fee Policy) is authorized.

(p) The legislative rule filed in the State Register on August 10, 2012, relating to the Higher Education Policy Commission (Authorization of Degree Granting Institutions) is authorized.

(q) The legislative rule filed in the State Register on August 10, 2012, relating to the Higher Education Policy Commission (Annual Reauthorization of Degree Granting Institutions) is authorized.

(r) The legislative rule filed in the State Register on March 20, 2013, relating to the Higher Education Policy Commission (Human Resources Administration) is authorized.

§18B-17-3. Authorizing rules of the Council for Community and Technical College Education.

(a) The legislative rule filed in the State Register on September 29, 2004, relating to the West Virginia Council for Community and Technical College Education (performance indicators rule) is authorized.

(b) The legislative rule filed in the State Register on October 13, 2005, relating to the West Virginia Council for Community
and Technical College Education (Authorization of degree-granting institutions) is authorized.

(c) The legislative rule filed in the State Register on October 30, 2006, relating to the West Virginia Council for Community and Technical College Education (Workforce Development Initiative Program) is authorized.

(d) The legislative rule filed in the State Register on December 4, 2008, relating to the West Virginia Council for Community and Technical College Education (Employing and Evaluating Presidents) is authorized.

(e) The legislative rule filed in the State Register on December 23, 2008, relating to the West Virginia Council for Community and Technical College Education (Performance Indicators) is authorized.

(f) The legislative rule filed in the State Register on February 5, 2009, relating to the West Virginia Council for Community and Technical College Education (Finance) is authorized.

(g) The legislative rule filed in the State Register on February 5, 2009, relating to the West Virginia Council for Community and Technical College Education (Accountability System) is authorized.

(h) The legislative rule filed in the State Register on June 15, 2011, relating to the West Virginia Council for Community and Technical College Education (Workforce Development Initiative Program) is authorized.

(i) The legislative rule filed in the State Register on October 26, 2011, relating to the West Virginia Council for Community and Technical College Education (Tuition and Fees) is authorized.
(j) The legislative rule filed in the State Register on October 17, 2012, relating to the West Virginia Council for Community and Technical College Education (Authorization of Degree Granting Institutions) is authorized.

(k) The legislative rule filed in the State Register on October 17, 2012, relating to the West Virginia Council for Community and Technical College Education (Annual Reauthorization of Degree Granting Institutions) is authorized.

(l) The legislative rule filed in the State Register on March 21, 2013, relating to the West Virginia Council for Community and Technical College Education (Human Resources Administration) is authorized.

CHAPTER 98

(Com. Sub. for S. B. 553 - By Senators Beach, McCabe, Miller and Stollings)

[Passed April 11, 2013; in effect from passage.]
[Approved by the Governor on April 30, 2013.]

AN ACT to amend and reenact §17-2D-2 and §17-2D-5 of the Code of West Virginia, 1931, as amended, all relating to the continuation of the Highway Design-Build Pilot Program; changing the name to the Highway Design-Build Program; removing the sunset date of the program; modifying limitations on design-build projects; requiring identification of design-build projects; modifying reporting requirements; and requiring annual reporting.

Be it enacted by the Legislature of West Virginia:

That §17-2D-2 and §17-2D-5 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:
ARTICLE 2D. HIGHWAY DESIGN-BUILD PROGRAM.

§17-2D-2. Highway Design-Build Program.

1 (a) Notwithstanding any provision of this code to the contrary, the Commissioner of the West Virginia Division of Highways may expedite the construction of projects by combining the design and construction elements of a highway or bridge project into a single contract as provided in this article.

6 (b) The Division of Highways may expend no more than $50 million in each year in the program: Provided, That if any of the $50 million is unused in one year, the remaining amount may be applied to the following year's amount: Provided, however, That the total aggregate amount to be expended may not exceed $150 million in any one year.

12 (c) A design-build project may be let to contract only in accordance with the commissioner's established policies and procedures concerning design-build projects.

15 (d) Projects receiving funding above the amount of federal core funding as appropriated to the state by formula in a federal highway authorization, currently titled MAP-21, may utilize the program, but shall not be included in expenditure limits provided by subsection (b) of this section.

§17-2D-5. Report to the Legislature.

1 On or before January 15, 2014, and annually thereafter, the commissioner shall prepare and submit to the Joint Committee on Government and Finance a written report evaluating the experience of the Division of Highways with each project completed during the prior calendar year, including whether the division realized any cost or time savings, the number and cost of change orders, the quality of work performed, the number of bids received and other issues the commissioner considers
CHAPTER 99

(S. B. 652 - By Senators Snyder, Jenkins, Boley and Tucker)

[Passed April 13, 2013; in effect from passage.]
[Approved by the Governor on May 1, 2013.]

AN ACT to amend and reenact §29-3-5b of the Code of West Virginia, 1931, as amended, relating to criminal background checks for home inspector license applicants; and providing rule-making authority to the State Fire Commission to require criminal background checks for home inspector license applicants.

Be it enacted by the Legislature of West Virginia:

That §29-3-5b of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 3. FIRE PREVENTION AND CONTROL ACT.

§29-3-5b. Promulgation of rules and statewide building code.

(a) The State Fire Commission shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code to safeguard life and property and to ensure the quality of construction of all structures erected or renovated throughout this state through the adoption of a State Building Code. The rules shall be in
accordance with standard safe practices so embodied in widely
recognized standards of good practice for building construction
and all aspects related thereto and have force and effect in those
counties and municipalities adopting the State Building Code:
Provided, That each county or municipality may adopt the code
to the extent that it is only prospective and not retroactive in its
application.

(b) The State Fire Commission has authority to propose rules
for legislative approval in accordance with the provisions of
article three, chapter twenty-nine-a of this code, regarding
building construction, renovation and all other aspects as related
to the construction and mechanical operations of a structure. The
rules shall be known as the State Building Code.

(c) The State Fire Commission shall propose a rule for
legislative approval in accordance with the provisions of article
three, chapter twenty-nine-a of this code to include the following
building energy codes in the State Building Code:

Conservation Code for residential buildings or other building
energy code or codes for residential buildings that meets or
exceeds equivalent energy savings; and

(2) The ANSI/ASHRAE/IESNA Standard 90.1-2007
building energy code for commercial buildings or other building
energy code or codes for commercial buildings that meets or
exceeds equivalent energy savings.

(d) (1) The State Fire Commission has authority to propose
rules for legislative approval, in accordance with the provisions
of article three, chapter twenty-nine-a of this code, establishing
state standards and fee schedules for the licensing, registration,
certification, regulation and continuing education of persons
which will conduct inspections relating to the State Building
Code, which include, but are not limited to, building code
officials, inspectors, plans examiners and home inspectors.
(2) The State Fire Commission shall propose rules for legislative approval requiring applicants for home inspector licensing, registration or certification to submit to a state and national criminal history record check as set forth in this section and may deny licensing, registration or certification based upon the results of the criminal history record check.

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

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

(g) Enforcement of the provisions of the State Building Code is the responsibility of the respective local jurisdiction. Also, any county or municipality may enter into an agreement with any other county or municipality to provide inspection and enforcement services: Provided, That any county or municipality may adopt the State Building Code with or without adopting the BOCA National Property Maintenance Code.
(h) After the State Fire Commission has promulgated rules as provided in this section, each county or municipality intending to adopt the State Building Code shall notify the State Fire Commission of its intent.

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

(j) The provisions of the State Building Code relating to the construction, repair, alteration, restoration and movement of structures are not mandatory for existing buildings and structures identified and classified by the State Register of Historic Places under the provisions of section eight, article one of this chapter or the National Register of Historic Places, pursuant to 16 U. S. C. §470a. Prior to renovations regarding the application of the State Building Code, in relation to historical preservation of structures identified as such, the authority having jurisdiction shall consult with the Division of Culture and History, State Historic Preservation Office. The final decision is vested in the State Fire Commission. Additions constructed on a historic building are not excluded from complying with the State Building Code.
to contract procedures for Department of Health and Human Resources; providing that previous contracts awarded would remain in full force and effect; and eliminating Department of Health and Human Resources' exemption for contracts for the Medicaid program from purchasing requirements.

Be it enacted by the Legislature of West Virginia:

That §9-2-9b of the Code of West Virginia, as amended, be repealed; and that §9-2-6 of said code be amended and reenacted, all to read as follows:

ARTICLE 2. COMMISSIONER OF HUMAN SERVICES; POWER, DUTIES AND RESPONSIBILITIES GENERALLY.


1 Within limits of state appropriations and federal grants and subject to provisions of state and federal laws and regulations, the secretary, in addition to all other powers, duties and responsibilities granted and assigned to that office in this chapter and elsewhere by law, is authorized to:

6 (1) Promulgate, amend, revise and rescind department rules respecting the organization and government of the department and the execution and administration of those powers, duties and responsibilities granted and assigned by this chapter and elsewhere by law to the department and the secretary.

11 (2) Promulgate, amend, revise and rescind department rules and regulations respecting qualifications for receiving the different classes of welfare assistance consistent with or permitted by federal laws, rules and policies, but not inconsistent with state law: Provided, That rules and policies respecting qualifications shall permit the expenditure of state funds to pay for care rendered in any birthing center licensed under the provisions of
article two-e, chapter sixteen of this code by a licensed nurse
midwife or midwife as this occupation is defined in section one,
article fifteen, chapter thirty of this code and which care is within
the scope of duties for such licensed nurse midwife or midwife as
permitted by the provisions of section seven of said article.

(3) Obtain by purchase or lease grounds, buildings, office or
other space, equipment, facilities and services as may be
necessary for the execution and administration of those powers,
duties and responsibilities granted and assigned by this chapter
and elsewhere by law to the department and the secretary.

(4) Sign and execute in the name of the state by the State
Department of Health and Human Resources any contract or
agreement with the federal government or its agencies, other
states, political subdivisions of this state, corporations,
associations, partnerships or individuals: Provided, That the
provisions of article three, chapter five-a are followed.

(5) Sign and execute a contract to implement professional
health care, managed care, actuarial and health care-related
monitoring, quality review/utilization, claims processing and
independent professional consultant contracts for the Medicaid
program: Provided, That the provisions of article three, chapter
five-a are followed: Provided, however, That a contract awarded
under the agency purchasing process from April 1, 2009, to
January 2, 2013, remains in full force and effect and the secretary
retains sole authority to review, approve and issue changes to
contracts issued under the former purchasing process, and is
responsible for challenges, disputes, protests and legal actions
related to such contracts.

(6) Establish such special funds as may be required by the
federal Social Security Act, as amended, or by any other Act or
Acts of Congress, in order for this state to take full advantage of
the benefits and provisions thereof relating to the federal-state
assistance and federal assistance programs administered by the
department and to make payments into and disbursements out of any such special fund or funds in accordance with the requirements of the federal Social Security Act, as amended, or any other Act or Acts of Congress, and in accordance with applicable state law and the objects and purposes of this chapter. In addition, the State Department of Health and Human Resources, through the secretary, is hereby authorized to accept any and all gifts or grants, whether in money, land, services or materials, which gift or gifts, if in the form of moneys, shall be placed in a separate fund and expended solely for the purpose of public assistance programs. No part of this special fund shall revert to the General Revenue Funds of this state. No expenses incurred pursuant to this special fund shall be a charge against the General Funds of this state.

(7) Establish within the department an Office of Inspector General for the purpose of conducting and supervising investigations and for the purpose of providing quality control for the programs of the department. The Office of Inspector General shall be headed by the Inspector General who shall report directly to the secretary. Neither the secretary nor any employee of the department may prevent, inhibit or prohibit the Inspector General or his or her employees from initiating, carrying out or completing any investigation, quality control review or other activity oversight of public integrity by the Office of the Inspector General. The secretary shall place within the Office of Inspector General any function he or she deems necessary. Qualification, compensation and personnel practice relating to the employees of the Office of the Inspector General, including that of the position of Inspector General, shall be governed by the classified service provisions of article six, chapter twenty-nine of this code and rules promulgated thereunder. The Inspector General shall supervise all personnel of the Office of Inspector General.
(8) Provide at department expense a program of continuing professional, technical and specialized instruction for the personnel of the department.

(9) Pay from available funds all or part of the reasonable expenses incurred by a person newly employed by the department in moving his household furniture, effects and immediate family from his or her place of residence in this state to his or her place of employment in this state; and to pay from available funds all or part of the reasonable expenses incurred by a department employee in moving his or her household furniture, effects and immediate family as a result of a reassignment of the employee which is considered desirable, advantageous to and in the best interests of the state, but no part of the moving expenses of any one such employee shall be paid more frequently than once in twelve months or for any movement other than from one place of employment in this state to another place of employment in this state.

(10) Establish a program to provide reimbursement to employees of the department whose items of personal property, as defined by the department by policy, are damaged during the course of employment or other work-related activity as a result of aggressive behavior by a client or patient receiving services from the department: Provided, That such reimbursement is limited to a maximum amount of $250.00 per claim.

(11) Establish and maintain such institutions as are necessary for the temporary care, maintenance and training of children and other persons.

(12) Prepare and submit state plans which will meet the requirements of federal laws, rules governing federal-state assistance and federal assistance and which are not inconsistent with state law.
(13) Organize within the department a Board of Review, consisting of a Chairman appointed by the secretary and as many assistants or employees of the department as may be determined by the secretary and as may be required by federal laws and rules respecting state assistance, federal-state assistance and federal assistance, such Board of Review to have such powers of a review nature and such additional powers as may be granted to it by the secretary and as may be required by federal laws and rules respecting federal-state assistance and federal assistance.

(14) Provide by rules review and appeal procedures within the Department of Health and Human Resources as may be required by applicable federal laws and rules respecting state assistance, federal-state assistance and federal assistance and as will provide applicants for, and recipients of all, classes of welfare assistance an opportunity to be heard by the Board of Review, a member thereof or individuals designated by the board, upon claims involving denial, reduction, closure, delay or other action or inaction pertaining to public assistance.

(15) Provide by rules, consistent with requirements of applicable federal laws and rules, application forms and application procedures for the various classes of public assistance.

(16) Provide locations for making applications for the various classes of public assistance.

(17) Provide a citizen or group of citizens an opportunity to file objections and to be heard upon objections to the grant of any class of public assistance.

(18) Delegate to the personnel of the department all powers and duties vested in the secretary, except the power and authority to sign contracts and agreements.
(19) Make such reports in such form and containing such information as may be required by applicable federal laws and rules respecting federal-state assistance and federal assistance.

(20) Invoke any legal, equitable or special remedies for the enforcement of the provisions of this chapter.
ARTICLE 2. CRIMES AGAINST THE PERSON.

§61-2-17. Human trafficking; criminal penalties.

(a) As used in this section:

1. "Debt bondage" means the status or condition of a debtor arising from a pledge by the debtor of the debtor's personal services or those of a person under the debtor's control as a security for debt, if the value of those services as reasonably assessed is not applied toward the liquidation of the debt or the length and nature of those services are not respectively limited and defined.

2. "Forced labor or services" means labor or services that are performed or provided by another person and are obtained or maintained through a person's:

   (A) Threat, either implicit or explicit, deception or fraud, scheme, plan, or pattern, or other action intended to cause a person to believe that, if the person did not perform or provide the labor or services that person or another person would suffer serious bodily harm or physical restraint: Provided, That, this does not include work or services provided by a minor to the minor's parent or legal guardian so long as the legal guardianship or custody of the minor was not obtained for the purpose compelling the minor to participate in commercial sex acts or sexually explicit performance, or perform forced labor or services.

   (B) Physically restraining or threatening to physically restrain a person;

   (C) Abuse or threatened abuse of the legal process; or

   (D) Knowingly destroying, concealing, removing, confiscating, or possessing any actual or purported passport or
other immigration document, or any other actual or purported government identification document, of another person.

"Forced labor or services" does not mean labor or services required to be performed by a person in compliance with a court order or as a required condition of probation, parole, or imprisonment.

(3) "Human trafficking" means the labor trafficking or sex trafficking involving adults or minors where two or more persons are trafficked within any one year period.

(4) "Labor trafficking" means the promotion, recruitment, transportation, transfer, harboring, enticement, provision, obtaining or receipt of a person by any means, whether a United States citizen or foreign national, for the purpose of:

(A) Debt bondage or forced labor or services; or

(B) Slavery or practices similar to slavery.

(5) "Sex trafficking of minors" means the promotion, recruitment, transportation, transfer, harboring, enticement, provision, obtaining or receipt of a person under the age of eighteen by any means, whether a United States citizen or foreign national, for the purpose of causing the minor to engage in sexual acts, or in sexual conduct violating the provisions of subsection (b), section five, article eight of this chapter or article eight-c of this chapter.

(6) "Sex trafficking of adults" means the promotion, recruitment, transportation, transfer, harboring, enticement, provision, obtaining, receipt of a person eighteen years of age or older, whether a United States citizen or foreign national for the purposes of engaging in violations of subsection (b), section five, article eight of this chapter by means of force, threat, coercion, deception, abuse or threatened abuse of the legal process, or any
scheme, plan, pattern, or other action intended to cause a person
to believe that, if the person did not engage in a violation of
subsection (b), section five, article eight of this chapter, that
person or another person would suffer serious bodily harm or
physical restraint.

(b) Any person who knowingly and willfully engages in
human trafficking is guilty of a felony and upon conviction shall
be incarcerated in a state correctional facility for an
indeterminate sentence of not less than three nor more than
fifteen years or fined not more than $200,000, or both.

(c) Any person who is a victim of human trafficking may
bring a civil action in circuit court. The court may award actual
damages, compensatory damages, punitive damages, injunctive
relief and any other appropriate relief. A prevailing plaintiff is
also entitled to attorneys fees and costs. Treble damages shall be
awarded on proof of actual damages where defendant's acts were
willful and malicious.

(d) Notwithstanding the definition of victim in subsection
(k), section three, article two-a, chapter fourteen of this code, a
person who is a victim of human trafficking is a victim for all
purposes of article two-a, chapter fourteen of this code.

(e) This article and the rights and remedies provided in this
article are cumulative and in addition to other existing rights.

(f) Notwithstanding the age and criminal history limitations
set forth in section twenty-six, article eleven of this chapter, any
person convicted of prostitution in violation of subsection (b),
section five, article eight of this chapter where the conviction
was a result of the person being a victim of human trafficking as
defined in this section, may petition the circuit court of the
county of conviction for an order of expungement pursuant to
section twenty-six, article eleven of this chapter.
No victim of human trafficking seeking relief under this subsection shall be required to prove he or she has rehabilitated himself or herself in order to obtain expungement.

CHAPTER 102

(Com. Sub. for S. B. 414 - Senators Laird and Miller)

[Passed April 13, 2013; in effect ninety days from passage.]
[Approved by the Governor on April 29, 2013.]

AN ACT to amend and reenact §20-2-32 of the Code of West Virginia, 1931, as amended, relating to issuing hunting and fishing licenses; and modifying who may be a license-issuing authority.

Be it enacted by the Legislature of West Virginia:

That §20-2-32 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2. WILDLIFE RESOURCES.

§20-2-32. Issuance of licenses; duplicate licenses.

(a) The clerk of the county commission in each county requesting designation and other persons, designated by the director pursuant to section thirty-three of this article, are license-issuing authorities authorized to issue a license to an applicant if the applicant is legally entitled to obtain the license and pays the proper fee.

(b) Materials and supplies for the issuance of licenses shall be furnished by the director to each license-issuing authority as needed.
(c) Each license shall bear a serial number and shall be signed by the licensee. The license-issuing authority shall keep an accurate record of licenses issued and fees collected as prescribed by the director.

(d) Any license-issuing authority may issue a duplicate license to replace a lost, destroyed or damaged license upon receipt of a verified application executed by the original licensee and payment of a duplicate license fee of $1.

CHAPTER 103

(Com. Sub. for H. B. 2395 - By Delegates Williams, D. Campbell, Moye, Perdue, Pino and Ellington)

[Passed April 10, 2013; in effect ninety days from passage.]  
[Approved by the Governor on April 17, 2013.]

AN ACT to amend and reenact §16-5P-15 of the Code of West Virginia, 1931, as amended, relating to senior services in-home care registry; providing for sixty-day waiver of initial registration fee; clarifying rule-making authority for the Bureau of Senior Services to require an applicant to obtain a state or federal criminal background check; and requiring legislative rules to be proposed for legislative approval during the 2014 legislative session.

Be it enacted by the Legislature of West Virginia:

That §16-5P-15 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 5P. SENIOR SERVICES.

§16-5P-15. Establishment of In-home Care Registry.
(a) There is continued within the Bureau of Senior Services an in-home care worker registry which is to be maintained by the bureau. The purpose of the registry is to provide the public a list of in-home care workers, along with their qualifications, who voluntarily agree to be included and who have obtained a criminal background check.

(b) “In-home care worker” means an unlicensed person who provides personal care or other services and supports to persons with disabilities or to the elderly in order to enhance their well-being and which involves face-to-face direct contact with the person. Functions performed may include, but are not limited to, assistance and training in activities of daily living, personal care services, and job-related supports.

(c) The bureau shall propose rules for legislative approval during the 2014 legislative session in accordance with the provisions of article three, chapter twenty-nine-a of this code to establish the following:

1. The registry of in-home care workers;
2. The requirements for inclusion on the registry as an “in-home care worker”, including educational attainment;
3. A fee schedule: Provided, That the Commissioner of the Bureau of Senior Services shall waive the initial registration fee for the first sixty days the registration is active;
4. Requiring an applicant to obtain a state or federal criminal background check, as determined in legislative rule by the bureau;
5. How a person obtains information from the registry; and
6. Any other requirement necessary to implement the provisions of this section.
AN ACT to amend and reenact §5-16-7 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §33-15-4k; to amend said code by adding thereto a new section, designated §33-16-3w; to amend said code by adding thereto a new section, designated §33-24-7l; to amend said code by adding thereto a new section, designated §33-25-8l; and to amend said code by adding thereto a new section, designated §33-25A-8k, all relating generally to requiring health insurance coverage of maternity services in certain circumstances; providing maternity services for all individuals participating in or receiving insurance coverage under a health insurance policy or plan if those services are covered under the policy or plan; modifying required benefits for public employees insurance, accident and sickness insurance, group accident and sickness insurance, hospital medical and dental corporations, health care corporations and health maintenance organizations; and providing exceptions to the extent that required benefits exceed the essential health benefits specified under the Patient Protection and Affordable Care Act.

Be it enacted by the Legislature of West Virginia:

That §5-16-7 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that said code be amended by adding thereto a new section, designated §33-15-4k; that said code be amended by adding thereto a new section, designated §33-16-3w; that said code be
amended by adding thereto a new section, designated §33-24-7l; that said code be amended by adding thereto a new section, designated §33-25-8i; and that said code be amended by adding thereto a new section, designated §33-25A-8k, all to read as follows:

CHAPTER 5. GENERAL POWERS AND AUTHORITY OF GOVERNOR, SECRETARY OF STATE AND ATTORNEY GENERAL; BOARD OF PUBLIC WORKS; MISCELLANEOUS AGENCIES, COMMISSIONS, OFFICES, PROGRAMS, ETC.

ARTICLE 16. WEST VIRGINIA PUBLIC EMPLOYEES INSURANCE ACT.

§5-16-7. Authorization to establish group hospital and surgical insurance plan, group major medical insurance plan, group prescription drug plan and group life and accidental death insurance plan; roles for administration of plans; mandated benefits; what plans may provide; optional plans; separate rating for claims experience purposes.

(a) The agency shall establish a group hospital and surgical insurance plan or plans, a group prescription drug insurance plan or plans, a group major medical insurance plan or plans and a group life and accidental death insurance plan or plans for those employees herein made eligible and establish and promulgate rules for the administration of these plans subject to the limitations contained in this article. These plans shall include:

(1) Coverages and benefits for x-ray and laboratory services in connection with mammograms when medically appropriate and consistent with current guidelines from the United States Preventive Services Task Force; pap smears, either conventional or liquid-based cytology, whichever is medically appropriate, and consistent with the current guidelines from either the United
States Preventive Services Task Force or The American College of Obstetricians and Gynecologists; and a test for the human papilloma virus (HPV) when medically appropriate and consistent with current guidelines from either the United States Preventive Services Task Force or The American College of Obstetricians and Gynecologists, when performed for cancer screening or diagnostic services on a woman age eighteen or over;

(2) Annual checkups for prostate cancer in men age fifty and over;

(3) Annual screening for kidney disease as determined to be medically necessary by a physician using any combination of blood pressure testing, urine albumin or urine protein testing and serum creatinine testing as recommended by the National Kidney Foundation;

(4) For plans that include maternity benefits, coverage for inpatient care in a duly licensed health care facility for a mother and her newly born infant for the length of time which the attending physician considers medically necessary for the mother or her newly born child. No plan may deny payment for a mother or her newborn child prior to forty-eight hours following a vaginal delivery or prior to ninety-six hours following a caesarean section delivery if the attending physician considers discharge medically inappropriate;

(5) For plans which provide coverages for post-delivery care to a mother and her newly born child in the home, coverage for inpatient care following childbirth as provided in subdivision (4) of this subsection if inpatient care is determined to be medically necessary by the attending physician. These plans may include, among other things, medicines, medical equipment, prosthetic appliances and any other inpatient and outpatient services and expenses considered appropriate and desirable by the agency; and
(6) Coverage for treatment of serious mental illness:

(A) The coverage does not include custodial care, residential care or schooling. For purposes of this section, "serious mental illness" means an illness included in the American Psychiatric Association's diagnostic and statistical manual of mental disorders, as periodically revised, under the diagnostic categories or subclassifications of: (i) Schizophrenia and other psychotic disorders; (ii) bipolar disorders; (iii) depressive disorders; (iv) substance-related disorders with the exception of caffeine-related disorders and nicotine-related disorders; (v) anxiety disorders; and (vi) anorexia and bulimia. With regard to a covered individual who has not yet attained the age of nineteen years, "serious mental illness" also includes attention deficit hyperactivity disorder, separation anxiety disorder and conduct disorder.

(B) Notwithstanding any other provision in this section to the contrary, if the agency demonstrates that its total costs for the treatment of mental illness for any plan exceeds two percent of the total costs for such plan in any experience period, then the agency may apply whatever additional cost-containment measures may be necessary in order to maintain costs below two percent of the total costs for the plan for the next experience period. These measures may include, but are not limited to, limitations on inpatient and outpatient benefits.

(C) The agency shall not discriminate between medical-surgical benefits and mental health benefits in the administration of its plan. With regard to both medical-surgical and mental health benefits, it may make determinations of medical necessity and appropriateness and it may use recognized health care quality and cost management tools including, but not limited to, limitations on inpatient and outpatient benefits, utilization review, implementation of cost-containment measures, preauthorization for certain treatments, setting coverage levels, setting maximum number of visits within certain time periods,
using capitated benefit arrangements, using fee-for-service arrangements, using third-party administrators, using provider networks and using patient cost sharing in the form of copayments, deductibles and coinsurance.

(7) Coverage for general anesthesia for dental procedures and associated outpatient hospital or ambulatory facility charges provided by appropriately licensed health care individuals in conjunction with dental care if the covered person is:

(A) Seven years of age or younger or is developmentally disabled and is an individual for whom a successful result cannot be expected from dental care provided under local anesthesia because of a physical, intellectual or other medically compromising condition of the individual and for whom a superior result can be expected from dental care provided under general anesthesia;

(B) A child who is twelve years of age or younger with documented phobias or with documented mental illness and with dental needs of such magnitude that treatment should not be delayed or deferred and for whom lack of treatment can be expected to result in infection, loss of teeth or other increased oral or dental morbidity and for whom a successful result cannot be expected from dental care provided under local anesthesia because of such condition and for whom a superior result can be expected from dental care provided under general anesthesia.

(8) (A) Any plan issued or renewed on or after January 1, 2012, shall include coverage for diagnosis, evaluation and treatment of autism spectrum disorder in individuals ages eighteen months to eighteen years. To be eligible for coverage and benefits under this subdivision, the individual must be diagnosed with autism spectrum disorder at age eight or younger. Such plan shall provide coverage for treatments that are medically necessary and ordered or prescribed by a licensed physician or licensed psychologist and in accordance with a
treatment plan developed from a comprehensive evaluation by a certified behavior analyst for an individual diagnosed with autism spectrum disorder.

(B) The coverage shall include, but not be limited to, applied behavior analysis which shall be provided or supervised by a certified behavior analyst. The annual maximum benefit for applied behavior analysis required by this subdivision shall be in an amount not to exceed $30,000 per individual for three consecutive years from the date treatment commences. At the conclusion of the third year, coverage for applied behavior analysis required by this subdivision shall be in an amount not to exceed $2,000 per month, until the individual reaches eighteen years of age, as long as the treatment is medically necessary and in accordance with a treatment plan developed by a certified behavior analyst pursuant to a comprehensive evaluation or reevaluation of the individual. This subdivision does not limit, replace or affect any obligation to provide services to an individual under the Individuals with Disabilities Education Act, 20 U.S. C. 1400 et seq., as amended from time to time or other publicly funded programs. Nothing in this subdivision requires reimbursement for services provided by public school personnel.

(C) The certified behavior analyst shall file progress reports with the agency semiannually. In order for treatment to continue, the agency must receive objective evidence or a clinically supportable statement of expectation that:

(i) The individual’s condition is improving in response to treatment;

(ii) A maximum improvement is yet to be attained; and

(iii) There is an expectation that the anticipated improvement is attainable in a reasonable and generally predictable period of time.

(D) On or before January 1 each year, the agency shall file an annual report with the Joint Committee on Government and
Finance describing its implementation of the coverage provided pursuant to this subdivision. The report shall include, but not be limited to, the number of individuals in the plan utilizing the coverage required by this subdivision, the fiscal and administrative impact of the implementation and any recommendations the agency may have as to changes in law or policy related to the coverage provided under this subdivision. In addition, the agency shall provide such other information as required by the Joint Committee on Government and Finance as it may request.

(E) For purposes of this subdivision, the term:

(i) “Applied behavior analysis” means the design, implementation and evaluation of environmental modifications using behavioral stimuli and consequences in order to produce socially significant improvement in human behavior and includes the use of direct observation, measurement and functional analysis of the relationship between environment and behavior.

(ii) “Autism spectrum disorder” means any pervasive developmental disorder including autistic disorder, Asperger’s Syndrome, Rett Syndrome, childhood disintegrative disorder or Pervasive Development Disorder as defined in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders of the American Psychiatric Association.

(iii) “Certified behavior analyst” means an individual who is certified by the Behavior Analyst Certification Board or certified by a similar nationally recognized organization.

(iv) “Objective evidence” means standardized patient assessment instruments, outcome measurements tools or measurable assessments of functional outcome. Use of objective measures at the beginning of treatment, during and after
treatment is recommended to quantify progress and support justifications for continued treatment. The tools are not required but their use will enhance the justification for continued treatment.

(F) To the extent that the application of this subdivision for autism spectrum disorder causes an increase of at least one percent of actual total costs of coverage for the plan year, the agency may apply additional cost containment measures.

(G) To the extent that the provisions of this subdivision require benefits that exceed the essential health benefits specified under section 1302(b) of the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, as amended, the specific benefits that exceed the specified essential health benefits shall not be required of insurance plans offered by the Public Employees Insurance Agency.

(9) For plans that include maternity benefits, coverage for the same maternity benefits for all individuals participating in or receiving coverage under plans that are issued or renewed on or after January 1, 2014: Provided, That to the extent that the provisions of this subdivision require benefits that exceed the essential health benefits specified under section 1302(b) of the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, as amended, the specific benefits that exceed the specified essential health benefits shall not be required of a health benefit plan when the plan is offered in this state.

(b) The agency shall, with full authorization, make available to each eligible employee, at full cost to the employee, the opportunity to purchase optional group life and accidental death insurance as established under the rules of the agency. In addition, each employee is entitled to have his or her spouse and dependents, as defined by the rules of the agency, included in the optional coverage, at full cost to the employee, for each eligible dependent.
(c) The finance board may cause to be separately rated for claims experience purposes:

(1) All employees of the State of West Virginia;

(2) All teaching and professional employees of state public institutions of higher education and county boards of education;

(3) All nonteaching employees of the Higher Education Policy Commission, West Virginia Council for Community and Technical College Education and county boards of education; or

(4) Any other categorization which would ensure the stability of the overall program.

(d) The agency shall maintain the medical and prescription drug coverage for Medicare eligible retirees by providing coverage through one of the existing plans or by enrolling the Medicare eligible retired employees into a Medicare specific plan, including, but not limited to, the Medicare/Advantage Prescription Drug Plan. If a Medicare specific plan is no longer available or advantageous for the agency and the retirees, the retirees remain eligible for coverage through the agency.

CHAPTER 33. INSURANCE.

ARTICLE 15. ACCIDENT AND SICKNESS INSURANCE.

§33-15-4k. Maternity coverage.

Notwithstanding any provision of any policy, provision, contract, plan or agreement applicable to this article, any health insurance policy subject to this article, issued or renewed on or after January 1, 2014, which provides health insurance coverage for maternity services, shall provide coverage for maternity services for all persons participating in or receiving coverage under the policy. To the extent that the provisions of this section require benefits that exceed the essential health benefits
9 specified under section 1302(b) of the Patient Protection and
10 Affordable Care Act, Pub. L. No. 111-148, as amended, the
11 specific benefits that exceed the specified essential health
12 benefits are not required of a health benefit plan when the plan
13 is offered by a health care insurer in this state. Coverage required
14 under this section may not be subject to exclusions or limitations
15 which are not applied to other maternity coverage under the
16 policy.

ARTICLE 16. GROUP ACCIDENT AND SICKNESS INSURANCE.

§33-16-3w. Maternity coverage.

1 Notwithstanding any provision of any policy, provision,
2 contract, plan or agreement applicable to this article, any health
3 insurance policy subject to this article, issued or renewed on or
4 after January 1, 2014, which provides health insurance coverage
5 for maternity services, shall provide coverage for maternity
6 services for all persons participating in, or receiving coverage
7 under the policy. To the extent that the provisions of this section
8 require benefits that exceed the essential health benefits
9 specified under section 1302(b) of the Patient Protection and
10 Affordable Care Act, Pub. L. No. 111-148, as amended, the
11 specific benefits that exceed the specified essential health
12 benefits are not required of a health benefit plan when the plan
13 is offered by a health care insurer in this state. Coverage required
14 under this section may not be subject to exclusions or limitations
15 which are not applied to other maternity coverage under the
16 policy.

ARTICLE 24. HOSPITAL MEDICAL AND DENTAL CORPORATIONS.

§33-24-7l. Maternity coverage.

1 Notwithstanding any provision of any policy, provision,
2 contract, plan or agreement applicable to this article, a health
insurance policy subject to this article, issued or renewed on or after January 1, 2014, which provides health insurance coverage for maternity services, shall provide coverage for maternity services for all persons participating in, or receiving coverage under the policy. To the extent that the provisions of this section require benefits that exceed the essential health benefits specified under section 1302(b) of the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, as amended, the specific benefits that exceed the specified essential health benefits are not required of a health benefit plan when the plan is offered by a healthcare insurer in this state. Coverage required under this section may not be subject to exclusions or limitations which are not applied to other maternity coverage under the policy.

ARTICLE 25. HEALTH CARE CORPORATION.

§33-25-8i. Maternity coverage.

Notwithstanding any provision of any policy, provision, contract, plan or agreement applicable to this article, a health insurance policy subject to this article, issued or renewed on or after January 1, 2014, which provides health insurance coverage for maternity services, shall provide coverage for maternity services for all persons participating in, or receiving coverage under the policy. To the extent that the provisions of this section require benefits that exceed the essential health benefits specified under section 1302(b) of the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, as amended, the specific benefits that exceed the specified essential health benefits are not required of a health benefit plan when the plan is offered by a healthcare insurer in this state. Coverage required under this section may not be subject to exclusions or limitations which are not applied to other maternity coverage under the policy.
ARTICLE 25A. HEALTH MAINTENANCE ORGANIZATION ACT.

§33-25A-8k. Maternity coverage.

1 Notwithstanding any provision of any policy, provision, contract, plan or agreement applicable to this article, a health insurance policy subject to this article, issued or renewed on or after January 1, 2014, which provides health insurance coverage for maternity services, shall provide coverage for maternity services for all persons participating in, or receiving coverage under the policy. To the extent that the provisions of this section require benefits that exceed the essential health benefits specified under section 1302(b) of the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, as amended, the specific benefits that exceed the specified essential health benefits are not required of a health benefit plan when the plan is offered by a health care insurer in this state. Coverage required under this section may not be subject to exclusions or limitations which are not applied to other maternity coverage under the policy.

CHAPTER 105

(Com. Sub. for S. B. 534 - By Senator Palumbo)

[Passed April 11, 2013; in effect from passage.]
[Approved by the Governor on April 29, 2013.]

AN ACT to amend and reenact §33-6F-2 of the Code of West Virginia, 1931, as amended, relating to correcting an internal reference of the code with regard to insurance information disclosure.
Be it enacted by the Legislature of West Virginia:

That §33-6F-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 6F. DISCLOSURE OF NONPUBLIC PERSONAL INFORMATION.

§33-6F-2. Disclosure of certain insurance information required.

Notwithstanding the provisions of section one of this article:

(a) Each insurer that provides personal lines liability insurance coverage, as that term is defined in section nine, article twelve of this chapter, to pay all or a portion of a claim asserted against an insurance policy insuring a motor vehicle shall provide, within thirty days of its receipt of a written request from a claimant’s attorney who has given written notice that he or she represents the claimant:

(1) A response providing the following information relating to each of the insurer’s known policies of insurance, including excess or umbrella insurance, which does or may provide liability coverage for the claim:

(A) The name of the insurer;

(B) The name of each named insured of the subject policy; and

(C) The limits of any motor vehicle liability insurance policy at the time of the events that are the subject of the claim; or

(2) The declarations page of any motor vehicle liability policy applicable at the time of the events that are the subject of the claim, appropriately redacted to comply with applicable privacy laws or rules;
(b) Any written request by the claimant's attorney under this section must include:

1. The date and location of the events that are the subject of the claim;
2. The name and, if known, the last known address of the insured;
3. A copy of the accident or incident report, if any;
4. The insurer's claim number;
5. A good-faith estimate and documentation of all of the claimant's medical expenses if any and any wage loss documentation as of the date of the request, if any; and
6. Documentation as of the date of the request of any and all property damage.

(c) Disclosure of the information required by subsection (a) of this section is not an admission that the alleged injury or damage is subject to the policy, nor does the disclosure waive any reservation of rights an insurer may have.

(d) The information disclosed by any party pursuant to this section, by reason of the disclosure, is not admissible as evidence at trial.

(e) An insurer's compliance with this section does not constitute a violation of this article, or subsection (12), section four, article eleven of this chapter.

(f) An insurer that fails to comply with this section is subject to a penalty of $500, plus reasonable attorneys' fees and expenses incurred in obtaining disclosure of the information required by subsection (a) of this section. This penalty is the sole
CHAPTER 106

(Com. Sub. for H. B. 2762 - By Delegates Miley and Manchin)

[Passed April 13, 2013; in effect ninety days from passage.]
[Approved by the Governor on April 29, 2013.]

AN ACT to amend and reenact §33-12B-1 and §33-12B-9 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §33-12B-4a, all relating to insurance; licensure of insurance adjusters; definitions, including a definition of "automated claims adjudication system"; providing exemptions for certain individuals from adjuster licensure in this state; and providing that a resident of Canada may be licensed as a nonresident adjuster if that person has obtained a resident or home state adjuster license in another state.

Be it enacted by the Legislature of West Virginia:

That §33-12B-1 and §33-12B-9 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto a new section, designated §33-12B-4a, all to read as follows:

ARTICLE 12B. ADJUSTERS.

§33-12B-1. Definitions.

1 (a) An "adjuster" is any individual who, for compensation, fee or commission, investigates and settles claims arising under
(b) "Automated claims adjudication system" means a preprogrammed computer system designed for the collection, data entry, calculation and final resolution of portable electronics insurance claims which:

(1) May only be used by a licensed adjuster, licensed producer or supervised individuals operating pursuant to section four-a of this article;

(2) Must comply with all claims payments requirements of the insurance code; and

(3) Must be certified as compliant with this section by a licensed adjuster that is an officer of the entity which employs the individuals operating pursuant to section four-a of this article.

c) "Company adjuster" means an adjuster representing the interests of the insurer, including an independent contractor and a salaried employee of the insurer.

d) "Home state" means the District of Columbia or any state or territory of the United States in which an adjuster maintains his or her principal place of residence or business and in which he or she is licensed to act as a resident adjuster. If a person's principal place of residence or business does not license adjusters for the type of adjuster license sought in this state, he or she shall designate as his or her home state any state in which he or she has such a license.

e) "Public adjuster" means an independent contractor representing solely the financial interests of the insured named in the policy.
(f) "Crop adjuster" means a person who adjusts crop
insurance claims under the federal crop insurance program
administered by the United States Department of Agriculture.

§33-12B-4a. Exemptions from license.

Individuals who collect claim information from, or furnish
claim information to, insureds or claimants and who conduct
data entry including entering data into an automated claims
adjudication system are exempt from licensure under this article:
Provided, That the individuals are under the supervision of a
licensed adjuster or licensed producer; Provided however, That
no more than twenty-five persons are under the supervision of
one licensed adjuster or licensed producer.

§33-12B-9. Licensing of nonresident adjusters.

(a) A nonresident applicant for an adjuster license who holds
a similar license in his or her home state may be licensed as a
nonresident adjuster in this state if the applicant's home state has
established, by law or regulation like requirements for the
licensing of a resident of this state as a nonresident adjuster.

(b) As a condition of continuing a nonresident adjuster
license, the licensee must maintain a license in his or her home
state.

(c) If a nonresident adjuster desires to become a resident
adjuster he or she must apply to become one within ninety days
of establishing legal residency in this state.

(d) If a nonresident adjuster has his or her license suspended,
terminated or revoked by his or her home state, the adjuster must
immediately notify the commissioner of that action.

(e) A resident of Canada may be licensed as a nonresident
adjuster under this section if that person has obtained a resident
or home state adjuster license in another state.
AN ACT to repeal §33-25C-5, §33-25C-6, §33-25C-7, §33-25C-9 and §33-25C-11 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new article, designated §33-16H-1, §33-16H-2, §33-16H-3 and §33-16H-4, all relating to requiring health plan issuers to develop processes for utilization review, to develop internal grievance procedures, and to make external review available with respect to all adverse determinations; mandating utilization review and internal grievance procedures; providing for external review of adverse determinations; defining terms; providing for judicial review of certain decisions; providing for venue of judicial review; providing for continued benefits pending judicial review; providing for an award of attorneys fees; providing no new causes of action; preserving existing causes of action; repealing similar provisions applicable to only health maintenance organizations; and directing proposal of legislative rules.

Be it enacted by the Legislature of West Virginia:

That §33-25C-5, §33-25C-6, §33-25C-7, §33-25C-9 and §33-25C-11 of the Code of West Virginia, 1931, as amended, be repealed; and that said code be amended by adding thereto a new article, designated §33-16H-1, §33-16H-2, §33-16H-3 and §33-16H-4, all to read as follows:
§33-16H-1. Definitions.

As used in this article:

1. "Adverse determination" means a determination by a health carrier or its designee utilization review organization that an admission, availability of care, continued stay or other healthcare service that is a covered benefit has been reviewed and, based upon the information provided, does not meet the health carrier's requirements for medical necessity, appropriateness, health care setting, level of care or effectiveness, and the requested service or payment for the service is therefore denied, reduced or terminated.

2. "External review" means a review of a final adverse determination by an independent review organization.

3. "Final adverse determination" means an adverse determination that has been upheld by the issuer at the completion of the internal grievance procedures or an adverse determination with respect to which the internal grievance procedures have been deemed exhausted.

4. "Health benefit plan" means a policy, contract, certificate or agreement entered into, offered or issued by an issuer to provide, deliver, arrange for, pay for, or reimburse any of the costs of health care services, including short-term and catastrophic health insurance policies and policies that pay on a cost-incurred basis, but excludes the excepted benefits defined in 42 U. S. C. §300gg-91 and policies, contracts, certificates or agreements excluded by rules promulgated pursuant to section four of this article.

5. "Health plan issuer" or "issuer" means an entity required to be licensed under this chapter that contracts, or offers to
contract to provide, deliver, arrange for, pay for, or reimburse any of the costs of health care services under a health benefit plan, including an accident and sickness insurance company, a health maintenance corporation, a health care corporation, a health or hospital service corporation, and a fraternal benefit society.

(6) "Independent review organization" means an entity approved by the commissioner to conduct external reviews of final adverse determinations.

(7) "Utilization review" means a system for the evaluation of the necessity, appropriateness and efficiency of the use of health care services, procedure and facilities.

§33-16H-2. Issuer requirements.

An issuer shall, in accordance with rules promulgated pursuant to section four of this article, develop processes for utilization review and internal grievance procedures and shall make external review available with respect to all adverse determinations.

§33-16H-3. Judicial review; enforcement.

(a) An individual or issuer may seek judicial review of a final decision rendered by an independent review organization by filing a petition in the circuit court within sixty days after receipt of notice of such decision.

(1) Venue for a petition filed pursuant to this section is the county in which the individual resides or, if the individual is a non-resident, the county in which he or she works or, if he or she does not work in this state, the county in which his or her employer is located, or if none of these counties are applicable, in Kanawha County.
The issuer shall provide benefits pursuant to the final external review decision, including by making payment on a disputed claim, unless or until there is a judicial decision otherwise.

(3) If the issuer files a petition pursuant to this section and the individual substantially prevails, the issuer shall be responsible for the reasonable attorney’s fees of the individual.

(b) A decision issued by an independent review organization pursuant to this article may be enforced in the same manner as an order of the commissioner.

(c) This article does not create any new cause of action or eliminate any presently existing cause of action.

§33-16H-4. Rule-making authority; applicability.

(a) The commissioner shall propose legislative rules for approval by the Legislature in accordance with the provisions of article three, chapter twenty-nine-a of this code to implement the provisions of this article, including, but not limited to, rules to:

(1) Define the scope of the applicability of this article;

(2) Establish requirements for all issuers with regard to utilization review and for internal grievance procedures and external review of adverse determinations, which rules shall be based on the corresponding model acts adopted by the National Association of Insurance Commissioners and, with respect to external review, shall meet or exceed the minimum consumer protections established by the federal Patient Protection and Affordable Care Act (Public Law 111-148), as amended by the federal Health Care and Education Reconciliation Act of 2010 (Public Law 111-152); and

(3) Provide for judicial review pursuant to subsection (a), section three of this article, which rules shall be based on the
provisions of this code and rules governing judicial review of
contested cases under the State Administrative Procedures Act.

(b) Notwithstanding the provisions of section one, article
twenty-three of this chapter; section four, article twenty-four of
this chapter; section six, article twenty-five of this chapter; and
section twenty-four, article twenty-five-a of this chapter, this
article and the rules promulgated under this article are applicable
to all health benefits plans and supersede any provisions to the
contrary in this chapter or in any rules promulgated under this
chapter.

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CHAPTER 108

(Com. Sub. for H. B. 2819 - By Delegates Guthrie,
Hartman, Ashley and Walters)

[Passed April 12, 2013; in effect ninety days from passage.]
[Approved by the Governor April 30, 2013.]

AN ACT to amend and reenact §33-31-16a of the Code of West
Virginia, 1931, as amended; and to amend and reenact §33-40-3 of
said code, all relating to the financial oversight of entities
regulated by the Insurance Commissioner; requiring captive
insurance companies organized as risk retention groups to comply
with risk-based capital for insurers’ provisions and state rules; and
incorporating a solvency trend test for property and casualty
insurance companies.

Be it enacted by the Legislature of West Virginia:

That §33-31-16a of the Code of West Virginia, 1931, as amended,
be amended and reenacted; and that §33-40-3 of said code be amended
and reenacted, all to read as follows:
ARTICLE 31. CAPTIVE INSURANCE.

§33-31-16a. Laws applicable; Risk Retention Groups.

In addition to the applicable provisions of this article, any captive insurance company organized as a risk retention group is subject to the following provisions of this chapter: section nine, article two (examination of insurers, agents, brokers and solicitors; access to books, records, etc.); section fourteen, article four (financial statement filings; annual and quarterly statements; required format; foreign insurers; agents of the commissioner); section fifteen-a, article four (credit for reinsurance; definitions; requirements; trust accounts; reductions from liability; security; effective date); article seven (assets and liabilities); article ten (rehabilitation and liquidation); article twenty-seven (insurance holding company systems); article thirty-three (annual audited financial report); article thirty-four (administrative supervision); article thirty-five (criminal sanctions for failure to report impairment); article thirty-six (Business Transacted with Producer Controlled Property/Casualty Insurer Act); article thirty-seven (managing general agents); article thirty-eight (Reinsurance Intermediary Act); article forty (risk-based capital for insurers); and article forty-one (Insurance Fraud Prevention Act), as well as any rules promulgated under those provisions in accordance with article three, chapter twenty-nine-a of this code, including any rule relating to property and casualty actuarial opinions.

ARTICLE 40. RISK-BASED CAPITAL (RBC) FOR INSURERS.

§33-40-3. Company action level event.

(a) "Company action level event" means any of the following events:

(1) The filing of an RBC report by an insurer which indicates that:
(A) The insurer’s total adjusted capital is greater than or equal to its regulatory action level RBC, but less than its company action level RBC;

(B) If a life and/or health insurer, the insurer has total adjusted capital which is greater than or equal to its company action level RBC, but less than the product of its authorized control level RBC and two and one-half and has a negative trend; or

(C) If a property and casualty insurer, the insurer has total adjusted capital which is greater than or equal to its company action level RBC, but less than the product of its authorized control level RBC and three and triggers the trend test determined in accordance with the trend test calculation included in the property and casualty RBC instructions;

(2) The notification by the commissioner to the insurer of an adjusted RBC report that indicates an event in subdivision (I) of this subsection, provided the insurer does not challenge the adjusted RBC report under section seven of this article; or

(3) If, pursuant to section seven of this article, an insurer challenges an adjusted RBC report that indicates the event in subdivision (1) of this subsection, the notification by the commissioner to the insurer that the commissioner has, after a hearing, rejected the insurer’s challenge.

(b) In the event of a company action level event, the insurer shall prepare and submit to the commissioner an RBC plan which shall:

(1) Identify the conditions which contribute to the company action level event;

(2) Contain proposals of corrective actions which the insurer intends to take and would be expected to result in the elimination of the company action level event;
(3) Provide projections of the insurer's financial results in the current year and at least the four succeeding years or, in the case of an HMO, in the current year and at least the two succeeding years, both in the absence of proposed corrective actions and giving effect to the proposed corrective actions, including projections of statutory operating income, net income, capital and/or surplus. (The projections for both new and renewal business may include separate projections for each major line of business and separately identify each significant income, expense and benefit component);

(4) Identify the key assumptions impacting the insurer's projections and the sensitivity of the projections to the assumptions; and

(5) Identify the quality of, and problems associated with, the insurer's business, including, but not limited to, its assets, anticipated business growth and associated surplus strain, extraordinary exposure to risk, mix of business and use of reinsurance, if any, in each case.

(c) The RBC plan shall be submitted:

(1) Within forty-five days of the company action level event; or

(2) If the insurer challenges an adjusted RBC report pursuant to section seven of this article, within forty-five days after notification to the insurer that the commissioner has, after a hearing, rejected the insurer's challenge.

(d) Within sixty days after the submission by an insurer of an RBC plan to the commissioner, the commissioner shall notify the insurer whether the RBC plan may be implemented or is, in the judgment of the commissioner, unsatisfactory. If the commissioner determines the RBC plan is unsatisfactory, the notification to the insurer shall set forth the reasons for the
determination and may set forth proposed revisions which will render the RBC plan satisfactory in the judgment of the commissioner. Upon notification from the commissioner, the insurer shall prepare a revised RBC plan, which may incorporate by reference any revisions proposed by the commissioner, and shall submit the revised RBC plan to the commissioner:

(1) Within forty-five days after the notification from the commissioner; or

(2) If the insurer challenges the notification from the commissioner under section seven of this article, within forty-five days after a notification to the insurer that the commissioner has, after a hearing, rejected the insurer's challenge.

(e) In the event of a notification by the commissioner to an insurer that the insurer's RBC plan or revised RBC plan is unsatisfactory, the commissioner may, at the commissioner's discretion, subject to the insurer's right to a hearing under section seven of this article, specify in the notification that the notification constitutes a regulatory action level event.

(f) Every domestic insurer that files an RBC plan or revised RBC plan with the commissioner shall file a copy of the RBC plan or revised RBC plan with the Insurance Commissioner in any state in which the insurer is authorized to do business if:

(1) The state has an RBC provision substantially similar to subsection (a), section eight of this article; and

(2) The Insurance Commissioner of that state has notified the insurer of its request for the filing in writing, in which case the insurer shall file a copy of the RBC plan or revised RBC plan in that state no later than the later of:

(A) Fifteen days after the receipt of notice to file a copy of its RBC plan or revised RBC plan with the state; or
(B) The date on which the RBC plan or revised RBC plan is filed under subsections (c) and (d) of this section.

CHAPTER 109

(S. B. 403 - By Senators Palumbo, Chafin and Kessler (Mr. President))

[Passed April 13, 2013; in effect from passage.]
[Approved by the Governor on May 2, 2013.]

AN ACT to amend and reenact §51-9-4 of the Code of West Virginia, 1931, as amended, relating to the judicial retirement system; reducing the contribution rate of judges; authorizing the Consolidated Public Retirement Board to annually establish future participant contribution rates based on the State Actuary’s report; requiring certain reporting to the Legislature’s Joint Committee on Government and Finance and the Joint Committee on Pensions and Retirement; and limiting the participant contribution rate to no more than ten and one-half percent and no less than seven percent of a participant’s salary.

Be it enacted by the Legislature of West Virginia:

That §51-9-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 9. RETIREMENT SYSTEM FOR JUDGES OF RECORD.

§51-9-4. Required percentage contributions from salaries; any termination of required contributions prior to actual retirement disallowed; leased employees; military
service credit; maximum allowable and qualified military service; qualifiable prosecutorial service.

(a) Every person who is now serving or shall hereafter serve as a judge of any court of record of this state shall pay into the Judges' Retirement Fund six percent of the salary received by such person out of the State Treasury: Provided, That when a judge becomes eligible to receive benefits from such trust fund by actual retirement, no further payment by him or her shall be required, since such employee contribution, in an equal treatment sense, ceases to be required in the other retirement systems of the state, also, only after actual retirement: Provided, however. That on and after January 1, 1995, every person who is then serving or shall thereafter serve as a judge of any court of record in this state shall pay into the Judges' Retirement Fund nine percent of the salary received by that person: Provided further, That consistent with the salary increase granted to judges of courts of record during the 2005 regular legislative session and to changes effectuated in judicial retirement by provisions enacted during the third extraordinary legislative session of 2005, on and after July 1, 2005, every person who is then serving or shall thereafter serve as a judge of any court of record in this state shall pay into the Judges' Retirement Fund ten and one-half percent of the salary received by that person: And provided further. That on and after July 1, 2013, except as provided in subsection (b) of this section, every person who is then serving or shall thereafter serve as a judge of any court of record in this state and who elects to participate in this retirement system shall pay into the Judges' Retirement Fund seven percent of the salary received. Any prior occurrence or practice to the contrary, in any way allowing discontinuance of required employee contributions prior to actual retirement under this retirement system, is rejected as erroneous and contrary to legislative intent and as violative of required equal treatment and is hereby nullified and discontinued fully, with the State Auditor to require such contribution in every instance hereafter, except
where no contributions are required to be made under any of the provisions of this article.

(b) On and after July 1, 2014, every person who is serving or shall hereafter serve as a judge of any court of record of this state and who elects to participate in this retirement system shall contribute to the fund an amount determined by the board. This amount will be based on the annual actuarial valuation prepared by the State Actuary: Provided, That the contribution will be no less than seven percent or no more than ten and one-half percent of the participant's annual compensation.

(c) On or after July 1, 2013, and each year thereafter, the annual actuarial valuation prepared by the State Actuary for determination of all participants' contributions and the annual actuarially required contribution prepared by the State Actuary for use by the courts of this state for legislative appropriation shall be provided to the Legislature's Joint Committee on Government and Finance and the Joint Committee on Pensions and Retirement.

(d) An individual who is a leased employee shall not be eligible to participate in the system. For purposes of this system, a "leased employee" means any individual who performs services as an independent contractor or pursuant to an agreement with an employee leasing organization or other similar organization. If a question arises regarding the status of an individual as a leased employee, the board has the final power to decide the question.

(e) In drawing warrants for the salary checks of judges, the State Auditor shall deduct from the amount of each such salary check six percent thereof, which amount so deducted shall be credited by the Consolidated Public Retirement Board to the trust fund: Provided, That on or after January 1, 1995, the amount so deducted and credited shall be nine percent of each
such salary check: *Provided, however, That* consistent with the salary increase granted to judges of courts of record during the 2005 regular legislative session and to changes effectuated in judicial retirement by provisions enacted during the third extraordinary legislative session of 2005, on or after July 1, 2005, the amount so deducted and credited shall be ten and one-half percent of each such salary check: *Provided further.* That on and after July 1, 2013, except as provided in subsection (b) of this section, the amount so deducted and credited shall be seven percent of each salary check: *And provided further.* That on and after July 1, 2014, the amount so deducted and credited will be determined by the board.

(f) *Any judge seeking to qualify military service to be claimed as credited service, in allowable aggregate maximum amount up to five years, shall be entitled to be awarded the same without any required payment in respect thereof to the Judges’ Retirement Fund.*

(g) *Notwithstanding the preceding provisions of this section, contributions, benefits and service credit with respect to qualified military service shall be provided in accordance with Section 414(u) of the Internal Revenue Code. For purposes of this section, “qualified military service” has the same meaning as in Section 414(u) of the Internal Revenue Code. The Retirement Board is authorized to determine all questions and make all decisions relating to this section and may promulgate rules relating to contributions, benefits and service credit pursuant to the authority granted to the retirement board in section one, article ten-d, chapter five of this code to comply with Section 414(u) of the Internal Revenue Code.*

(h) *Any judge holding office as such on the effective date of the amendments to this article adopted by the Legislature at its 1987 regular session who seeks to qualify service as a prosecuting attorney as credited service, which service credit must have been earned prior to the year 1987, shall be required*
to pay into the Judges' Retirement Fund nine percent of the annual salary which was actually received by such person as prosecuting attorney during the time such prosecutorial service was rendered prior to the year 1987 and for which credited service is being sought, together with applicable interest. No judge whose term of office shall commence after the effective date of such amendments to this article shall be eligible to claim any credit for service rendered as a prosecuting attorney as eligible service for retirement benefits under this article, nor shall any time served as a prosecutor after the year 1988 be considered as eligible service for any purposes of this article.

CHAPTER 110

(Com. Sub. for S. B. 74 - By Senator Sypolt)

[Passed April 13, 2013; in effect ninety days from passage.]
[Approved by the Governor on April 29, 2013.]

AN ACT to amend and reenact §52-1-5a and §52-1-8 of the Code of West Virginia, 1931, as amended, all relating to redefining the basis for disqualification of prospective jurors to include those who have been convicted of any crime punishable by imprisonment in excess of one year, perjury or false swearing; and requiring clerks to provide copies of certain juror qualification questionnaires to counsel of record upon request.

Be it enacted by the Legislature of West Virginia:

That §52-1-5a and §52-1-8 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:
ARTICLE 1. PETIT JURIES.

§52-1-5a. Jury qualification form; contents; procedure for use; penalties.

(a) Not less than twenty days before the date for which persons are to report for jury duty, the clerk may, if directed by the court, serve by first-class mail, upon each person listed on the master list, a juror qualification form accompanied by instructions necessary for its completion: Provided, That the clerk may, if directed by the court, mail the juror qualification form to only those prospective jurors drawn for jury service under the provisions of section seven of this article. Each prospective juror shall be directed to complete the form and return it by mail to the clerk within ten days after its receipt. The juror qualification form is subject to approval by the circuit court as to matters of form and shall elicit the following information concerning the prospective juror:

(1) The juror’s name, sex, race, age and marital status;

(2) The juror’s level of educational attainment, occupation and place of employment;

(3) If married, the name of the juror’s spouse and the occupation and place of employment of the spouse;

(4) The juror’s residence address and the juror’s mailing address if different from the residence address;

(5) The number of children which the juror has and their ages;

(6) Whether the juror is a citizen of the United States and a resident of the county;

(7) Whether the juror is able to read, speak and understand the English language;
(8) Whether the juror has any physical or mental disability substantially impairing the capacity to render satisfactory jury service: Provided, That a juror with a physical disability, who can with reasonable accommodation render competent service, is eligible for service;

(9) Whether the juror has, within the preceding two years, been summoned to serve as a petit juror, grand juror or magistrate court juror, and has actually attended sessions of the magistrate or circuit court and been reimbursed for his or her expenses as a juror;

(10) Whether the juror has lost the right to vote because of a criminal conviction; and

(11) Whether the juror has been convicted of perjury, false swearing or any crime punishable by imprisonment in excess of one year under the applicable law of this state, another state or the United States.

The juror qualification form may also request information concerning the prospective juror’s religious preferences and organizational affiliations, except that the form and the accompanying instructions shall clearly inform the juror that this information need not be provided if the juror declines to answer such inquiries.

(b) The juror qualification form shall contain the prospective juror’s declaration that the responses are true to the best of the prospective juror’s knowledge and an acknowledgment that a willful misrepresentation of a material fact may be punished by a fine of not more than $500 or imprisonment for not more than thirty days, or both fine and imprisonment. Notarization of the juror qualification form shall not be required. If the prospective juror is unable to fill out the form, another person may assist the prospective juror in the preparation of the form and indicate that...
such person has done so and the reason therefor. If an omission, ambiguity or error appear in a returned form, the clerk shall again send the form with instructions to the prospective juror to make the necessary addition, clarification or correction and to return the form to the clerk within ten days after its second receipt.

(c) Any prospective juror who fails to return a completed juror qualification form as instructed shall be directed by the clerk to appear forthwith before the clerk to fill out the juror qualification form. At the time of the prospective juror's appearance for jury service, or at the time of any interview before the court or clerk, any prospective juror may be required to fill out another juror qualification form in the presence of the court or clerk. At that time the prospective juror may be questioned with regard to the responses to questions contained on the form and the grounds for the prospective juror's excuse or disqualification. Any information thus acquired by the court or clerk shall be noted on the juror qualification form.

(d) Any person who willfully misrepresents a material fact on a juror qualification form or during any interview described in subsection (c) of this section, for the purpose of avoiding or securing service as a juror, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $500 or imprisoned not more than thirty days, or both fined and imprisoned.

(e) Upon the clerk's receipt of the juror qualification questionnaires of persons selected as prospective petit jurors, he or she shall make the questionnaires of the persons so selected available, upon request, to counsel of record in the trial or trials for which the persons have been selected as prospective jurors.

§52-1-8. Disqualification from jury service.

(a) The court, shall determine whether any prospective juror is disqualified for jury service on the basis of information
provided on the juror qualification form or interview with the prospective juror or other competent evidence. The clerk shall enter this determination in the space provided on the juror qualification form and on the alphabetical lists of names drawn from the jury wheel or jury box.

(b) A prospective juror is disqualified to serve on a jury if the prospective juror:

(1) Is not a citizen of the United States, at least eighteen years old and a resident of the county;

(2) Is unable to read, speak and understand the English language. For the purposes of this section, the requirement of speaking and understanding the English language is met by the ability to communicate in American Sign Language or Signed English;

(3) Is incapable, by reason of substantial physical or mental disability, of rendering satisfactory jury service. A person claiming this disqualification may be required to submit a physician's certificate as to the disability and the certifying physician is subject to inquiry by the court at its discretion;

(4) Has, within the preceding two years, been summoned to serve as a petit juror, grand juror or magistrate court juror and has attended sessions of the magistrate or circuit court and been reimbursed for his or her expenses as a juror pursuant to the provisions of section twenty-one of this article, section thirteen, article two of this chapter, or pursuant to an applicable rule or regulation of the Supreme Court of Appeals promulgated pursuant to the provisions of section eight, article five, chapter fifty of this code;

(5) Has lost the right to vote because of a criminal conviction; or
(6) Has been convicted of perjury, false swearing or any crime punishable by imprisonment in excess of one year under the applicable law of this state, another state or the United States.

(c) A prospective juror seventy years of age or older is not disqualified from serving but shall be excused from service by the court upon his or her request.

(d) A prospective grand juror is disqualified to serve on a grand jury if he or she is an officeholder under the laws of the United States or of this state except that the term “officeholder” does not include notaries public.

(e) A person who is physically disabled and can render competent service with reasonable accommodation is not ineligible to act as juror and may not be dismissed from a jury panel on the basis of disability alone. The circuit judge shall, upon motion by either party or upon his or her own motion, disqualify a disabled juror if the circuit judge finds that the nature of potential evidence in the case including, but not limited to, the type or volume of exhibits or the disabled juror’s ability to evaluate a witness or witnesses, unduly inhibits the disabled juror’s ability to evaluate the potential evidence. For purposes of this section:

(1) Reasonable accommodation includes, but is not limited to, certified interpreters for the hearing impaired, spokespersons for the speech impaired, real-time court reporting and readers for the visually impaired.

(2) The court shall administer an oath or affirmation to any person present to facilitate communication for a disabled juror. The substance of the oath or affirmation shall be that any person present as an accommodation to a disabled juror will not deliberate on his or her own behalf, although present throughout the proceedings, but act only to accurately communicate for and to the disabled juror.
65 (f) Nothing in this article limits a party’s right to preemptory
66 strikes in civil or criminal actions.

CHAPTER 111

(Com. Sub. for H. B. 2498 - By Delegates Marcum,
Miley, Craig, Moore, White, Perry, Skaff,
E. Nelson, Ferro, Ferns and Eldridge)

[Passed April 13, 2013; in effect ninety days from passage.]
[Approved by the Governor on April 29, 2013.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by
adding thereto a new section, designated §52-2-15, relating to
grand jury proceedings; providing misdemeanor offense for
disclosure of matters occurring before a grand jury under certain
circumstances; providing exceptions; and providing criminal
penalties.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by
adding thereto a new section, designated §52-2-15 to read as follows:

ARTICLE 2. GRAND JURIES.


(a) A grand juror, an interpreter, a stenographer, an operator
of a recording device, a typist who transcribes recorded
testimony, an attorney for the state, or any person to whom
disclosure is made under paragraph (B), subdivision (1),
subsection (c) of this section, shall not disclose matters occurring
before the grand jury, except as otherwise provided by
subsection (c) of this section, and rules promulgated by the
Supreme Court of Appeals.

(b) A person who knowingly violates subsection (a) of this
section is guilty of a misdemeanor and, upon conviction, shall be
fined not more than $1,000 or confined in jail not more than
thirty days, or both fined and confined.

(c) (1) Disclosure otherwise prohibited by this section of
matters occurring before the grand jury, other than its
deliberations and the vote of any grand juror, may be made to:

(A) An attorney for the state for use in the performance of
such attorney's duty; and

(B) Such official personnel as are deemed necessary by an
attorney for the state to assist an attorney for the state in the
performance of such attorney's duty to enforce criminal law.

(2) Disclosure otherwise prohibited by this section of matters
occurring before the grand jury may also be made:

(A) When so directed by a court preliminarily to or in
connection with a judicial proceeding;

(B) When permitted by a court at the request of the
defendant, upon a showing that grounds may exist for a motion
to dismiss the indictment because of matters occurring before the
grand jury;

(C) When the disclosure is made by an attorney for the state
to another grand jury; or

(D) When permitted by a court at the request of an attorney
for the state, upon a showing that such matters may disclose a
violation of federal criminal law or of the law of another state,
to an appropriate official of the federal government or of such other state for the purposes of enforcing such law.

CHAPTER 112

(Com. Sub. for H.B. 2357 - By Delegates Poore, Marshall, Moore, Hamilton, Miley, Longstreth, Caputo, Manchin and Ellem)

[Passed April 13, 2013; in effect ninety days from passage.]  
[Approved by the Governor on May 1, 2013.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §49-5-13g; and to amend said code by adding thereto a new section, designated §61-8C-3b, all relating to juvenile proceedings; proscribing juveniles from manufacturing, possessing and distributing nude or partially nude images of minors; declaring a violation to be an act of juvenile delinquency and providing for the punishment thereof; authorizing the development of an educational diversion program for minors engaged in delinquent offenses associated with sexting and related offenses; delineation of sexting and associated offenses; providing for the establishment of a specialized diversion program by the West Virginia Supreme Court of Appeals for sexting by minors and associated offenses; suggested scope and topics to be included in such specialized diversion program; providing for the participation in the diversion program as a part of a pre-petition diversion and informal resolution in advance of a filed petition, as part of a required counseling plan, or as part of an improvement period requirement established in advance of adjudication; consideration of successful completion of specialized diversion program on first offense and subsequent offenses; and allowing for
court discretion as to whether adjudicated juvenile should be required to register as a sex offender as a result of adjudication as status offender for sexting and related offenses.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §49-5-13g; and that said code be amended by adding thereto a new section, designated §61-8C-3b, all to read as follows:

CHAPTER 49. CHILD WELFARE.

ARTICLE 5. JUVENILE PROCEEDINGS.

§49-5-13g. Sexting educational diversion program.

(a) Before a juvenile petition is filed for activity proscribed by article eight-a or eight-c, chapter sixty-one of this code, or after probable cause has been found to believe a juvenile has committed a violation thereof, but before an adjudicatory hearing on the petition, the court or a prosecuting attorney may direct or allow a minor who engaged in such activity to participate in an educational diversion program which meets the requirements of subsection (b) of this section. The prosecutor or court may refer the minor to the educational diversion program, as part of a prepetition diversion and informal resolution pursuant to the provisions of section two-a of this article; as part of counseling provided pursuant to the provisions of sections three or three-a of this article; or as part of the requirements of an improvement period to be satisfied in advance of an adjudicatory hearing pursuant to the provisions of section nine of this article.

(b) The West Virginia Supreme Court of Appeals may develop an educational diversion program for minors who are accused of activity proscribed by the provisions of article eight-a or eight-c, chapter sixty-one of this code. As a part of any
specialized educational diversion program so developed, the following issues and topics should be included:

(1) The legal consequences of and penalties for sharing sexually suggestive or explicit materials, including applicable federal and state statutes;

(2) The nonlegal consequences of sharing sexually suggestive or explicit materials including, but not limited to, the effect on relationships, loss of educational and employment opportunities, and being barred or removed from school programs and extracurricular activities;

(3) How the unique characteristics of cyberspace and the Internet, including searchability, replicability and an infinite audience, can produce long-term and unforeseen consequences for sharing sexually suggestive or explicit materials; and

(4) The connection between bullying and cyber-bullying and minors sharing sexually suggestive or explicit materials.

(c) Once a specialized educational diversion program is established by the West Virginia Supreme Court of Appeals consistent with the provisions of this section, the minor’s successful completion of the educational diversion program shall be duly considered by the prosecutor or the court in their respective decisions to either abstain from filing the juvenile petition or to dismiss the juvenile petition, as follows:

(1) If the minor has not previously been judicially determined to be delinquent, and the minor’s activities represent a first offense for a violation of section three-b, article eight-c, chapter sixty-one of this code, the minor shall not be subject to the requirements of said section, as long as he or she successfully completes the educational diversion program; and

(2) If the minor commits a second or subsequent violation of article eight-a or eight-c, chapter sixty-one of this code, the
51 minor’s successful completion of the educational diversion program may be considered as a factor to be considered by the prosecutor and court in deciding to not file a petition or to dismiss a petition, upon successful completion of an improvement plan established by the court.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 8C. FILMING OF SEXUALLY EXPPLICIT CONDUCT OF MINORS.

§61-8C-3b. Prohibiting juveniles from manufacturing, possessing and distributing nude or partially nude images of minors; creating exemptions; declaring a violation to be an act of juvenile delinquency; and providing for the punishment thereof.

(a) Any minor who intentionally possesses, creates, produces, distributes, presents, transmits, posts, exchanges, or otherwise disseminates a visual portrayal of another minor posing in an inappropriate sexual manner or who distributes, presents, transmits, posts, exchanges or otherwise disseminates a visual portrayal of himself or herself posing in an inappropriate sexual manner shall be guilty of an act of delinquency and upon adjudication disposition may be made by the circuit court pursuant to the provisions of article five, chapter forty-nine of this code.

(b) As used in this section:

(1) “Posing in an inappropriate sexual manner” means exhibition of a bare female breast, female or male genitalia, pubic or rectal areas of a minor for purposes of sexual titillation.

(2) “Visual portrayal” means:

(A) A photograph;
17  (B) A motion picture;
18  (C) A digital image;
19  (D) A digital video recording; or
20  (E) Any other mechanical or electronic recording process or device that can preserve, for later viewing, a visual image of a person that includes, but is not limited to, computers, cellphones, personal digital assistance and other digital storage or transmitting devices;
25  (c) It shall be an affirmative defense to an alleged violation of this section that a minor charged with possession of the prohibited visual depiction did neither solicit its receipt nor distribute, transmit or present it to another person by any means.
29  (d) Notwithstanding the provisions of article twelve, chapter fifteen of this code, an adjudication of delinquency under the provisions of this section shall not subject the minor to the requirements of said article and chapter.

CHAPTER 113

(Com. Sub. for S. B. 355 - By Senators Kessler (Mr. President) and M. Hall)
[By Request of the Executive]

[Passed April 13, 2013; in effect ninety days from passage.]
[Approved by the Governor on April 29, 2013.]

AN ACT to amend and reenact §21-5-4 of the Code of West Virginia, 1931, as amended, relating to the time final wages are required to
be paid to discharged employees; authorizing payment by mail if requested by the employee; providing that employers pay an employee all wages he or she earned at the time of quitting if the employee gives written notice of his or her intention to quit at least one pay period before quitting; defining "business day"; and making other technical changes.

Be it enacted by the Legislature of West Virginia:

That §21-5-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 5. WAGE PAYMENT AND COLLECTION.

§21-5-4. Cash orders; employees separated from payroll before paydays.

(a) In lieu of lawful money of the United States, any person, firm or corporation may compensate employees for services by cash order which may include checks or money orders on banks convenient to the place of employment where suitable arrangements have been made for the cashing of the checks by employees for the full amount of wages.

(b) Whenever a person, firm or corporation discharges an employee, the person, firm or corporation shall pay the employee's wages in full no later than the next regular payday or four business days, whichever comes first. Payment shall be made through the regular pay channels or, if requested by the employee, by mail. For purposes of this section, "business day" means any day other than Saturday, Sunday or any legal holiday as set forth in section one, article two, chapter two of this code.

(c) Whenever an employee quits or resigns, the person, firm or corporation shall pay the employee's wages in full no later than the next regular payday. Payment shall be made through the regular pay channels or, if requested by the employee, by mail.
However, if the employee gives at least one pay period's written notice of intention to quit, the person, firm or corporation shall pay all wages earned by the employee at the time of quitting.

(d) When work of any employee is suspended as a result of a labor dispute, or when an employee for any reason whatsoever is laid off, the person, firm or corporation shall pay in full to the employee not later than the next regular payday, either through the regular pay channels or by mail if requested by the employee, wages earned at the time of suspension or layoff.

(e) If a person, firm or corporation fails to pay an employee wages as required under this section, the person, firm or corporation, in addition to the amount which was unpaid when due, is liable to the employee for three times that unpaid amount as liquidated damages. Every employee shall have a lien and all other rights and remedies for the protection and enforcement of his or her salary or wages, as he or she would have been entitled to had he or she rendered service therefor in the manner as last employed; except that, for the purpose of liquidated damages, the failure shall not be deemed to continue after the date of the filing of a petition in bankruptcy with respect to the employer if he or she is adjudicated bankrupt upon the petition.

CHAPTER 114

(Com. Sub. for H. B. 2652 - By Delegates Poore, Marcum, Fleischauer, Frich, Eldridge and Sobonya)

[Passed April 10, 2013; in effect from passage.]
[Approved by the Governor on April 30, 2013.]

AN ACT to amend and reenact article 2, chapter 64 of the Code of West Virginia, 1931, as amended, relating generally to the
promulgation of administrative rules by the Department of Administration; legislative mandate or authorization for the
promulgation of certain legislative rules by various executive or
administrative agencies of the state; authorizing certain of the
agencies to promulgate certain legislative rules in the form that the
rules were filed in the State Register; authorizing certain of the
agencies to promulgate certain legislative rules with various
modifications presented to and recommended by the Legislative
Rule-Making Review Committee; authorizing certain of the
agencies to promulgate certain legislative rules with various
modifications presented to and recommended by the Legislative
Rule-Making Review Committee and as amended by the
Legislature; authorizing certain of the agencies to promulgate
certain legislative rules in the form that the rules were filed in the
State Register and as amended by the Legislature; authorizing the
Department of Administration to promulgate a legislative rule
relating to selecting design-builders under the Design-Build
Procurement Act; authorizing the Department of Administration to
promulgate a legislative rule relating to state owned vehicles;
authorizing the Consolidated Public Retirement Board to
promulgate a legislative rule relating to general provisions;
authorizing the Consolidated Public Retirement Board to
promulgate a legislative rule relating to benefit determination and
appeal; authorizing the Consolidated Public Retirement Board to
promulgate a legislative rule relating to the Teachers’ Retirement
System; authorizing the Consolidated Public Retirement Board to
promulgate a legislative rule relating to the Public Employees
Retirement System; and authorizing the Consolidated Public
Retirement Board to promulgate a legislative rule relating to the
West Virginia State Police.

Be it enacted by the Legislature of West Virginia:

That article 2, chapter 64 of the Code of West Virginia, 1931, as
amended, be amended and reenacted to read as follows:
ARTICLE 2. AUTHORIZATION FOR DEPARTMENT OF ADMINISTRATION TO PROMULGATE LEGISLATIVE RULES.

§64-2-1. Department of Administration.

(a) The legislative rule filed in the State Register on the thirtieth day of August, two thousand twelve, authorized under the authority of section six, article twenty-two-a, chapter five, of this code, modified by the Department of Administration to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on the nineteenth day of December, two thousand twelve, relating to the Department of Administration (selecting design-builders under the Design-Build Procurement Act, 148 CSR 11), is authorized, with the amendment set forth below:

On page one, section four, subsection 4.1, line twelve, following the word "Section", by striking "11" and inserting in lieu thereof "10".

(b) The legislative rule filed in the State Register on the thirtieth day of August, two thousand twelve, authorized under the authority of section forty-eight, article three, chapter five-a, of this code, modified by the Department of Administration to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on the nineteenth day of December, two thousand twelve, relating to the Department of Administration (state owned vehicles, 148 CSR 3), is authorized, with the amendment set forth below:

On page five, section six, subdivision 6.2.1, line sixteen, following the words "minimum of 1664 hours-weekly", by striking out the number "500" and inserting in lieu thereof the number "1,100".

(a) The legislative rule filed in the State Register on the twenty-second day of August, two thousand twelve, authorized under the authority of section one, article ten-d, chapter five, of this code, modified by the Consolidated Public Retirement Board to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on the twentieth day of September, two thousand twelve, relating to the Consolidated Public Retirement Board (general provisions, 162 CSR 1), is authorized, with the following amendments:

On page two, section three, by striking out the subsection designation 3.1;

On page two, section three, lines eight and nine, by underlining the words "and the Municipal Police Officers and Firefighters Retirement System (W.Va. Code §8-22A, et seq.)";

On page two, section five, subsection 5.4, line seven, after the words "involved by reason", by striking out the word "or" and inserting in lieu thereof the word "of";

On page three, section six, subsection 6.1, lines five and six, by underlining the words "and the Municipal Police Officers and Firefighters Retirement System";

On page three, subsection 6.2, following line two, by striking "4.4" and inserting in lieu thereof "5.4";

On page four, section seven, subdivision 7.2.c, line two, after the word "ex-spouse", by striking out the underlined word "and";

On page five, section seven, subdivision 7.2.f., line ten, by striking out the word "ser" and inserting in lieu thereof, the word "set";
On page six, subdivision 7.2.h, line three, following the words "retirant and the", by striking the words "former spouse" and inserting in lieu thereof "alternate payee";

And,

On page six, subdivision 7.2.h, line three, following the words "Payments to the", by striking the words "former spouse" and inserting in lieu thereof "alternate payee".

(b) The legislative rule filed in the State Register on the twenty-second day of August, two thousand twelve, authorized under the authority of section one, article ten-d, chapter five, of this code, modified by the Consolidated Public Retirement Board to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on the twentieth day of September, two thousand twelve, relating to the Consolidated Public Retirement Board (benefit determination and appeal, 162 CSR 2), is authorized, with the following amendment:

On page six, section eight, by striking out the subsection designation 8.1;

On page six, section nine, by striking out the subsection designation 9.1.;

On page six, section nine, line four, after the words "financial information", by striking out the word "are" and inserting in lieu thereof, the word "is";

And,

On page six, section ten, by striking out the subsection designation 10.1.

(c) The legislative rule filed in the State Register on the twenty-second day of August, two thousand twelve, authorized
under the authority of section one, article ten-d, chapter five, of
this code, modified by the Consolidated Public Retirement Board
to meet the objections of the Legislative Rule-Making Review
Committee and refiled in the State Register on the twentieth day
of September, two thousand twelve, relating to the Consolidated
Public Retirement Board (Teachers' Retirement System, 162
CSR 4), is authorized, with the following amendment:

On page five, section four, subdivision 4.12.1, line four,
following "W.Va. Code §5-16-13(f)", by inserting "and (m)".

(d) The legislative rule filed in the State Register on the
twenty-second day of August, two thousand twelve, authorized
under the authority of section one, article ten-d, chapter five, of
this code, modified by the Consolidated Public Retirement Board
to meet the objections of the Legislative Rule-Making Review
Committee and refiled in the State Register on the twentieth day
of September, two thousand twelve, relating to the Consolidated
Public Retirement Board (Public Employees Retirement System,
162 CSR 5), is authorized, with the following amendment:

On Page three, subsection 8.1., after the word "System" by
changing the period to a colon and inserting the following
proviso: And provided further. That beginning July 1, 2013, each
participating public employer shall contribute fourteen and five-
tenths percent (14.5%) of each compensation payment of all its
employees who are members of the Public Employees
Retirement System.

(e) The legislative rule filed in the State Register on the
twenty-second day of August, two thousand twelve, authorized
under the authority of section one, article ten-d, chapter five, of
this code, relating to the Consolidated Public Retirement Board
(West Virginia State Police, 162 CSR 9), is authorized, with the
amendment set forth below:

On page eight, section two, after line seventy-nine, by
inserting the following:
On page eight, subsection 14.1., after the word "System" by changing the period to a colon and inserting the following proviso: "And provided further, That beginning July 1, 2013, the West Virginia State Police shall contribute fourteen and five-tenths percent (14.5%) of the monthly salary of each member of the West Virginia State Police Retirement System to the West Virginia State Police Retirement System;

On page nine, section eighteen, subsection 18.1, line five, following the word "lifetime", by inserting "or until he or she remarries. If there is no surviving spouse or if the surviving spouse remarries or dies, then payments are to be paid to the dependent children or dependent parents of the deceased retirant as provided in subsection (a), section fourteen, article two-a, chapter fifteen of the code."

CHAPTER 115

(Com. Sub. for S. B. 243 - By Senator Snyder)

[Passed April 12, 2013; in effect from passage.]
[Approved by the Governor on April 30, 2013.]

AN ACT to amend and reenact article 3, chapter 64 of the Code of West Virginia, 1931, as amended, relating generally to the promulgation of administrative rules by the Department of Environmental Protection; legislative mandate or authorization for the promulgation of certain legislative rules by various executive or administrative agencies of the state; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the Legislative Rule-Making Review Committee: authorizing certain of the
Rule-Making Review Committee; authorizing certain of the agencies to promulgate certain legislative rules in the form that the rules were filed in the State Register; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the Legislative Rule-Making Review Committee and as amended by the Legislature; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to covered electronic devices recycling; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to hazardous waste administrative proceedings and civil penalty assessment; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to horizontal well development; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to permits for construction and major modification of major stationary sources for the prevention of significant deterioration of air quality; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to standards of performance for new stationary sources; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to the control of air pollution from the combustion of solid waste; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to the control of air pollution from hazardous waste treatment, storage and disposal facilities; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to requirements for operating permits; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to emission standards for hazardous air pollutants; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to water pollution control permit fee schedules; and authorizing the Department of Environmental Protection to promulgate a legislative rule relating to the WV/NPDES regulations for coal mining facilities.
Be it enacted by the Legislature of West Virginia:

That article 3, chapter 64 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 3. AUTHORIZATION FOR DEPARTMENT OF ENVIRONMENTAL PROTECTION TO PROMULGATE LEGISLATIVE RULES.

§64-3-1. Department of Environmental Protection.

(a) The legislative rule filed in the State Register on August 30, 2012, authorized under the authority of section twenty-nine, article fifteen-a, chapter twenty-two of this code, modified by the Department of Environmental Protection to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 13, 2012, relating to the Department of Environmental Protection (covered electronic devices recycling, 33 CSR 12), is authorized with the following amendment:

On page two, paragraph 4.1.b.1., by striking out all of paragraph 4.1.b.1. and inserting in lieu thereof a new paragraph 4.1.b.1., to read as follows:

4.1.b.1. Within one year after the effective date of this rule, receiving, storage, operations and shipping areas must be under a roof or in an enclosed area sufficient to prevent stormwater contamination.

(b) The legislative rule filed in the State Register on August 24, 2012, authorized under the authority of section seventeen, article eighteen, chapter twenty-two of this code, relating to the Department of Environmental Protection (hazardous waste administrative proceedings and civil penalty assessment, 33 CSR 27), is authorized.
(c) The legislative rule filed in the State Register on September 4, 2012, authorized under the authority of section six, article six-a, chapter twenty-two of this code, modified by the Department of Environmental Protection to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on February 14, 2013, relating to the Department of Environmental Protection (horizontal well development, 35 CSR 8), is authorized with the following amendments:

On page two, after subsection 2.12., by inserting a new subsection 2.13. to read as follows:

2.13. “Health care professional” means a physician, physician assistant, nurse practitioner, registered nurse, or emergency medical technician licensed by the State of West Virginia.

And renumbering the remaining subsections;

And,

On page ten, section 5.6.e., line 1 and 2, by deleting the sentence that reads, “A copy of the approved Water Management Plan shall be available upon request.” and inserting in lieu thereof the following:

“Signage shall be posted at each water withdraw site that provides how to obtain the Water Management Plan, the phone number of the company conducting the withdraw, the Office’s web site name and phone number, and the permit number.”

And,

On page ten, subsection 5.7.a, line 5, following the words “is sought,” by inserting the words “the anticipated MSDS Sheets, and”
And,

On page ten, subsection 5.7.1, line 12, following the words "emergency services." by inserting the following:

"The operator shall also provide the Well Site Safety Plan to the surface owner and any water purveyor or surface owner subject to notice and water testing as provided in subsection 15 of this rule.

And,

On page nineteen, Section 9.1.b.2, line 3, following the words "will be utilized" by striking out the period and inserting a comma and the following:

"and the telephone number for the Department of Environmental Protection."

- And,

On pages twenty-three and twenty-four, by striking out all of subsection 10.1. and inserting in lieu thereof a new subsection 10.1. to read as follows:

10.1. Well Records Made During Permitted Work - The well operator or its contractor (service provider, drilling contractor or other contractor, as appropriate) shall keep at the well location a copy of the application as permitted, including the associated plat and plans required by section 5 of this rule. The well operator or its contractor (service provider, drilling contractor or other contractor, as appropriate) shall also make and preserve at the well location accurate records of all well work performed pursuant to the permit, including documentation by the contractor or person performing the cementing services of the time of completion of cementing and the volume of cement used for the cementing of all casing operations. The records shall be complete enough to support, as applicable, the entries of well
work done and related data on Form WR-35, “Well Operator’s Report of Well Work”, Form WR-36, “Well Operator’s Report of Initial Gas-Oil Ratio Test”, and Form WR-38, “Affidavit of Plugging and Filling Well”, but these forms shall reflect information discovered or changes made after the permitted well work has been finished and before the reports are filed. The records made and preserved at the well location and the recordings made on Form WR-35 shall include, but not be limited to, indications of caverns, open mines or other voids, whether the freshwater casing cement circulated to the surface, and the efforts made to fill the annular space and the results. Unless the records of well work performed are prepared by the well operator or owner, a copy of all the records shall be delivered to the well owner or operator, except for those records the contractor (service provider, drilling contractor or other contractor, as appropriate) designates as a confidential trade secret.

10.1.a. As part of the well completion report (Form WR-35), the operator or its service provider shall list all the additives used in the hydraulic fracturing or stimulation process, including each additive’s specific trade name, supplier, and purpose. The operator or its service provider shall also list each chemical of each additive intentionally added to a base fluid for the purpose of preparing a fracturing fluid, along with each chemical’s CAS registry number, if applicable, its maximum concentration in the additive, and its maximum concentration as added to the base fluid, and the volume of the base fluid used. The concentrations shall be expressed as a mass percent. The operator or service provider may designate the information regarding the specific identity or concentration or both of a chemical as a confidential trade secret not to be disclosed to the agency or anyone else except in the event of an investigation by the office, medical emergency, or for diagnostic or treatment purposes involving the designated chemical, pursuant to subdivisions 10.1.d. and 10.1.e. below.
The operator or service provider shall fulfill the additive reporting requirement of subdivision 10.1.a. above by submitting the information to the office and the FracFocus Chemical Disclosure Registry.

10.1.c. As part of the well completion report (Form WR-35), the operator shall report the volumes of fluids pumped and treatment pressures recorded throughout the hydraulic fracturing process.

10.1.d. In the event of an investigation by the office involving a chemical designated as a confidential trade secret, the operator or service provider shall provide the specific identity of the chemical, the concentration of the chemical, or both the specific identity and concentration of the chemical, as needed, to the agency upon receipt of notification from the chief or his or her designee stating that such information is necessary in connection with an investigation by the office. Upon receipt of such notification of need, such information shall be disclosed by the operator or service provider, as applicable, directly to the chief or his or her designee and shall in no way be construed as publicly available. The chief or designee may disclose information regarding the specific identity of a chemical, the concentration of a chemical, or both the specific identity and concentration of a chemical claimed to be a confidential trade secret to additional agency staff members to the extent that such disclosure is necessary to allow the agency staff member receiving the information to assist in such an investigation by the office, provided that such individuals shall not disseminate the information further and such information shall at all times be considered confidential and shall not be construed as publicly available. Upon request by the operator or service provider, and where a notification of need is provided orally, the chief shall execute a written statement of need indicating that the information was necessary in connection with an investigation by the office.
The operator or service provider shall provide the specific identity of a chemical designated as a confidential trade secret, the concentration of the chemical designated as a confidential trade secret, or both the specific identity and concentration of the chemical designated as a confidential trade secret, as needed, upon request to a health care professional in a medical emergency, or for diagnostic or treatment purposes. The health care professional shall only use the information provided by the operator or service provider for diagnosis or treatment of an individual, and the operator or service provider may provide notice to the health care professional at the time of release of the information, that the information provided is solely for diagnosis or treatment of the individual, that the information may be a trade secret, and disclosure to others for any other purpose may subject that health care professional to a legal action by the operator or service provider for violating its trade secret."

And,

On page thirty, by striking out all of subsection 13.5."

(d) The legislative rule filed in the State Register on August 15, 2012, authorized under the authority of section four, article five, chapter twenty-two of this code, relating to the Department of Environmental Protection (permits for construction and major modification of major stationary sources for the prevention of significant deterioration of air quality, 45 CSR 14), is authorized.

(e) The legislative rule filed in the State Register on August 14, 2012, authorized under the authority of section four, article five, chapter twenty-two of this code, relating to the Department of Environmental Protection (standards of performance for new stationary sources, 45 CSR 16), is authorized.

(f) The legislative rule filed in the State Register on August 15, 2012, authorized under the authority of section four, article
five, chapter twenty-two of this code, relating to the Department of Environmental Protection (control of air pollution from combustion of solid waste, 45 CSR 18), is authorized.

(g) The legislative rule filed in the State Register on August 15, 2012, authorized under the authority of section four, article five, chapter twenty-two of this code, relating to the Department of Environmental Protection (control of air pollution from hazardous waste treatment, storage or disposal facilities, 45 CSR 25), is authorized.

(h) The legislative rule filed in the State Register on August 15, 2012, authorized under the authority of section four, article five, chapter twenty-two of this code, relating to the Department of Environmental Protection (requirements for operating permits, 45 CSR 30), is authorized.

(i) The legislative rule filed in the State Register on August 15, 2012, authorized under the authority of section four, article five, chapter twenty-two of this code, relating to the Department of Environmental Protection (emission standards for hazardous air pollutants, 45 CSR 34), is authorized.

(j) The legislative rule filed in the State Register on August 30, 2012, authorized under the authority of section ten, article eleven, chapter twenty-two of this code, relating to the Department of Environmental Protection (water pollution control permit fee schedules, 47 CSR 26), is authorized.

(k) The legislative rule filed in the State Register on August 28, 2012, authorized under the authority of section four, article eleven, chapter twenty-two of this code, relating to the Department of Environmental Protection (WV/NPDES regulations for coal mining facilities, 47 CSR 30), is authorized.
AN ACT to amend and reenact article 5, chapter 64 of the Code of West Virginia, 1931, as amended, relating generally to the promulgation of administrative rules by the Department of Health and Human Resources; legislative mandate or authorization for the promulgation of certain legislative rules by various executive or administrative agencies of the state; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the Legislative Rule-Making Review Committee; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the Legislative Rule-Making Review Committee and as amended by the Legislature; authorizing certain of the agencies to promulgate certain legislative rules in the form that the rules were filed in the State Register; authorizing certain of the agencies to promulgate certain legislative rules in the form that the rules were filed in the State Register and as amended by the Legislature; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to reportable diseases, events and conditions; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to general sanitation; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to Grade A pasturized milk; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to fees for services; repealing the Bureau for Public Health's legislative rule relating to the regulation of opioid treatment programs, 64 CSR 90;
authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to pulse oximetry newborn testing; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to the regulation of opioid treatment programs, 69 CSR 7; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to chronic pain management clinic licensure; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to minimum licensing requirements for residential child care and treatment facilities for children and transitioning adults in West Virginia; authorizing the Health Care Authority to promulgate a legislative rule relating to the West Virginia Health Information Network; and authorizing the Bureau of Senior Services to promulgate a legislative rule relating to the in-home care worker registry.

Be it enacted by the Legislature of West Virginia:

That article 5, chapter 64 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 5. AUTHORIZATION FOR DEPARTMENT OF HEALTH AND HUMAN RESOURCES TO PROMULGATE LEGISLATIVE RULES.


(a) The legislative rule filed in the State Register on August 31, 2012, authorized under the authority of section four, article one, chapter sixteen of this code, modified by the Department of Health and Human Resources to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on January 10, 2013, relating to the Department of Health and Human Resources (reportable diseases, events and conditions, 64 CSR 7), is authorized with the following amendments:
On page twenty-four, subsection 9.1., by striking out the words “the reporting” and inserting in lieu thereof the words “the access”;

On page twenty-five, subsection 9.2., by striking out the words “be reported” and inserting in lieu thereof the words “be made available”;

On page twenty-five, subsection 9.2., by striking out the words “the reporting” and inserting in lieu thereof the words “the access”;

On page twenty-five, subsection 9.2., after the word “activities” by inserting the following: “consistent with the mission of the bureau. The responsibility for communication with healthcare facilities regarding data collection, data quality and completeness rests with the Office of Epidemiology and Prevention Services within the Bureau for Public Health”;

And,

On page twenty-five, by striking out all of subsection 9.3. and renumbering the remaining subsection.

(b) The legislative rule filed in the State Register on June 29, 2012, authorized under the authority of section four, article one, chapter sixteen of this code, modified by the Department of Health and Human Resources to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on November 15, 2012, relating to the Department of Health and Human Resources (general sanitation, 64 CSR 18), is authorized with the following amendment:

On page three, subdivision 2.13, by removing the period and inserting the following, “Bed and Breakfast Inn.”

(c) The legislative rule filed in the State Register on August 27, 2012, authorized under the authority of section five, article
seven, chapter sixteen of this code, relating to the Department of Health and Human Resources (Grade A pasteurized milk, 64 CSR 34), is authorized.

(d) The legislative rule filed in the State Register on August 31, 2012, authorized under the authority of section one, article eleven, chapter sixteen of this code, modified by the Department of Health and Human Resources to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on January 10, 2013, relating to the Department of Health and Human Resources (fees for services, 64 CSR 51), is authorized with the following amendment:

On page eleven, subdivision 9.7, after the word "emergency", by inserting a period and removing the underscored words "or as a relevant factor associated with the provision of services and may include but is not limited to, supply shortages, federal or other funding restrictions of policy changes impacting the ability to provide services".

(e) The legislative rule filed in the State Register on October 11, 2012, authorized under the authority of section four, article one, chapter sixteen of this code, relating to the Department of Health and Human Resources (regulation of opioid treatment programs, 64 CSR 90), is repealed.

(f) The legislative rule filed in the State Register on August 27, 2012, authorized under the authority of section four, article one, chapter sixteen of this code, modified by the Department of Health and Human Resources to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on January 10, 2013, relating to the Department of Health and Human Resources (pulse oximetry newborn testing, 64 CSR 100), is authorized with the following amendment:
On page two, subdivision 5.3, by striking out the words "the closest" and inserting in lieu thereof the word "an".

§64-5-2. Department of Health and Human Resources.

(a) The legislative rule filed in the State Register on August 31, 2012, authorized under the authority of section one, article eleven, chapter sixteen of this code, modified by the Department of Health and Human Resources to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on February 5, 2013, relating to the Department of Health and Human Resources (regulation of opioid treatment programs, 69 CSR 7), is authorized with the following amendment:

On page fourteen, by striking section 7.3 and inserting a new section 7.3 to read as follows:

"7.3. License Fees and Inspection Costs.

7.3.a. All applications for an initial or renewed license shall be accompanied by a non-refundable license fee in the amount required by this rule. The annual renewal fee is based upon the average daily total census of the program. In addition to the set fee, the annual renewal fee shall be adjusted on the first day of June of each year to correspond with increases in the consumer price index. The base amounts for initial and renewal fees are as follows:

7.3.a.1. Initial license fee - $250;

7.3.a.2. Renewal fee - fewer than 500 patients - $500 plus adjustment;

7.3.a.3. Renewal fee - 500 to 1,000 patients - $1,000 plus adjustment;
7.3.a.4. Renewal fee - more than 1,000 patients - $1,500 plus adjustment.

7.3.b. An opioid treatment program shall pay for the cost of the initial inspection made by the secretary prior to issuing a license. The cost of the initial inspection is $400, and shall be billed to the applicant by the secretary within five business days after the inspection. The cost of the initial inspection must be paid in full by the applicant before a license may be issued.

7.3.c. The Office of Health Facility Licensure and Certification shall use the fee for increased oversight on opioid treatment programs.

On page thirty-two, by inserting a new subdivision 18.3.j. to read as follows:

"18.3.j. There shall be one (1) counselor for every fifty (50) clients in the program."

On page fifty-three, by striking section 30.8 and inserting a new section 30.8 to read as follows:

"30.8. Each opioid treatment program must provide counseling on preventing exposure to, and the transmission of, human immunodeficiency virus (HIV) disease and Hepatitis C disease for each patient admitted or re-admitted to maintenance or detoxification treatment. Services rendered to patients with HIV disease shall comply with the requirements of section 44 of this rule."

On page fifty-four, by striking subdivision 31.4.a and inserting a new subdivision 31.4.a to read as follows:

"31.4.a. Preventing exposure to, and the transmission of, HIV disease and Hepatitis C disease for each patient admitted or readmitted to maintenance or detoxification treatment; and"
On page fifty-six, by striking subdivision 32.2.a and inserting a new subdivision 32.2.a to read as follows:

"32.2.a. The initial post-admission assessment shall consist of a comprehensive medical evaluation, which shall include, but not be limited to:

32.2.a.1. A comprehensive physical evaluation;
32.2.a.2. A comprehensive psychiatric evaluation, including mental status examination and psychiatric history;
32.2.a.3. A personal and family medical history;
32.2.a.4. A comprehensive history of substance abuse, both personal and family;
32.2.a.5. A tuberculosis skin test and chest X-ray, if skin test is positive;
32.2.a.6. A screening test for syphilis;
32.2.a.7. A Hepatitis C test;
32.2.a.8. An HIV test to the extent voluntarily elected by the patient; and
32.2.a.9. Other tests as necessary or appropriate (e.g., CBC, EKG, chest X-ray, pap smear, hepatitis B surface antigen and hepatitis B antibody testing)."

On page seventy, by striking section 37.14 and inserting a new section 37.14 to read as follows:

"37.14 The state authority may approve exceptional unsupervised-medication dosages, including alternative medications, on a case-by-case basis upon application for an
exemption by the program physician. Any authorization for exceptions shall be consistent with guidelines and protocols of approved authorities, provided that the authority may not grant any exceptions during a calendar month which exceed three (3) exceptions or ten (10) percent of the number of patients enrolled in the program on the last day of the previous month, whichever is greater: Provided, That the state authority may grant additional exceptions for inclement weather or clinic closure.

On page seventy-three, by inserting a new subdivision 38.14 to read as follows:

"38.14 Maintenance treatment shall be discontinued within two (2) continuous years after the treatment is begun unless, based upon the clinical judgment of the medical director or program physician and staff which shall be recorded in the client's record by the medical director or program physician, the client's status indicates that the treatment should be continued for a longer period of time because discontinuance from treatment would lead to a return to (i) illicit opiate abuse or dependance, or (ii) increased psychiatric, behavioral or medical symptomology."

On page seventy-five, by striking subdivision 41.2.d.3 and inserting a new subdivision 41.2.d.3 to read as follows:

"41.2.d.3. When using urine as a screening mechanism, all patient drug testing shall be observed to minimize the chance of adulterating or substituting another individual's urine."

And,

On page eighty-one, by striking subdivision 44.5.d.1. and inserting a new subdivision 44.5.d.1. to read as follows:

"44.5.d.1. Maintenance treatment dosage levels of pregnant clients shall be maintained at the lowest possible dosage level
that is a medically appropriate therapeutic dose as determined by
the medical director or clinic physician taking the pregnancy into
account."

(b) The legislative rule filed in the State Register on January
7, 2013, authorized under the authority of section nine, article
five-h. chapter sixteen of this code, relating to the Department of
Health and Human Resources (chronic pain management clinic
licensure, 69 CSR 8), is authorized with the following
amendments:

On page one, subsection 1.4, line eleven, following the
number "2013.", by inserting the following words:

"This rule is effective upon the date specified in an
emergency rule promulgated by the Department of Health and
Human Resources as being the date funding for implementation
of Chronic Pain Management Clinic Licensure will become
available pursuant to a duly enacted appropriation bill
authorizing the expenditure of funds for that purpose."

On page four, subsection 3.1., by striking out all of
subdivisions 3.1.a., 3.1.b., 3.1.c. and 3.1.d. and inserting in lieu
thereof the following:

3.1.a. The primary component of the medical practice of the
clinic, facility or office is treatment of chronic pain for non-
malignant conditions;

3.1.b. More than fifty percent of patients in any one month
of the prescribers are provided treatment for chronic pain for
nonmalignant conditions and are prescribed, administered or
dispensed tramadol, carisoprodol, opioid drug products or other
Schedule II or Schedule III controlled substances for such
diagnosis;
3.1.c. The calculation of more than fifty percent of patients will be calculated by dividing the number of unique patient encounters at the clinic, facility or office during any one month for a diagnosis of chronic nonmalignant pain and pursuant to such diagnosis of chronic nonmalignant pain were prescribed, administered or dispensed tramadol, carisoprodol, opioid drugs or other Scheduled II or Scheduled III controlled substances by the total number of all patient encounters at the clinic, facility or office during any month; and

3.1.d. Patients receiving tramadol, carisoprodol, opioid drug products or other Schedule II or Schedule III controlled substances for treatment of an injury or illness that lasts or is expected to last thirty days or less shall not be included in the calculation of more than fifty percent of all patients.” and renumbering the remaining subdivisions;

On page five, by inserting a new paragraph, 3.2.i.2., to read as follows:

“3.2.i.2. Medical practices, clinics or offices in which a physician treats an average of 20 or fewer patients a day with any diagnosis in any one month, and in which the physician holds a Competency Certification in Controlled Substances Management.”;

And,

On page thirteen, subparagraph 6.5.b.2.B., after the words “Osteopathic Specialist;” by inserting the words “hold Competency Certification in Controlled Substances Management;”:

(c) The legislative rule filed in the State Register on August 30, 2012, authorized under the authority of section four, article two-b, chapter forty-nine of this code, modified by the
Department of Health and Human Resources to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on January 15, 2013, relating to the Department of Health and Human Resources (minimum licensing requirements for residential child care and treatment facilities for children and transitioning adults in West Virginia, 78 CSR 3), is authorized, with the following amendment:

On page fifty-two, paragraph 11.2.a.3., line five, by striking out the word “Training” and inserting the word “Certification”.

§64-5-3. Health Care Authority.

The legislative rule filed in the State Register on May 14, 2012, authorized under the authority of section seven, article twenty-nine-g, chapter sixteen of this code, modified by the Health Care Authority to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on July 19, 2012, relating to the Health Care Authority to promulgate a legislative rule relating to (West Virginia Health Information Network, 65 CSR 28), is authorized.


The legislative rule filed in the State Register on August 31, 2012, authorized under the authority of section fifteen, article five-p, chapter sixteen of this code, modified by the Bureau of Senior Services to meet the objections of the Legislative Rule-making Review Committee and refiled in the State Register on January 17, 2013, relating to the Bureau of Senior Services (in-home care worker registry, 76 CSR 2), is authorized with the following amendment:

On page two, subdivision 4.1(i), by striking the word “training” and inserting the word “certification” ..
CHAPTER 117
(Com. Sub. for H. B. 2626 - By Delegates Poore, Marcum, Fleischauer, Frich and Eldridge)

[Passed April 13, 2013; in effect from passage.]
[Approved by the Governor on April 30, 2013.]

AN ACT to amend and reenact article 6, chapter 64 of the Code of West Virginia, 1931, as amended, relating generally to the promulgation of administrative rules by the Department of Military Affairs and Public Safety and the procedures relating thereto; legislative mandate or authorization for the promulgation of certain legislative rules by various executive or administrative agencies of the Department of Military Affairs and Public Safety; authorizing certain of the agencies to promulgate certain legislative rules in the form that the rules were filed in the State Register; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the Legislative Rule-Making Review Committee; authorizing certain of the agencies to promulgate certain legislative rules as amended by the Legislature; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the Legislative Rule-Making Review Committee and as amended by the Legislature; authorizing the Division of Protective Services to promulgate a legislative rule relating to contracted police or security services; authorizing the State Fire Commission to promulgate a legislative rule relating to the state building code; authorizing the State Fire Commission to promulgate a legislative rule relating to volunteer firefighters’ training, equipment and operating standards; authorizing the Governor’s Committee on Crime, Delinquency and Correction to promulgate a legislative rule relating to law enforcement training and certification standards; authorizing the Governor’s Committee
on Crime, Delinquency and Correction to promulgate a legislative rule relating to the protocol for law enforcement response to stalking; and authorizing the Governor's Committee on Crime, Delinquency and Correction to promulgate a legislative rule relating to the protocol for law enforcement response to child abuse and neglect.

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

That article 6, chapter 64 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 6. AUTHORIZATION FOR DEPARTMENT OF MILITARY AFFAIRS AND PUBLIC SAFETY TO PROMULGATE LEGISLATIVE RULES.**

§64-6-1. Division of Protective Services.

1. The legislative rule filed in the State Register on the thirty-first day of August, two thousand twelve, authorized under the authority of section three, article two-d, chapter fifteen of this code, modified by the Division of Protective Services to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on the seventeenth day of January, two thousand thirteen, relating to the Division of Protective Services (contracted police or security services, 99 CSR 5), is authorized.

§64-6-2. State Fire Commission.

1. (a) The legislative rule filed in the State Register on the eighteenth day of July, two thousand twelve, authorized under the authority of section five-b, article three, chapter twenty-nine, of this code, modified by the State Fire Commission to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on the twenty-first day of December, two thousand twelve, relating to the State Fire
New One and Two Family Dwellings over one level in height, New One and Two Family Dwellings containing a basement, and New One and Two Family Dwellings containing a crawl space containing a fuel burning appliance below the first floor, shall provide one of the following methods for fire protection of floors: (1) A 1/2 inch (12.7 mm) gypsum wallboard membrane, 5/8 inch (16 mm) wood structural panel membrane, or equivalent on the underside of the floor framing member; (2) Wood floor assemblies using dimension lumber or structural composite lumber equal or greater than 2 inch by 10 inch (50.8 mm by 254 mm) nominal dimension, or other approved floor assemblies demonstrating equivalent fire performance; or (3) An Automatic Fire Sprinkler System as set forth in section R313.2 of the 2009 edition of the International Residential Code for One and Two Family Dwellings: Provided, That floor assemblies located directly over a space protected by an automatic sprinkler system as set forth in section R313.2 of the 2009 edition of the International Residential Code for One and Two Family Dwellings are exempt from this requirement.;

(b) The legislative rule filed in the State Register on the thirty-first day of August, two thousand twelve, authorized under the authority of section five-d, article three, chapter twenty-nine, of this code, modified by the State Fire Commission to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on the twenty-first day of December, two thousand twelve, relating to the State Fire Commission (volunteer firefighters' training, equipment and operating standards, 87 CSR 8), is authorized, with the following amendments:

On page three, section three, by striking out subsection 3.7, and inserting in lieu thereof, the following:
"3.7. The Fire Commission, at all times, shall have an equivalency program to allow certification of fire officers in Fire Officer 1 and Fire Officer 2. Any person may apply to this program for certification in either Fire Officer 1, Fire Officer 2, or both. This program shall evaluate a person's practical knowledge and life experience within the fire service, and any previous training that person may have completed. If the person has demonstrated competency in the skills taught in these curricula, then the application shall be granted.

3.8. All operators of fire department engines, tankers, aerials, and rescue trucks must have a Firefighter I certification, have a valid driver's license, and must have completed an approved Emergency Vehicle Operations Course (EVOC), or equivalent, and pass any and all testing required for certification: Provided that, during maintenance or service of the vehicle, any person operating a vehicle to perform his or her job, may operate that vehicle as long as that person meets all other requirements to operate that vehicle as set forth by statute.

Nothing in this rule shall prohibit specialized support members or emergency medical response personnel from operating fire department squads, ambulances and/or emergency medical response vehicles, or prevent ancillary support members of fire departments from operating utility vehicles.” and renumbering the remainder of the section;

On page eight, after subsection 6.9, by inserting a new subsection, designated 6.10., to read as follows:

"6.10. All fire pumps and hoses, and aerial apparatus shall be tested as least annually for compliance with NFPA 1901, 1911, 1961 and 1962. Records of these tests shall be maintained by the department for a minimum of five (5) years and shall be produced by the department upon request of the Fire Commission, Fire Marshal, or governmental entity overseeing the Department."
74 On page eight, section six, subsection 6.11, by striking out
75 subsection 6.11. and the remainder of the section in its entirety
76 and by inserting in lieu thereof, the following:
77
78 "6.11. All apparatus and associated equipment shall have
79 met the standard for that particular apparatus or piece of
80 equipment as set forth in NFPA 1901 in the year that the
81 apparatus and piece of associated equipment was manufactured,
82 and shall be fully operable.
83
84 6.12. At all times, at a minimum, the following items shall
85 be transported to the fire scene with the listed apparatus,
86 provided that these items shall only be required if the apparatus
87 is dispatched to an emergency scene:
88
89 6.12.1 Engine - as defined in NFPA 1901.
92 6.12.1.c. Fire Pump tested in accordance with subsection
93 6.10.
95 6.12.1.e. 14 foot straight ladder.
96 6.12.1.f. 800 feet minimum of 2½ inch or larger supply hose
97 tested in accordance with subsection 6.10.
98 6.12.1.g. 400 feet minimum of 1½ to 2 inch attack hose
99 tested in accordance with subsection 6.10.
100 6.12.1.h. sufficient number of nozzles.
101 6.12.1.i. two (2) pike poles or equivalent.
6.12.1.j. 1 pickhead axe.

6.12.1.k. 1 flathead axe.

6.12.1.l. 2 hand lights.

6.12.1.m. 1 dry chemical extinguisher.

6.12.1.n. 1 first aid kit.

6.12.1.o. 2 wheel chocks.

6.12.1.p. 1 SCBA pack (meeting NFPA 1781 standard) for each seat with one spare bottle for each pack.

6.12.1.q. 1 traffic vest for each seat.

6.12.2. Tanker - as defined in NFPA 1901.


6.12.2.c. If the unit contains a Fire Pump it shall be tested in accordance with subsection 6.10.

6.12.2.d. If the unit contains a Fire Pump 200 feet minimum of 2 ½ inch or larger supply hose tested in accordance with subsection 6.10.

6.12.2.e. If the unit contains a Fire Pump 400 feet minimum of 1 ½ to 2 inch attack hose tested in accordance with subsection 6.10.

6.12.2.f. If the unit contains a Fire Pump sufficient number of nozzles.

6.12.2.g. 2 hand lights.
6.12.2.h. 1 dry chemical extinguisher.
6.12.2.i. 1 first aid kit.
6.12.2.j. 2 wheel chocks.
6.12.2.k. 1 SCBA pack (meeting NFPA 1781 standard) for each seat with one spare bottle for each pack.
6.12.2.l. 1 traffic vest for each seat.
6.12.3. Aerial - as defined in NFPA 1901.
6.12.3.c. If the unit contains a Fire Pump it shall be Fire Pump tested in accordance with subsection 6.10.
6.12.3.d. Aerial unit tested in accordance with subsection 6.10.
6.12.3.e. If the unit contains a Fire Pump 800 feet minimum of 2 ½ inch or larger supply hose tested in accordance with subsection 6.10.
6.12.3.f. If the unit contains a Fire Pump 400 feet minimum of 1 ½ to 2 inch attack hose tested in accordance with subsection 6.10.
6.12.3.g. If the unit contains a Fire Pump sufficient number of nozzles.
6.12.3.h. 4 Ladder Belts.
6.12.3.i. 2 hand lights.
6.12.3.j. 1 dry chemical extinguisher.

6.12.3.k. 1 first aid kit.

6.12.3.l. 2 wheel chocks.

6.12.3.m. 1 SCBA pack (meeting NFPA 1781 standard) for each seat with one spouse bottle for each pack.

6.12.3.n. 1 traffic vest for each seat.

6.12.4. Quint - as defined in NFPA 1901.


6.12.4.c. Fire Pump tested in accordance with subsection 6.10.

6.12.4.d. Aerial unit tested in accordance with subsection 6.10.

6.12.4.e. 300 feet minimum of 2 ½ inch or larger supply hose tested in accordance with subsection 6.10.

6.12.4.f. 400 feet minimum of 1 ½ to 2 inch attack hose tested in accordance with subsection 6.10.

6.12.4.g. sufficient number of nozzles.

6.12.4.h. 4 Ladder Belts.

6.12.4.i. 2 hand lights.

6.12.4.j. 1 dry chemical extinguisher.

6.12.4.k. 1 first aid kit.
6.12.4.1. 2 wheel chocks.

6.12.4.m. 1 SCBA pack (meeting NFPA 1781 standard) for each seat with one spare bottle for each pack.

6.12.4.n. 1 traffic vest for each seat.

6.12.5. Mini-Pumper - as defined in NFPA 1901.


6.12.5.c. Fire Pump tested in accordance with subsection 6.10.

6.12.5.d. 300 feet minimum of 2 ½ inch or larger supply hose tested in accordance with subsection 6.10.

6.12.5.e. 400 feet minimum of 1 ½ to 2 inch attack hose tested in accordance with section 6.10.

6.12.5.f. sufficient number of nozzles.

6.12.5.g. 2 hand lights.

6.12.5.h. 1 dry chemical extinguisher.

6.12.5.i. 1 first aid kit.

6.12.5.j. 2 wheel chocks.

6.12.5.k. 1 SCBA pack (meeting NFPA 1781 standard) for each seat with one spare bottle for each pack.

6.12.5.l. 1 traffic vest for each seat.

6.12.5 Service Truck - as defined in NFPA 1901.


6.12.5.c. 2 hand lights.

6.12.5.d. 1 dry chemical extinguisher.

6.12.5.e. 1 first aid kit.

6.12.5.f. 2 wheel chocks.

6.12.5.g. 1 SCBA pack (meeting NFPA 1781 standard) for each seat with one spare bottle for each pack.

6.12.5.h. 1 traffic vest for each seat.

6.13. If an apparatus is not capable of transporting the required equipment, as set forth in subsection 6.12, to an emergency scene, a written plan must be kept on file, and be capable of being produced upon demand to the Fire Commission, Fire Marshal, or overseeing governmental agency, setting forth a detailed procedure for transporting all necessary equipment as detailed in subsection 6.12 to the emergency scene, which shall be strictly adhered to. The plan not being able to be produced, or the plan not being adhered to is a violation of this standard and may result in revocation of the department’s certification.

6.14. At all times, departments shall maintain workers compensation coverage for all personnel.”;

And,

On page nine, section 8, line three, after the words “Rules §87-6-l et seq” by inserting a colon and the following: “Provided, That, except in situations of imminent danger to life or property, upon application, the Commission shall grant a department a 180 day period of correction, that may be extended
upon good cause shown, during which the Commission shall assist a department in correcting deficiencies noted, facilitating training through West Virginia University or the West Virginia Department of Education, and in working with other involved parties, e.g. county commissions, municipal governments or county fire boards."

§64-6-3. Governor's Committee on Crime, Delinquency, and Correction.

(a) The legislative rule filed in the State Register on the thirty-first day of August, two thousand twelve, authorized under the authority of section three, article twenty-nine, chapter thirty, of this code, relating to the Governor's Committee on Crime, Delinquency and Correction (law enforcement training and certification standards, 149 CSR 2), is authorized with the following amendment:

On page twenty-five, subsection 10.2., after the words "minimum period of" by striking out "four (4)" and inserting in lieu thereof "three (3)".

(b) The legislative rule filed in the State Register on the sixteenth day of August, two thousand twelve, authorized under the authority of section nine-a, article two, chapter sixty-one, of this code, modified by the Governor's Committee on Crime, Delinquency and Correction to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on the fifth day of December, two thousand twelve, relating to the Governor's Committee on Crime, Delinquency and Correction (protocol for law enforcement response to stalking, 149 CSR 7), is authorized.

(c) The legislative rule filed in the State Register on the sixteenth day of August, two thousand twelve, authorized under the authority of section five, article nine, chapter fifteen, of this code, modified by the Governor's Committee on Crime,
Delinquency and Correction to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on the fifth day of December, two thousand twelve, relating to the Governor's Committee on Crime, Delinquency and Correction (protocol for law enforcement response to child abuse and neglect, 149 CSR 8), is authorized.

CHAPTER 118

(Com. Sub. for S. B. 270 - By Senator Snyder)

[Passed April 13, 2013; in effect from passage.]
[Approved by the Governor on May 2, 2013.]

AN ACT to amend and reenact article 7, chapter 64 of the Code of West Virginia, 1931, as amended, relating generally to the promulgation of administrative rules by the Department of Revenue; legislative mandate or authorization for the promulgation of certain legislative rules by various executive or administrative agencies of the state; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the Legislative Rule-Making Review Committee; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the Legislative Rule-Making Review Committee and as amended by the Legislature; authorizing certain of the agencies to promulgate certain legislative rules in the form that the rules were filed in the State Register; authorizing the Insurance Commissioner to promulgate a legislative rule relating to provider-sponsored networks; authorizing the Athletic Commission to promulgate a legislative rule relating to mixed martial arts; authorizing the Racing Commission to promulgate a
legislative rule relating to thoroughbred racing; authorizing the Racing Commission to promulgate a legislative rule relating to greyhound racing; authorizing the Racing Commission to promulgate a legislative rule relating to pari-mutuel wagering; authorizing the Lottery Commission to promulgate a legislative rule relating to state lottery rules; and authorizing the State Tax Department to promulgate a legislative rule relating to the valuation of commercial and industrial real and personal property for ad valorem property tax purposes.

Be it enacted by the Legislature of West Virginia:

That article 7, chapter 64 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 7. AUTHORIZATION FOR DEPARTMENT OF REVENUE TO PROMULGATE LEGISLATIVE RULES.

§64-7-1. Insurance Commissioner.

1. The legislative rule filed in the State Register on August 31, 2012, authorized under the authority of section five, article twenty-five-g, chapter thirty-three of this code, modified by the Insurance Commissioner to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on October 18, 2012, relating to the Insurance Commissioner (provider-sponsored networks, 114 CSR 43A), is authorized with the following amendments:

9. On page one, subsection 2.1., by striking out “ths” and inserting in lieu thereof the word “this”;

11. And,

12. On page two, paragraph 4.3.b.1., after the words “financial statements” by adding the words “that reflect positive net worth”.

§64-7-2. Athletic Commission.

The legislative rule filed in the State Register on August 27, 2012, authorized under the authority of section three-a, article five-a, chapter twenty-nine of this code, modified by the Athletic Commission to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on October 18, 2012, relating to the Athletic Commission (mixed martial arts, 177 CSR 2), is authorized with the following amendments:

On page four, section five, line one, after the number 2500, by inserting a period and striking out the remainder of the sentence;

On page four, section six, line four, by striking out the dollar amount $35,000 and inserting in lieu thereof, the dollar amount $10,000;

On page six, section eight, subsection 8.1, line five, by striking out the dollar amount $30,000 and inserting in lieu thereof, the dollar amount $20,000;

And,

On page six, section eight, subsection 8.2, line two, by striking out the dollar amount $30,000 and inserting in lieu thereof, the dollar amount $20,000."

§64-7-3. Racing Commission.

(a) The legislative rule filed in the State Register on August 27, 2012, authorized under the authority of section six, article twenty-three, chapter nineteen of this code, modified by the Racing Commission to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 4, 2012, relating to the Racing Commission (thoroughbred racing, 178 CSR 1), is authorized with the following amendments:
On page thirty-seven, subdivision 24.1.i, by striking out the word "sixteen (16)" and inserting in lieu thereof the word "eighteen (18)", and

On page thirty-seven, subdivision 24.1.1, following the word "age" by inserting the following language: "Provided, except that an occupational permit may be granted at sixteen (16) years of age for the children or grandchildren of licensed permit holders; licensed permit holders being defined for the purposes of this subdivision as owners, breeders, trainers and veterinarians".

(b) The legislative rule filed in the State Register on August 27, 2012, authorized under the authority of section six, article twenty-three, chapter nineteen of this code, relating to the Racing Commission (greyhound racing, 178 CSR 2), is authorized.

(c) The legislative rule filed in the State Register on August 27, 2012, authorized under the authority of section six, article twenty-three, chapter nineteen of this code, relating to the Racing Commission (pari-mutuel wagering, 178 CSR 5), is authorized.

§64-7-4. Lottery Commission.

The legislative rule filed in the State Register on August 10, 2012, authorized under the authority of section five, article twenty-two, chapter twenty-nine of this code, modified by the Lottery Commission to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 20, 2012, relating to the Lottery Commission (state lottery rules, 179 CSR 1), is authorized.

§64-7-5. State Tax Department.

The legislative rule filed in the State Register on August 30, 2012, authorized under the authority of section five, article one-
3 c, chapter eleven of this code, modified by the State Tax
4 Department to meet the objections of the Legislative Rule-
5 Making Review Committee and refiled in the State Register on
6 December 6, 2012, relating to the State Tax Department
7 (valuation of commercial and industrial real and personal
8 property for ad valorem property tax purposes, 110 CSR 1P), is
9 authorized, with the following amendments:

10 On page one, subsection 1.1, beginning on line ten, by
11 striking out subsection 1.1 in its entirety and inserting in lieu
12 thereof the following:

13 "1.1 Scope. — These regulations clarify and implement State
14 law as it relates to the appraisal at market value of commercial
15 and industrial real and personal property under W. Va. Code
16 §11-10C-10."

17 And,

18 On page two, subsection 2.14, line twenty-four, following
19 the words "remaining in", by striking out the words "the
20 landlord" and inserting in lieu thereof the word "one".

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CHAPTER 119

(Com. Sub. for S. B. 281 - By Senator Snyder)

[Passed April 12, 2013; in effect from passage.]
[Approved by the Governor on April 29, 2013.]

AN ACT to amend and reenact article 8, chapter 64 of the Code of
West Virginia, 1931, as amended, relating generally to the
promulgation of administrative rules by the Department of
Transportation; legislative mandate or authorization for the
promulgation of certain legislative rules by various executive or
administrative agencies of the state; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the Legislative Rule-Making Review Committee; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the Legislative Rule-Making Review Committee and as amended by the Legislature; authorizing certain of the agencies to promulgate certain legislative rules in the form that the rules were filed in the State Register and as amended by the Legislature; authorizing the Division of Motor Vehicles to promulgate a legislative rule relating to the denial, suspension, revocation, disqualification, restriction, nonrenewal, cancellation, administrative appeals and reinstatement of motor vehicle operating privileges; authorizing the Commissioner of Highways to promulgate a legislative rule relating to the transportation of hazardous wastes upon the roads and highways; and authorizing the Office of Administrative Hearings to promulgate a legislative rule relating to appeal procedures.

Be it enacted by the Legislature of West Virginia:

That article 8, chapter 64 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 8. AUTHORIZATION FOR DEPARTMENT OF TRANSPORTATION TO PROMULGATE LEGISLATIVE RULES.

§64-8-1. Division of Motor Vehicles.

1 The legislative rule filed in the State Register on August 30, 2012, authorized under the authority of section nine, article two, chapter seventeen-a, of this code, modified by the Division of Motor Vehicles to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on
December 21, 2012, relating to the Division of Motor Vehicles (denial, suspension, revocation, disqualification, restriction, nonrenewal, cancellation, administrative appeals and reinstatement of motor vehicle operating privileges, 91 CSR 5), is authorized with the following amendments:

On page one, in the title, by striking out the word "PROPOSED";

On page two, paragraph 3.2.c.1., after the words "under consideration;" by adding the word "or";

On page three, subdivision 3.2.e., by striking out the words "subdivisions 3.2.a, 3.2.b or 3.2.c" and inserting in lieu thereof the word "subsection 3.2.";

On page three, subsection 3.3., by striking out the words "notice submitted pursuant" and inserting in lieu thereof the words "opinion submitted pursuant";

On page three, subsection 3.3., by striking out the words "notice submitted by" and inserting in lieu thereof the words "professional opinion submitted by";

On page three, subsection 3.3., by striking out the word "subsection 9.2.b." and inserting in lieu thereof the word "subdivision 9.2.b."

On page four, paragraph 3.3.a.1., by striking out the word "States," and inserting in lieu thereof the words "States and who practices in the specialty field of the medical condition under consideration; or";

On page four, by striking out all of paragraph 3.3.a.2.;

And renumbering the remaining paragraph;
On page four, paragraph 3.3.a.3., after the word “States” by inserting the words “who practices in the specialty field of the vision condition under consideration.”;

On page six, subdivision 3.5.c., after the word “Rehabilitation” by inserting the word “Services”;

On page ten, subsection 7.1., by striking out “§17B-3-6(3)” and inserting in lieu thereof “§17B-3-6(a)”;

On page sixteen, subsection 7.9., by inserting a period after “7.9”;

On page seventeen, subsection 7.13., by striking out the following: The Office of Administrative Hearings shall use the Division’s record to determine whether the point totals are correct and whether the person suspended is the person named in the citations. The burden of proof is on the driver;

On page nineteen, subsection 8.2., by striking out “§17B-2-3a(j)(2)(G)” and inserting in lieu thereof “§17B-2-3a”;

On page nineteen, subdivision 8.2.a., by striking out “§17B-2-3a(j)(2)(H)” and inserting in lieu thereof “§17B-2-3a”;

On page nineteen, subdivision 8.2.b., by striking out “§17B-2-3a(k)(1)(B)” and inserting in lieu thereof “§17B-2-3a”;

On page twenty-five, subsection 11.6., by striking out the following: The Office of Administrative Hearings shall use the Division’s record to determine timely compliance with the citations and whether the person suspended is the person named in the citations. The burden of proof is on the driver;

On page twenty-seven, subsection 12.3., by striking out the following: The Office of Administrative Hearings shall use the Division’s record to determine identity and age of the licensee. The burden of proof is on the driver.
On page twenty-eight, subsection 13.1., by striking out the following: The Division may not act on any failure to pay report transmitted to the Division more than one year from the date of the conviction:

On page twenty-nine, subsection 13.5., by striking out the following: The Office of Administrative Hearings shall use the Division's record to determine timely compliance with the citations and whether the person suspended is the person named in the citations. The burden of proof is on the driver:

On page thirty-one, subsection 15.5., by striking out the following: The Office of Administrative Hearings shall use the Division's record to determine whether the person suspended is the person named in the court order. The burden of proof is on the driver:

On page thirty-four, subdivision 16.3.a., by striking out the words "for licensees of his her state or jurisdiction";

On "page thirty-seven, paragraph 16.3.d.11, by striking out the word "Subdivision 13.6.d.8" and inserting in lieu thereof the word "Paragraph 16.3.d.8";

On page thirty-seven, paragraph 16.3.d.12, by striking out the word "Subdivision 13.6.d.8" and inserting in lieu thereof the word "Paragraph 16.3.d.8";

On page thirty-seven, paragraph 16.3.d.13, by striking out the word "Subdivision 13.6.d.8" and inserting in lieu thereof the word "Paragraph 16.3.d.8";

And,

On page thirty-nine, subdivision 16.5.b, after the words "with a valid registration" by inserting a period.
§64-8-2. Division of Highways.

1 The legislative rule filed in the State Register on July 30, 2012, authorized under the authority of section seven, article eighteen, chapter twenty-two, of this code, modified by the Commissioner of Highways to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 30, 2012, relating to the Commissioner of Highways (transportation of hazardous wastes upon the roads and highways, 157 CSR 7), is authorized.


1 The legislative rule filed in the State Register on August 30, 2012, authorized under the authority of section four-a, article five-c, chapter seventeen-c of this code, relating to the Office of Administrative Hearings (appeal procedures, 105 CSR 1), is authorized with the following amendments:

6 On page two, subsection 4.2., by striking out the words “an address” and inserting in lieu thereof the words “the most recent address”;

9 On page three, subsection 5.5., by striking out the word “proceedings” and inserting in lieu thereof the word “action”;

11 On page four, subsection 7.1., after the words “within thirty (30)” by inserting the word “calendar”;

13 On page four, subsection 7.1., after the words “necessary for proof of” by inserting the words “the filing of”;

15 On page five, subsection 7.7., after the words “DUI case” by inserting the words “or any other contested case”;

17 On page five, subsection 8.5., by striking out the word “on” and inserting in lieu thereof the word “to”;
On page seven, subsection 10.6., by striking out the words "anticipated plea,";

On page eight, subsection 10.6., by striking out the word "received" and inserting in lieu thereof the word "receive";

On page eight, subsection 10.6., by striking out the words "cancelled or continued" and inserting in lieu thereof the words "cancels or continues";

On page eight, subsection 11.1., by striking out the word "submission" and inserting in lieu thereof the word "production";

On page eleven, subsection 15.8., by striking out the word "seven (7)" and inserting in lieu thereof the word "ten (10)";

And,

On page twelve, subsection 17.5., by striking out "appeals a final order, the appealing" and inserting in lieu thereof "petitions a court for judicial review of a final order, the petitioning".

CHAPTER 120

(Com. Sub. for H. B. 2689 - By Delegates Poore, Marcum, Fleischauer and Eldridge.)

[Passed April 13, 2013; in effect from passage.]
[Approved by the Governor on April 30, 2013.]

AN ACT to amend and reenact article 9, chapter 64 of the Code of West Virginia, 1931, as amended, relating generally to the promulgation of administrative rules by the various executive or administrative agencies and the procedures relating thereto;
legislative mandate or authorization for the promulgation of certain legislative rules; authorizing certain of the agencies to promulgate certain legislative rules in the form that the rules were filed in the State Register; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the Legislative Rule-Making Review Committee; authorizing certain of the agencies to promulgate certain legislative rules as amended by the Legislature; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the Legislative Rule-Making Review Committee and as amended by the Legislature; authorizing the Board of Medicine to promulgate a legislative rule relating to practitioner requirements for accessing the West Virginia controlled substances monitoring program database; authorizing the Board of Medicine to promulgate a legislative rule relating to licensure, disciplinary and complaint procedures; continuing education; and physician assistants; authorizing the Board of Medicine to promulgate a legislative rule relating to continuing education for physicians and podiatrists; authorizing the Board of Optometry to promulgate a legislative rule relating to continuing education; authorizing the Board of Osteopathic Medicine to promulgate a legislative rule relating to licensing procedures for osteopathic physicians; authorizing the Board of Osteopathic Medicine to promulgate a legislative rule relating to practitioner requirements for controlled substances licensure and accessing the West Virginia controlled substances monitoring program database; authorizing the Board of Osteopathic Medicine to promulgate a legislative rule relating to osteopathic physician assistants; authorizing the Board of Pharmacy to promulgate a legislative rule relating to ephedrine and pseudoephedrine control; authorizing the Board of Pharmacy to promulgate a legislative rule relating to controlled substances monitoring; authorizing the Real Estate Appraiser Licensing and Certification Board to promulgate a legislative rule relating to requirements for licensure and certification; authorizing the Real
Estate Appraiser Licensing and Certification Board to promulgate a legislative rule relating to renewal of licensure - qualifications for renewal; authorizing the Board of Examiners for Registered Professional Nurses to promulgate a legislative rule relating to fees for services rendered by the Board and supplemental renewal fee for the center for nursing; authorizing the Board of Examiners for Registered Professional Nurses to promulgate a legislative rule relating to practitioner requirements for accessing the West Virginia controlled substances monitoring program database; authorizing the Board of Examiners for Registered Professional Nurses to promulgate a legislative rule relating to the announcement of advanced practice; authorizing the Board of Examiners for Registered Professional Nurses to promulgate a legislative rule relating to limited prescriptive authority for nurses in advanced practice; authorizing the Secretary of State to promulgate a legislative rule relating to the Uniform Commercial Code; authorizing the Secretary of State to promulgate a legislative rule relating to administration of the address confidentiality program; authorizing the Secretary of State to promulgate a legislative rule relating to the regulation of political party headquarters financing; authorizing the Secretary of State to promulgate a legislative rule relating to the regulation of late registration; authorizing the Board of Barbers and Cosmetologists to promulgate a legislative rule relating to the procedures, criteria and curricula for examination and licensure of barbers, cosmetologists, nail technicians, aestheticians and hair stylists; authorizing the Board of Barbers and Cosmetologists to promulgate a legislative rule relating to barber apprenticeships; authorizing the Board of Barbers and Cosmetologists to promulgate a legislative rule relating to the operational standards for schools of barbering and beauty culture; authorizing the Commissioner of Agriculture to promulgate a legislative rule relating to animal disease control; authorizing the Commissioner of Agriculture to promulgate a legislative rule relating to poultry litter and manure movement into primary poultry breeder rearing
areas; authorizing the Board of Architects to promulgate a legislative rule relating to the registration of architects; authorizing the Board of Dental Examiners to promulgate a legislative rule relating to the Board; authorizing the Board of Dental Examiners to promulgate a legislative rule relating to practitioner requirements for accessing the West Virginia controlled substances monitoring program database; authorizing the Board of Dental Examiners to promulgate a legislative rule relating to continuing education requirements; authorizing the Board of Dental Examiners to promulgate a legislative rule relating to the expanded duties of dental hygienists and dental assistants; authorizing the Hatfield-McCoy Regional Recreation Authority to promulgate a legislative rule relating to rules for use of the facility; authorizing the Treasurer’s Office to promulgate a legislative rule relating to the enforcement of the Uniform Unclaimed Property Act; authorizing the Board of Veterinary Medicine to promulgate a legislative rule relating to the organization and operation and licensing of veterinarians; authorizing the Board of Veterinary Medicine to promulgate a legislative rule relating to a schedule of fees; authorizing the Board of Social Work to promulgate a legislative rule relating to a fee schedule; authorizing the Board of Social Work to promulgate a legislative rule relating to qualifications for the profession social work; authorizing the Board of Social Work to promulgate a legislative rule relating to applications; authorizing the Board of Social Work to promulgate a legislative rule relating to continuing education for social workers and providers; authorizing the Board of Social Work to promulgate a legislative rule relating to a code of ethics; authorizing the Board of Examiners for Speech-Language Pathology and Audiology to promulgate a legislative rule relating to the licensure of speech-pathology and audiology; and authorizing the Conservation Committee to promulgate a legislative rule relating to the operation of the West Virginia State Conservation Committee and conservation districts.
Be it enacted by the Legislature of West Virginia:

That article 9, chapter 64 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 9. AUTHORIZATION FOR MISCELLANEOUS AGENCIES AND BOARDS TO PROMULGATE LEGISLATIVE RULES.

§64-9-1. Board of Medicine.

1 (a) The legislative rule filed in the State Register on the twenty-eighth day of August, two thousand twelve, authorized under the authority of section five-a, article nine, chapters sixty-a, of this code, modified by the Board of Medicine to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on the sixth day of December, two thousand twelve, relating to the Board of Medicine (practitioner requirements for accessing the West Virginia controlled substances monitoring program data base, 11 CSR 10), is authorized.

11 (b) The legislative rule filed in the State Register on the twenty-eighth day of August, two thousand twelve, authorized under the authority of section seven, article three, chapter thirty, of this code, modified by the Board of Medicine to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on the sixth day of December, two thousand twelve, relating to the Board of Medicine (licensure, disciplinary and complaint procedures; continuing education; and physician assistants, 11 CSR 1B), is authorized.

20 (c) The legislative rule filed in the State Register on the twenty-eighth day of August, two thousand twelve, authorized under the authority of section seven, article three, chapter thirty, of this code, modified by the Board of Medicine to meet the objections of the Legislative Rule-Making Review Committee
and refiled in the State Register on the sixth day of December, two thousand twelve, relating to the Board of Medicine (continuing education for physicians and podiatrists, 11 CSR 6), is authorized.

§64-9-2. Board of Optometry.

(a) The legislative rule filed in the State Register on the thirty-first day of August, two thousand twelve, authorized under the authority of section six, article eight, chapter thirty, of this code, modified by the Board of Optometry to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on the fourteenth day of December, two thousand twelve, relating to the Board of Optometry (continuing education, 14 CSR 10), is authorized.


(a) The legislative rule filed in the State Register on the twenty-eighth day of August, two thousand twelve, authorized under the authority of section four, article one, chapter thirty, of this code, modified by the Board of Osteopathic Medicine to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on the twelfth day of December, two thousand twelve, relating to the Board of Osteopathic Medicine (licensing procedures for osteopathic physicians, 24 CSR 1), is authorized with the following amendments:

On page four, subsection 4.11., after the word "licensure," by adding the following: The training shall be provided by a Board approved program.;

On page thirteen, subdivision 15.2.g., after the words "minimum of three (3) hours of" by inserting the words "board approved";
(b) The legislative rule filed in the State Register on the
twenty-eighth day of August, two thousand twelve, authorized
under the authority of section five-a, article nine, chapter sixty-a,
of this code, modified by the Board of Osteopathic Medicine to
meet the objections of the Legislative Rule-Making Review
Committee and refiled in the State Register on the twelfth day of
December, two thousand twelve, relating to the Board of
Osteopathic Medicine (practitioner requirements for controlled
substances licensure and accessing the West Virginia controlled
substances monitoring program database, 24 CSR 7), is
authorized.

(c) The legislative rule filed in the State Register on the
twenty-eighth day of August, two thousand twelve, authorized
under the authority of section four, article one, chapter thirty, of
this code, modified by the Board of Osteopathic Medicine to
meet the objections of the Legislative Rule-Making Review
Committee and refiled in the State Register on the twelfth day of
December, two thousand twelve, relating to the Board of
Osteopathic Medicine (osteopathic physician assistants, 24 CSR
2), is authorized with the following amendments:

On page eleven, subsection 7.4., after the words "3 hours of"
by inserting the words "Board approved";

§64-9-4. Board of Pharmacy.

(a) The legislative rule filed in the State Register on the
thirty-first day of August, two thousand twelve, authorized under
the authority of section six, article nine, chapter sixty-a, of this
code, modified by the Board of Pharmacy to meet the objections
of the Legislative Rule-Making Review Committee and refiled
in the State Register on the seventh day of February, two
thousand thirteen, relating to the Board of Pharmacy (ephedrine
and pseudoephedrine control, 15 CSR 11), is authorized.
(b) The legislative rule filed in the State Register on the thirty-first day of August, two thousand twelve, authorized under the authority of section six, article nine, chapter sixty-a, of this code, modified by the Board of Pharmacy to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on the seventh day of February, two thousand thirteen, relating to the Board of Pharmacy (controlled substances monitoring, 15 CSR 8), is authorized.

§64-9-5. Real Estate Appraiser Licensing and Certification Board.

(a) The legislative rule filed in the State Register on the thirty-first day of August, two thousand twelve, authorized under the authority of section nine, article thirty-eight, chapter thirty, of this code, modified by the Real Estate Appraiser Licensing and Certification Board to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on the nineteenth day of December, two thousand twelve, relating to the Real Estate Appraiser Licensing and Certification Board (requirements for licensure and certification, 190 CSR 2), is authorized.

(b) The legislative rule filed in the State Register on the thirty-first day of August, two thousand twelve, authorized under the authority of section nine, article thirty-eight, chapter thirty, of this code, relating to the Real Estate Appraiser Licensing and Certification Board (renewal of licensure - qualifications for renewal, 190 CSR 3), is authorized.


(a) The legislative rule filed in the State Register on the first day of August, two thousand twelve, authorized under the authority of section five, article seven, chapter thirty, of this code, modified by the Board of Examiners for Registered Professional Nurses to meet the objections of the Legislative
Rule-Making Review Committee and refiled in the State Register on the seventh day of December, two thousand twelve, relating to the Board of Examiners for Registered Professional Nurses (fees for services rendered by the Board and supplemental renewal fee for the center for nursing, 19 CSR 12), is authorized.

(b) The legislative rule filed in the State Register on the thirty-first day of July, two thousand twelve, authorized under the authority of section five-a, article nine, chapter sixty-a, of this code, modified by the Board of Examiners for Registered Professional Nurses to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on the seventh day of December, two thousand twelve, relating to the Board of Examiners for Registered Professional Nurses (practitioner requirements for accessing the West Virginia controlled substances monitoring program database, 19 CSR 14), is authorized.

(c) The legislative rule filed in the State Register on the second day of August, two thousand twelve, authorized under the authority of section one, article seven, chapter thirty, of this code, modified by the Board of Examiners for Registered Professional Nurses to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on the seventh day of December, two thousand twelve, relating to the Board of Examiners for Registered Professional Nurses (announcement of advanced practice, 19 CSR 7), is authorized.

(d) The legislative rule filed in the State Register on the first day of August, two thousand twelve, authorized under the authority of section fifteen-a, article seven, chapter thirty, of this code, modified by the Board of Examiners for Registered Professional Nurses to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State
§64-9-7. Secretary of State.

(a) The legislative rule filed in the State Register on the thirty-first day of August, two thousand twelve, authorized under the authority of section five hundred twenty-six, article nine, chapter forty-six, of this code, modified by the Secretary of State to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on the eighteenth day of January, two thousand thirteen, relating to the Secretary of State (Uniform Commercial Code, 153 CSR 35), is authorized.

(b) The legislative rule filed in the State Register on the fourteenth day of August, two thousand twelve, authorized under the authority of section one hundred ten, article twenty-eight-a, chapter forty-eight, of this code, modified by the Secretary of State to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on the eighteenth day of January, two thousand thirteen, relating to the Secretary of State (administration of the address confidentiality program, 153 CSR 37), is authorized.

(c) The legislative rule filed in the State Register on the twenty-seventh day of August, two thousand twelve, authorized under the authority of section six-a, article two, chapter three, of this code, modified by the Secretary of State to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on the twenty-third day of January, two thousand thirteen, relating to the Secretary of State (regulation of political party headquarters financing, 153 CSR 43), is authorized.
(d) The legislative rule filed in the State Register on the thirty-first day of August, two thousand twelve, authorized under the authority of section six-a, article two, chapter three, of this code, modified by the Secretary of State to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on the eighteenth day of January, two thousand thirteen, relating to the Secretary of State (regulation of late registration, 153 CSR 44), is authorized.

§64-9-8. Board of Barbers and Cosmetologists.

(a) The legislative rule filed in the State Register on the twenty-ninth day of June, two thousand twelve, authorized under the authority of section six, article twenty-seven, chapter thirty, of this code, relating to the Board of Barbers and Cosmetologists (procedures, criteria and curricula for examination and licensure of barbers, cosmetologists, nail technicians, aestheticians and hair stylists, 3 CSR 1), is authorized.

(b) The legislative rule filed in the State Register on the twenty-ninth day of June, two thousand twelve, authorized under the authority of section six, article twenty-seven, chapter thirty, of this code, modified by the Board of Barbers and Cosmetologists to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on the tenth day of January, two thousand thirteen, relating to the Board of Barbers and Cosmetologists (barber apprenticeships, 3 CSR 13), is authorized.

(c) The legislative rule filed in the State Register on the twenty-second day of August, two thousand twelve, authorized under the authority of section six, article twenty-seven, chapter thirty, of this code, modified by the Board of Barbers and Cosmetologists to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on the twenty-ninth day of January, two thousand thirteen, relating
to the Board of Barbers and Cosmetologists (operational
standards for schools of barbering and beauty culture, 3 CSR 4),
is authorized, with the following amendment:

On page four, subdivision 3.2(1), after the stricken word
"within" by striking the words, "five (5) day"; and

On page four, subsection 3.2, subdivision (1), by striking out
the words "Student Catalogs and" and inserting in lieu thereof
"School Catalogs";

On page four, subsection 3.2, subdivision (q), after the word
"student" by striking out the words "policy book" and inserting
in lieu thereof the word "handbook";

On page four, by striking subdivision 3.2(s) in its entirety;
and

On page seven, by striking subsection 7.1, and inserting a
new subsection 7.1 to read as follows,

"7.1 Daily Records - Each school shall keep a daily class
record of each student, showing the number hours earned daily,
the total number of hours the student is in attendance and the
days each student is absent. Daily hours shall be recorded by the
school using a time tracking system that can not be edited by a
student. Each student shall clock himself or herself in and out of
school."


(a) The legislative rule filed in the State Register on the
thirty-first day of August, two thousand twelve, authorized under
the authority of section two, article nine, chapter nineteen, of this
code, relating to the Commissioner of Agriculture (animal
disease control, 61 CSR 1), is authorized.
(b) The legislative rule filed in the State Register on the thirty-first day of August, two thousand twelve, authorized under the authority of section two, article nine, chapter nineteen, of this code, modified by the Department of Agriculture to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on the fifth day of December, two thousand twelve, relating to the Commissioner of Agriculture (poultry litter and manure movement into primary poultry breeder rearing areas, 61 CSR 28, is authorized, with the following amendment:

On page four, section five, line three, by striking out the entire section five and renumbering the remaining sections.

§64-9-10. Board of Architects.

The legislative rule filed in the State Register on the sixteenth day of August, two thousand twelve, authorized under the authority of section one, article twelve, chapter thirty, of this code, modified by the Board of Architects to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on the tenth day of October, two thousand twelve, relating to the Board of Architects (registration of architects, 2 CSR 1), is authorized, with the following amendment:

On page four, subdivision 2.2.17. after the word “apartment” by inserting the word “and”;

On page four, subdivision 2.2.17. after the word “Condominiums” by striking out the words “and dormitories,”;

On page six, subdivision 2.2.26. after the words “Other review, or review and corrections, of technical submissions after” by striking out the word “thy” and inserting in lieu thereof the word “they”;

On page...
18 On page nine, subdivision 3.11.1. after the words "certificate of" by striking out the underlined words "good standing" and reinserting the stricken word "registration" and;

19 On page nine, paragraph 3.11.2.a. after the word "grading" by inserting a comma;

20 On page ten, subsection 3.12. after the words "before the Board," by striking out the underlined words "no one shall" and reinserting the stricken words "an applicant or licensee may not" and;

21 On page ten, subsection 4.1. after the words "an applicant for" by reinserting the stricken words "a certificate of";

22 On page ten, subdivision 5.1.1. by striking out the section in its entirety and inserting in lieu thereof the following:

"To be eligible for a certificate of registration, other than pursuant to §2-1-6 of this rule, an applicant shall meet the following requirements:"

23 On page eleven, paragraph 5.1.1.b. after the word "NCARB’s" by striking out the remainder of said paragraph and inserting in lieu thereof the words "education standards applicable upon passage of this rule during the 2013 Regular Session of the West Virginia Legislature";

24 On page eleven, paragraph 5.1.1.c. after the words "stipulated by NCARB" by striking out the underlined words "and as accepted by the board";

25 On page eleven, paragraph 5.1.1.d. after the words "took the examination" by striking out the comma and the words "as accepted by the board" and inserting in lieu thereof a period;

26 On page eleven, subdivision 5.1.4. by reinserting the stricken words "Prior to granting a certificate of registration", and by
striking out the underlined words "When evaluation qualifications" and by striking out the comma and the underlined words "prior to reaching its decision";

On page twelve, subdivision 6.1.2. after the words "to the Board concerning the applicant" by striking out the comma and the words "as the board considers pertinent";

On page thirteen, subdivision 7.3.3. after both instances of the words "the Board" by striking both instances of the word "will" and inserting in lieu thereof in both instances the word "shall";

On page fifteen, subdivision 8.4.b. by restoring the stricken words "United States";

On page fifteen, subsection 8.6. after the words "non-renewal of any" by reinstating the stricken words "certificate of";

On page seventeen, subdivision 9.1.2 after the words "and municipal building laws" by reinserting the stricken words "and rules and ordinances";

On page seventeen, subdivision 9.1.2 after the words "in violation of those laws" by reinserting the stricken words "and rules and ordinances";

On page nineteen, subdivision 9.3.3.a. after the words "municipal building laws" by restoring the stricken words "and rules or ordinances";

On page nineteen, paragraph 9.3.3.c. after the words "the project" by striking out the underlined words "unless the registered architect is able to cause the matter to be resolved by other means"; and
On page twenty, subdivision 9.4.3. after the words “disciplinary action if” by striking out the underlined words “based on grounds substantially similar to those which lead to disciplinary action in this jurisdiction, the architect was disciplined in any other United States jurisdiction” and inserting in lieu thereof the words “he or she was disciplined in another jurisdiction in the United States where the grounds for discipline are substantially similar to those in West Virginia”.


(a) The legislative rule filed in the State Register on the thirty-first day of August, two thousand twelve, authorized under the authority of section six, article four, chapter thirty, of this code, relating to the Board of Dental Examiners (rule for the West Virginia Board of Dental Examiners, 5 CSR 1), is authorized.

(b) The legislative rule filed in the State Register on the thirty-first day of August, two thousand twelve, authorized under the authority of section five-a, article nine, chapter sixty-a, of this code, modified by the Board of Dental Examiners to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on the sixth day of December, two thousand twelve, relating to the Board of Dental Examiners (practitioner requirements for accessing the West Virginia controlled substances monitoring program database, 5 CSR 10), is authorized.

(c) The legislative rule filed in the State Register on the thirty-first day of August, two thousand twelve, authorized under the authority of section seven-a, article one, chapter thirty, of this code, modified by the Board of Dental Examiners to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on the sixth day of December, two thousand twelve, relating to the Board of Dental
Examiners (continuing education requirements, 5 CSR 11), is authorized.

(d) The legislative rule filed in the State Register on the thirty-first day of August, two thousand twelve, authorized under the authority of section six, article four, chapter thirty, of this code, relating to the Board of Dental Examiners (expanded duties of dental hygienists and dental assistants, 5 CSR 13), is authorized.

§64-9-12. Hatfield-McCoy Regional Recreation Authority.

The legislative rule filed in the State Register on the thirtieth day of August, two thousand twelve, authorized under the authority of section five, article fourteen, chapter twenty, of this code, modified by the Hatfield-McCoy Regional Recreation Authority to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on the sixth day of December, two thousand twelve, relating to the Hatfield-McCoy Regional Recreation Authority (rules for use of facility, 204 CSR 1), is authorized.


The legislative rule filed in the State Register on the sixteenth day of August, two thousand twelve, authorized under the authority of section twenty-eight, article eight, chapter thirty-six, of this code, modified by the Treasurer’s Office to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on the twenty-fifth day of September, two thousand twelve, relating to the Treasurer’s Office (enforcement of the Uniform Unclaimed Property Act, 112 CSR 5), is authorized, with the following amendment:

On page six, subsection eleven, line eleven, following the words “under the Act”, by striking out the words “or under the
§64-9-14. Board of Veterinary Medicine.

(a) The legislative rule filed in the State Register on the thirtieth day of July, two thousand twelve, authorized under the authority of section six, article ten, chapter thirty, of this code, modified by the Board of Veterinary Medicine to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on the twenty-fifth day of October, two thousand twelve, relating to the Board of Veterinary Medicine (organization and operation and licensing of veterinarians, 26 CSR 1), is authorized.

(b) The legislative rule filed in the State Register on the thirtieth day of July, two thousand twelve, authorized under the authority of section six, article ten, chapter thirty, of this code, modified by the Board of Veterinary Medicine to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on the twenty-fifth day of October, two thousand twelve, relating to the Board of Veterinary Medicine (schedule of fees, 26 CSR 6), is authorized.


(a) The legislative rule filed in the State Register on the thirty-first day of August, two thousand twelve, authorized under the authority of section six, article thirty, chapter thirty, of this code, modified by the Board of Social Work to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on the twenty-third day of January, two thousand thirteen, relating to the Board of Social Work (fee schedule, 25 CSR 3), is authorized.

(b) The legislative rule filed in the State Register on the thirty-first day of August, two thousand twelve, authorized under
the authority of section six, article thirty, chapter thirty, of this
code, modified by the Board of Social Work to meet the
objections of the Legislative Rule-Making Review Committee
and refiled in the State Register on the fifth day of February, two
thousand thirteen, relating to the Board of Social Work
(qualifications for the profession social work, 25 CSR 1), is
authorized, with the following amendment:

On page three, subsection 3.1., by striking out “30-30-8” and
inserting in lieu thereof “30-30-1”;

On page three, subdivision 3.2.2, by striking out “3.2.2.” and
inserting in lieu thereof “3.2.1.”;

On page three, subdivision 3.2.3., by striking out “3.2.3.”
and inserting in lieu thereof “3.2.2.”;

On page three, subdivision 3.2.3., renumbered by this
amendment as 3.2.2., after the word “candidate” by inserting the
word “may”;

On page four, subsection 3.3., after the words “sociology,
psychology, counseling,” by inserting the words “criminal
justice,”;

On page four, subsection 3.3., after the words “qualified
supervision and employment” by inserting the words “critical
social work workforce shortage”;

On page four, subdivision 3.3.1., by striking out all of
paragraph (b) and inserting in lieu thereof a new paragraph,
designated paragraph (b), to read as follows:

“(b) Documentation showing the applicant has met the
requirements set forth in W.Va. Code §30-30-16.”;

On page four, subdivision 3.3.2., after the words “applicant
must submit” by striking out the remainder of the subdivision
and inserting in lieu thereof the words "a provisional license agreement contract on a form provided by the board. Along with the contract, the applicant must submit evidence of full time social work employment under a provisional license supervisor.";

On page four, subdivision 3.3.4., after the words "license period." by striking out the remainder of the subsection and inserting in lieu thereof the words "Successful completion means receiving a passing grade.";

On page four, by striking out all of paragraph 3.3.4.(a);
On page five, by striking out all of paragraph 3.3.4.(b);
On page five, by striking out all of paragraph 3.3.4.(d);
And relettering the remaining paragraphs accordingly;

On page six, paragraph 3.3.8.(a), after the words "made prior to" by striking out the remainder of the paragraph and inserting in lieu thereof the words "submitting an application to employ a provisional licensee; and";

On page six, subdivision 3.3.9., at the beginning of the subdivision, by striking out the words "An employer" and inserting in lieu thereof the words "A provisional licensing supervisor";

On page six, subdivision 3.3.9., after the words "while under the" by striking out the words "employment of the agency." and inserting in lieu thereof the words "supervision of the supervisor."

On page six, paragraph 3.3.11.(e), by striking out the words "The Provisional Supervisor shall not have" and inserting in lieu thereof the word "Has not";
On page six, at the end of paragraph 3.3.11.(e), by inserting the word “and”;

On page seven, subdivision 3.3.6, by renumbering said subdivision as subdivision 3.3.13;

On page seven, subsection 3.6, by renumbering said subsection as subsection 3.4;

On page seven, subdivision 3.6, renumbered by this amendment as 3.4, after the words “attempting the examination” by striking out the words “an additional time” and inserting in lieu thereof the word “thereafter”;

On page seven, subsection 3.8, by renumbering said subsection as subsection 3.5;

On page seven, beginning with subsection 3.9, by striking out said subsection 3.9 in its entirety, and striking out subdivision 3.9.1, the first subdivision 3.9.2 and the second subdivision 3.9.2, and inserting in lieu thereof the following:

"3.6. As set forth in W. Va. Code §30-30-8, a licensed independent clinical social worker may apply social work theory, methods, assessment, ethics and the professional use of self to the diagnosis, treatment and prevention of psychological dysfunction, disability or impairment, including emotional and mental disorders and developmental disabilities.

3.6.1. To be approved by the board to serve as a clinical supervisor, a West Virginia licensed independent clinical social worker, or a licensed clinical social worker from another jurisdiction, shall:

(a) Have completed no less than two years of clinical practice since the initial issuance of the clinical license;

(b) Submit a clinical supervision contract which identifies the clinical supervisor and the person being supervised, and sets
forth the respective duties of employment. A clinical supervisor from another jurisdiction shall provide evidence of having a current, valid clinical social work license in good standing; and

(c) Maintain records of supervision, initialed by both parties, of each face-to-face session, for 100 hours, over the course of two years of full time employment or 3,000 hours of part time employment: Provided, That up to 30 of the 100 hours may be conducted by electronic means, so long as confidentiality is guaranteed and the communication is not open for view or comment by other parties."

(c) The legislative rule filed in the State Register on the twenty-ninth day of January, two thousand thirteen, authorized under the authority of section six, article thirty, chapter thirty, of this code, relating to the Board of Social Work (applications, 25 CSR 4), is authorized, with the following amendment:

On page one, subsection 2.1., by striking out the words “mail, fax or email.” and inserting in lieu thereof the words “mail, by fax to 304-558-4189, or by email to bswe2@suddenlink.net or amypolen@wvsocialworkboard.org.”

(d) The legislative rule filed in the State Register on the twenty-ninth day of January, two thousand thirteen, authorized under the authority of section six, article thirty, chapter thirty, of this code, relating to the Board of Social Work (continuing education for social workers and providers, 25 CSR 5), is authorized, with the following amendment:

On page one, subdivision 3.1.1., after the words “at least” by striking out the word “thirty”;

On page two, subdivision 3.1.1., after the words “may be earned via” by striking out the word “technical” and inserting in lieu thereof the word “electronic”;
On page two, subsection 3.2., after the words "licensee is not" by inserting in lieu thereof the word "required";

On page two, subdivision 3.3.1., after the words "satisfactorily completing:" by inserting the words "individual professional activities as follows:";

On page two, subdivision 3.3.1. paragraph (b), at the end of the paragraph, after the words "under contract" by striking out the words "and professional meetings";

On page two, subdivision 3.4.3., after the words "three (3) years of time" by striking out the remainder of said subdivision 3.4.3. and inserting in lieu thereof the words "preceding the date of renewal. Once the license is renewed, the Board may expunge the records.");

On page three, subdivision 3.7.2., at the beginning of the subdivision, by striking out the words "The license" and inserting in lieu thereof the words "A delinquent license";

On page three, subsection 4.1., in the third sentence of the subsection, after the words "programs under" by striking out the word "it's" and inserting in lieu thereof the word "its";

On page four, subdivision 4.2.6., after the words "provisions of the" by striking out the word "American's" and inserting in lieu thereof the word "Americans";

On page five, subdivision 4.3.12., after the words "provisions of the" by striking out the word "American's" and inserting in lieu thereof the word "Americans"; and

On page five, subdivision 4.4.2, in the second sentence of the subdivision, after the words "conducted via" by striking out the word "technical" and inserting in lieu thereof the word "electronic".
(e) The legislative rule filed in the State Register on the twenty-ninth day of January, two thousand thirteen, authorized under the authority of section six, article thirty, chapter thirty, of this code, relating to the Board of Social Work (code of ethics, 25 CSR 7), is authorized.


The legislative rule filed in the State Register on the twelfth day of June, two thousand twelve, authorized under the authority of section ten, article thirty-two, chapter thirty, of this code, relating to the Board of Examiners for Speech-Language Pathology and Audiology (licensure of speech-pathology and audiology, 29 CSR 1), is authorized.


The legislative rule filed in the State Register on the twenty-seventh day of August, two thousand twelve, authorized under the authority of section four, article twenty-one-a, chapter nineteen, of this code, modified by the Conservation Committee to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on the seventeenth day of December, two thousand twelve relating to the Conservation Committee (operation of the West Virginia State Conservation Committee and conservation districts, 63 CSR 1), is authorized, with the following amendment:

One page one, section one, subsection 1.1, by striking out the comma and the words “appointment and removal” and inserting in lieu thereof the words “and appointment”; and

On page three, section two, by striking out all of subsection 2.6.
CHAPTER 121

(Com. Sub. for S. B. 250 - By Senator Snyder)

[Passed April 13, 2013; in effect from passage.]
[Approved by the Governor on May 3, 2013.]

AN ACT to amend and reenact article 10, chapter 64 of the Code of West Virginia, 1931, as amended, relating generally to the promulgation of administrative rules by the Department of Commerce; legislative mandate or authorization for the promulgation of certain legislative rules by various executive or administrative agencies of the state; authorizing certain of the agencies to promulgate certain legislative rules in the form that the rules were filed in the State Register; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the Legislative Rule-Making Review Committee; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the Legislative Rule-Making Review Committee and as amended by the Legislature; repealing the Development Office legislative rule relating to the use of coalbed methane severance tax proceeds; authorizing the Broadband Deployment Council to promulgate a legislative rule relating to broadband deployment grants programs; authorizing the Board of Miner Training, Education and Certification to promulgate a legislative rule relating to the standards for certification of coal mine electricians; authorizing the Division of Natural Resources to promulgate a legislative rule relating to special boating; authorizing the Division of Natural Resources to promulgate a legislative rule relating to special motorboating; authorizing the Division of Natural Resources to promulgate a legislative rule relating to defining the terms used in all hunting and trapping rules; authorizing the Division of Natural Resources to promulgate a legislative rule relating to prohibitions
when hunting and trapping; authorizing the Division of Natural Resources to promulgate a legislative rule relating to deer hunting; authorizing the Division of Natural Resources to promulgate a legislative rule relating to general trapping; authorizing the Division of Natural Resources to promulgate a legislative rule relating to special waterfowl hunting; authorizing the Division of Natural Resources to promulgate a legislative rule relating to special fishing; authorizing the Division of Natural Resources to promulgate a legislative rule relating to falconry; authorizing the Division of Labor to promulgate a legislative rule relating to bedding and upholstered furniture; authorizing the Division of Labor to promulgate a legislative rule relating to the Amusement Rides and Amusement Attractions Safety Act; authorizing the Division of Labor to promulgate a legislative rule relating to the supervision of elevator mechanics and apprentices; authorizing the Division of Labor to promulgate a legislative rule relating to the Crane Operator Certification Act; and authorizing the Division of Labor to promulgate a legislative rule relating to the Crane Operator Certification Act—practical examination.

Be it enacted by the Legislature of West Virginia:

That article 10, chapter 64 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 10. AUTHORIZATION FOR BUREAU OF COMMERCE TO PROMULGATE LEGISLATIVE RULES,

§64-10-1. Development Office,

1 The legislative rule filed in the Office of the Secretary of State, authorized under the prior enactment of section twenty-a, article thirteen-a, chapter eleven of this code, relating to the Development Office (use of coalbed methane severance tax proceeds, 145 CSR 13), is repealed.

The legislative rule filed in the State Register on August 10, 2012, authorized under the authority of section four, article fifteen-c, chapter thirty-one of this code, modified by the Broadband Deployment Council to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on January 22, 2013, relating to the Broadband Deployment Council (broadband deployment grants programs, 208 CSR 1), is authorized.


The legislative rule filed in the State Register on August 22, 2012, authorized under the authority of section six, article seven, chapter twenty-two-a of this code, modified by the Board of Miners Training, Education and Certification to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 17, 2012, relating to the Board of Miners Training, Education and Certification (standards for certification of coal mine electricians, 48 CSR 7), is authorized.

§64-10-4. Division of Natural Resources.

(a) The legislative rule filed in the State Register on August 31, 2012, authorized under the authority of section seven, article one, chapter twenty of this code, relating to the Division of Natural Resources (special boating, 58 CSR 26), is authorized.

(b) The legislative rule filed in the State Register on August 31, 2012, authorized under the authority of section twenty-three, article seven, chapter twenty of this code, modified by the Division of Natural Resources to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on October 18, 2012, relating to the Division of
Natural Resources (special motorboating, 58 CSR 27), is authorized.

(c) The legislative rule filed in the State Register on August 31, 2012, authorized under the authority of section seven, article one, chapter twenty of this code, relating to the Division of Natural Resources (defining the terms used in all hunting and trapping rules, 58 CSR 46), is authorized.

(d) The legislative rule filed in the State Register on July 19, 2012, authorized under the authority of section seven, article one, chapter twenty of this code, relating to the Division of Natural Resources (prohibitions when hunting and trapping, 58 CSR 47), is authorized.

(e) The legislative rule filed in the State Register on August 31, 2012, authorized under the authority of section seven, article one, chapter twenty of this code, modified by the Division of Natural Resources to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on October 18, 2012, relating to the Division of Natural Resources (deer hunting, 58 CSR 50), is authorized.

(f) The legislative rule filed in the State Register on August 31, 2012, authorized under the authority of section seven, article one, chapter twenty of this code, relating to the Division of Natural Resources (general trapping, 58 CSR 53), is authorized.

(g) The legislative rule filed in the State Register on August 31, 2012, authorized under the authority of section seven, article one, chapter twenty of this code, relating to the Division of Natural Resources (special waterfowl hunting, 58 CSR 58), is authorized.

(h) The legislative rule filed in the State Register on August 31, 2012, authorized under the authority of section seven, article
one, chapter twenty of this code, relating to the Division of
Natural Resources (special fishing, 58 CSR 61), is authorized.

(i) The legislative rule filed in the State Register on August
31, 2012, authorized under the authority of section seven, article
one, chapter twenty of this code, modified by the Division of
Natural Resources to meet the objections of the Legislative Rule-
Making Review Committee and refiled in the State Register on
October 31, 2012, relating to the Division of Natural Resources
(falconry, 58 CSR 65), is authorized with the following
amendments:

On page one, subsection 2.8., after the word “Falconiformes”
by inserting a comma and the words “the Order
Accipitriformes”;

On page one, after subsection 2.8., by inserting a new
subsection 2.9. to read as follows:

“2.9. “Passage” means a first-year raptor that is no longer
dependent upon parental care.”;

On page three, by striking out all of subsection 4.5. and
inserting in lieu thereof a new subsection 4.5. to read as follows:

“4.5. A permittee may use a falconry to take any bird species
for which there is a depredation order in place in 50 CFR at any
time in accordance with the conditions of the applicable
depredation order. The permittee may not receive any
compensation for depredation activities.”;

On page four, subdivision 5.3.e., after the word
“Falconiform” by inserting a comma and the word
“Accipitriform”;

On page six, subdivision 7.2.a., by striking out the word
“Alymeri” and inserting in lieu thereof the word “Aylmeri”;
On page eight, by striking out all of subsection 10.1. and inserting in lieu thereof a new subsection 10.1. to read as follows:

"10.1. A raptor taken, possessed, transported or used for falconry purposes shall be marked with: a seamless, numbered band issued by the Division for captive-bred birds or a U.S. Fish and Wildlife Service permanent, non-reusable numbered band issued by the Division for birds originating from the wild. An ISO (International Organization for Standardization)-compliant (134.2 kHz) microchip may be implanted in addition to the band."

On page eight, by striking out all of subsection 10.3. and inserting in lieu thereof a new subsection 10.3. to read as follows:

"10.3. A permittee must report the loss or removal of any band within five (5) days by filing a Federal form 3-186A either electronically or in paper form. Lost bands must be replaced by a permanent, nonreusable numbered band supplied by the division. Upon remarking the raptor, the permittee shall immediately complete and submit a Federal form 3-186A either electronically or on paper reporting the new band."

On page nine, by striking out all of subsection 10.6. and inserting in lieu thereof a new subsection 10.6. to read as follows:

"10.6. A permittee shall remove and surrender to the division any markers from an intentionally released raptor which is indigenous to the state. A standard Federal band may be attached to the birds at the discretion of the division prior to release."

On page nine, subsection 11.1., by striking out the words "both the division and the U. S. Fish and Wildlife Service"
Regional Law-Enforcement office” and inserting in lieu thereof the words “the division”;

And,

On page nine, by striking out all of subsection 11.3. and inserting in lieu thereof a new subsection 11.3. to read as follows:

“11.3. Resident General or Master Falconers may take from the wild any species of Falconiform, Accipitriform or Strigiform in West Virginia except: eagles; peregrine falcon (Falco peregrines); Northern harrier (Circus cyaneus); northern goshawk (Accipiter gentilis); American rough-legged hawk (Buteo lagopus); barn owl (Tyto alba); long-eared owl (Asio otus); short-eared owl (Asio flammeus); saw-whet owl (Aegolius acadicus); merlin (Falco columbaris) eyases; and sharp-shinned hawk (Accipiter straitus) eyases.”

§64-10-5. Division of Labor.

(a) The legislative rule filed in the State Register on August 31, 2012, authorized under the authority of section fifteen, article one-a, chapter forty-seven of this code, modified by the Division of Labor to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 21, 2012, relating to the Division of Labor (bedding and upholstered furniture, 42 CSR 12), is authorized with the following amendments:

On page two, following subsection 3.6, by striking subsection 3.7 and renumbering the remaining subsections;

On page two, subsection 3.9, line two, following the word “manufacturing” and the comma, by striking the word “importing” and the comma;
On page three, subsection 5.1, line one, following the word "manufacturing" and the comma, by striking the word "importing" and the comma;

On page three, subsection 5.1, line three, following the word "manufacturer" and the comma, by striking the word "importer" and the comma;

On page three, subsection 6.1, line one, following the word "manufacturer" and the comma, by striking the word "importer" and the comma;

On page three, subsection 6.2, line one, following the word "manufacturer", by striking the words "or importer";

One page five, subsection 9.3, line one, following the word "manufacturer" and the comma, by striking the word "importer" and the comma;

On page five, subdivision 10.1.1, following the word "manufacturer", by striking the words "or importer";

On page ten, appendix C, line sixteen, by striking out the misspelled word "ADDRESS" and inserting the in lieu thereof, the word "ADDRESS";

On page eleven, appendix D, line twenty, by striking out the misspelled word "ADDRESS" and inserting the in lieu thereof, the word "ADDRESS";

On page fourteen, appendix G, line fourteen, by striking out the misspelled word "ADDRESS" and inserting the in lieu thereof, the word "ADDRESS";

And,

On page fifteen, appendix H, line thirteen, by striking out the misspelled word "ADDRESS" and inserting the in lieu thereof, the word "ADDRESS";
(b) The legislative rule filed in the State Register on August 31, 2012, authorized under the authority of section three, article ten, chapter twenty-one of this code, modified by the Division of Labor to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 21, 2012, relating to the Division of Labor (Amusement Rides and Amusement Attractions Safety Act, 42 CSR 17), is authorized with the following amendments:

51. On pages three and four, by re-designating subdivisions 4.1.1., 4.1.2., 4.1.3., 4.1.4., 4.1.5., 4.1.6., 4.1.7., 4.1.8., 4.1.9., 4.1.10. and 4.1.11. as 4.1.a., 4.1.b., 4.1.c., 4.1.d., 4.1.e., 4.1.f., 4.1.g., 4.1.h., 4.1.i., 4.1.j. and 4.1.k.;

52. On page seven, subdivision 9.2.b., line two, after the word "has", by striking out the word "of";

53. On page eight, subdivision 10.2.b., line two, after the word "has", by striking out the word "of";

54. On page eleven, subsection 17.4, line two, following the words "report of the", by inserting the word "serious";

55. On page eleven, subsection 17.5, line one, following the words "document the", by striking the word "accident" and inserting in lieu thereof the words "serious injury or fatality";

56. On page eleven, subsection 18.1, line two, following the words "required by", by striking the words "this section of the rule" and inserting in lieu thereof the words "sections 15 or 17 of this rule";

57. On page eleven, subsection 18.1, line three, following the word "cessation" and the comma, by striking the words "imminent danger notification" and the comma;
On page twelve, subsection 19.4, line three, following the
word "operation", by striking the words "is prohibited" and
inserting a colon;

On page twelve, by re-designating subdivisions 19.4.1 and
19.4.2 as 19.4.a. and 19.4.b.;

And,

On page twelve, by re-designating paragraphs 19.4.2.1.,
19.4.2.2., 19.4.2.3., 19.4.2.4., 19.4.2.5., 19.4.2.6. as 19.4.b.1.,
19.4.b.2., 19.4.b.3., 19.4.b.4., 19.4.b.5., 19.4.b.6.

(c) The legislative rule filed in the State Register on August
31, 2012, authorized under the authority of section eleven, article
three-c, chapter twenty-one of this code, modified by the
Division of Labor to meet the objections of the Legislative Rule-
Making Review Committee and refiled in the State Register on
December 21, 2012, relating to the Division of Labor
(supervision of elevator mechanics and apprentices, 42 CSR
21A), is authorized, with the following amendments:

On page two, subsection 5.1., by un-striking the word "may"
and striking out the word "shall";

On page two, subsection 5.2., by un-striking the word "may"
and striking out the word "shall";

And,

On page six, subsection 9.2, line two, after the word "with",
by striking out the word "the".

(d) The legislative rule filed in the State Register on August
31, 2012, authorized under the authority of section three, article
three-d, chapter twenty-one of this code, modified by the
Division of Labor to meet the objections of the Legislative Rule-
Making Review Committee and refiled in the State Register on December 21, 2012, relating to the Division of Labor (Crane Operator Certification Act, 42 CSR 24), is authorized with the following amendment:

On page two, subsection 3.4, line four, following the word "November", by striking "10" and inserting in lieu thereof "14".

(e) The legislative rule filed in the State Register on August 21, 2012, authorized under the authority of section three, article three-d, chapter twenty-one of this code, relating to the Division of Labor (Crane Operator Certification Act - practical examination, 42 CSR 25), is authorized with the following amendments:

On page two, subsection 3.4, line five, following the word "November", by striking "10" and inserting in lieu thereof "14";

And,

On page three, line fifteen, after the stricken subdivision designation 4.5.d., by inserting the subdivision designation 4.4.d."

CHAPTER 122

(H. B. 3013 - By Mr. Speaker (Mr. Thompson), Boggs, Swartzmiller, Caputo, Miley, M. Poling, White, Perdue, Morgan, Moye and D. Poling)

[Passed April 2, 2013; in effect ninety days from passage.]
[Approved by the Governor on April 10, 2013.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §4-2B-1, relating to
authorizing the establishment of job creation work groups to obtain information to assist the Legislature's efforts to take effective action to increase and attract jobs in West Virginia.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §4-2B-1, to read as follows:

ARTICLE 2B. WORK GROUPS.

§4-2B-1. Job creation work groups.

(a)(1) The Legislature finds that an array of economic development initiatives have been taken by the Legislature, the Governor and various agencies of the Executive to promote the growth of job opportunities for residents of the state, including, but not limited to:

(A) An extensive reduction of business tax burdens, workers' compensation reform, and significant investment in university research;

(B) Providing new and expanding businesses with technical and financial assistance to train, retrain and upgrade the skills of their employees;

(C) Providing the curricula of an expanding Community and Technical College System that is highly responsive to business and workforce needs; and

(D) Broad based nationwide and global marketing of the advantages of West Virginia as a place to do business, to work and to live.

(2) These efforts are promoting a positive business climate and continued business growth in the state. The Legislature
finds, however, that more can be done. The Legislature expects to continuously examine and consider legislative proposals for further actions that can be taken to increase jobs available in this state by encouraging the expansion of existing industries and business, both large and small, in this state, and by attracting to this state new industries and businesses that will complement the state's ongoing efforts to compete in the national and global economies. The Legislature further finds that it can promote the effectiveness of its consideration of these proposals as well as provide a source of other ideas for the same by authorizing the formation of job creation work groups to gather information in person at locations within and outside the state in order to observe first hand the best practices for job creation developed elsewhere.

(b) The President of the Senate may establish one or more Senate job creation work groups, composed of one or more members of the Senate. The Speaker of the House of Delegates may establish one or more House of Delegates job creation work groups, composed of one or more members of the House of Delegates.

(c) Each job creation work group shall conduct its activities under the direction of the appointing presiding officer, independently or in cooperation with the Department of Commerce, the West Virginia Development Office, or other executive office or agency of the state. The work group shall conduct meetings and visitations as it is directed by the appointing presiding officer for the purposes of obtaining information available to assist the Legislature's efforts to take effective action to increase and attract jobs in West Virginia. The primary purpose of a job creation workgroup is to become a resource for other members of its respective house of the Legislature. The work group shall also meet with existing businesses and organizations to further develop resources currently available to expand upon and grow job opportunities
Within the state. Each member of a job creation work group may make proposals or recommendations on this subject as an individual member of the Legislature. The work group exists until terminated by the appointing presiding officer.

(d) The expenses of a job creation work group shall be paid from the funds of the respective house in which it is established. The members of the work group may receive no compensation for their services other than actual expenses incurred in the discharge of their duties as members of work group, subject to the limitations provided for the reimbursement of travel and other expenses incurred in the performance of duties as a member of the Legislature under article two-a of this chapter.

(e) The provisions of this section expire and are of no force and effect after December 31, 2014.

CHAPTER 123

(Com. Sub. for S. B. 544 - By Senators Snyder and Stollings)

[Passed April 11, 2013; in effect ninety days from passage;]
[Approved by the Governor on April 29, 2013.]

AN ACT to amend and reenact §4-10-8 of the Code of West Virginia, 1931, as amended, relating to the schedule of departments for agency review.

Be it enacted by the Legislature of West Virginia:

That §4-10-8 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:
ARTICLE 10. PERFORMANCE REVIEW ACT.

§4-10-8. Schedule of departments for agency review.

(a) Each department shall make a presentation, pursuant to
the provisions of this article, to the joint standing committee and
the committee during the first interim meeting after the regular
session of the year in which the department is to be reviewed
pursuant to the schedule set forth in subsection (b) of this
section.

(b) An agency review shall be performed on one or more
agencies under the purview of each department at least once
every seven years, as follows:

1. (1) 2013, the Department of Transportation;
2. (2) 2014, the Department of Administration;
3. (3) 2015, the Department of Education, including the Higher
   Education Policy Commission and the West Virginia Council for
   Community and Technical College Education;
4. (4) 2016, the Department of Veterans’ Assistance and the
   Department of Education and the Arts;
5. (5) 2017, the Department of Revenue and the Department of
   Commerce;
6. (6) 2018, the Department of Environmental Protection and
   the Department of Military Affairs and Public Safety;
7. (7) 2019, the Department of Health and Human Resources,
   including the Bureau of Senior Services; and
8. (8) 2020, the Department of Transportation.
CHAPTER 124

(Com. Sub. for H. B. 2399 - By Delegates D. Poling, Anderson, Manypenny, Guthrie, Ireland, Ellem and Swartzmiller)

[Passed April 12, 2013; in effect ninety days from passage.]
[Approved by the Governor on April 29, 2013.]

AN ACT to repeal §19-18-4, §19-18-5, §19-18-6, §19-18-7, §19-18-8, §19-18-9, §19-18-10, §19-18-11 and §19-18-12 of the Code of West Virginia, 1931, as amended; to amend and reenact §19-1C-4 of said code; and to amend and reenact §19-18-1, §19-18-2 and §19-18-3 of said code, all relating generally to livestock; permitting the Livestock Care Standards Board to create procedures to address the inhumane treatment of livestock; prohibiting livestock from trespassing; clarifying damages that may be recovered; permitting containment of livestock; requiring notification of owner of trespassing livestock; requiring containment costs be negotiated and recovered in court; permitting the sheriff to take possession of unclaimed livestock; permitting unclaimed livestock be sold at auction; setting forth the distribution of auction proceeds; and establishing misdemeanor penalties.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1C. CARE OF LIVESTOCK.

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

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

1. Establish standards governing the care and well-being of livestock;
2. Maintain food safety;
3. Encourage locally grown and raised food; and
4. Protect West Virginia farms and families.

(b) The board is also authorized to establish standards by legislative rule, pursuant to the provisions of article three, chapter twenty-nine-a of this code, governing the care and well-being of livestock in this state, including:

1. The agricultural best management practices for the care and well-being of livestock and poultry in this state;
2. Procedures for addressing complaints regarding the inhumane treatment of livestock and coordinating efforts with county humane officers;
3. Biosecurity, disease prevention, animal morbidity and mortality data;
4. Food safety practices; and
5. The protection of local, affordable food supplies for consumers.

(c) The Department of Agriculture shall administer and enforce the standards established by the board that are approved by the Legislature.
ARTICLE 18. GENERAL LIVESTOCK TRESPASS LAW.

§19-18-1. Livestock trespassing on property of another; damages for injuries to person or property; notice to livestock owner; containment of livestock; costs for containment.

(a) If livestock enters the property of a landowner without that landowner’s consent, the owner of the livestock is liable for damages for personal injury or property damage in a civil action in magistrate or circuit court.

(b) The landowner must attempt to contact the owner of the trespassing livestock within forty-eight hours of the trespass. If the owner cannot be contacted within forty-eight hours, the landowner shall notify the county sheriff.

(c) The landowner may contain the trespassing livestock on his or her property, but is not required to do so. If the landowner is able to contact the owner of the trespassing livestock pursuant to subsection (a) of this section, he or she shall also inform the owner of the costs of containment.

(d) The owner of the trespassing livestock and the landowner shall attempt to mutually agree upon a fair cost for any containment. A fair cost for containment is an amount which would be allowed for the sheriff for containing similar livestock. If the negotiation fails, or if the landowner is not otherwise reimbursed for the costs for containment, the landowner may seek monetary damages in a civil action for these costs.

§19-18-2. Unclaimed livestock; containment by sheriff; sheriff’s sale at public auction.

(a) If the owner of trespassing livestock cannot be determined, or if the trespassing livestock has not been
recovered within ten days of notifying the owner, the county
sheriff shall take possession of the trespassing livestock.

(b) The county sheriff may return the livestock to its owner
and seek reimbursement for containment costs. If attempts to
return the livestock to the owner fail, the sheriff may, after
publishing notice as a Class I legal advertisement, sell the
livestock to the highest bidder at a public livestock auction.

(c) The proceeds of the livestock sale shall be distributed in
the following order:

(1) Costs incident to the sale;

(2) Costs of containment incurred by the sheriff and the
landowner;

(3) Any remaining amount to the owner of the trespassing
livestock; and

(4) If the owner is unknown or does not claim the amount
remaining within ninety days, that amount shall be deposited
into the county treasury.


(a) While livestock may escape enclosures due to accident
or unforeseen circumstances, it is unlawful for the owner of
livestock to negligently permit livestock to run at large and
trespass on the property of other landowners.

(b) If livestock injures a person or destroys the property of
another person while negligently trespassing, the owner of the
livestock shall be given an oral or written warning for the first
offense. For a second offense within six months of the first, the
owner is guilty of a misdemeanor and, upon conviction thereof,
shall be fined not less than $50 nor more than $100. For a third
or subsequent offense within six months of the second or
subsequent offense, the owner is guilty of a misdemeanor and,
upon conviction thereof, shall be fined not less than $100 nor
more than $1,000.

CHAPTER 125
(Com. Sub. for S. B. 146 - By Senators Unger and Beach)

[Passed April 13, 2013; in effect ninety days from passage.]
[Approved by the Governor on May 1, 2013.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by
adding thereto a new section, designated §50-3-2c, relating to
requiring the Tax Commissioner to withhold unpaid costs, fines,
fees, forfeitures, restitution, penalties and other fees imposed on a
defendant in a criminal action in magistrate court, or imposed in
circuit court in a criminal action on appeal from magistrate court,
from the income tax refund of the defendant upon notification
from the clerk of the appropriate court; requiring clerk to give
notification to Tax Commissioner if amounts are unpaid within one
year of judgment; providing a process for deducting, distributing
and allocating those unpaid amounts; creating the Magistrate Fines
and Fees Collection Fund; permitting the Tax Commissioner to
charge an administrative fee; and providing rule-making authority.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by
adding thereto a new section, designated §50-3-2c, to read as follows:
ARTICLE 3. COSTS, FINES AND RECORDS.

§50-3-2c. Withholding from personal income tax refunds for unpaid fines and costs in magistrate criminal actions, in magistrate criminal appeals to circuit court and for failure to appear in court.

(a) If costs, fines, fees, forfeitures, restitution or penalties imposed by the magistrate court upon conviction of a person for a criminal offense as defined by this code, imposed by the circuit court upon judgment on an appeal to circuit court of that conviction, or imposed by either court for failure to appear are not paid in full within one year of the judgment, the magistrate court clerk or, upon a judgment rendered on appeal, the circuit clerk shall notify the Tax Commissioner that the defendant has failed to pay the costs, fines, forfeitures or penalties assessed by the court. The notice provided by the magistrate clerk or the circuit clerk to the Tax Commissioner must include the defendant's Social Security number. The Tax Commissioner, or his or her designee, shall withhold from any personal income tax refund due and owing to a defendant the costs, fines, fees, forfeitures, restitution or penalties due, the Tax Commissioner's administration fee for the withholding and any and all fees or other amounts that the magistrate court and the circuit court would have collected had the defendant appeared: Provided, That no withholding shall be made under this section if there is an unsatisfied withholding request made pursuant to section two-b, article ten, chapter eight of this code. The Tax Commissioner's administration fee shall not exceed $25, unless this maximum amount is increased by legislative rule promulgated in accordance with article three, chapter twenty-nine-a of this code. The administrative fees deducted shall be deposited in the special revolving fund hereby created in the State Treasury, which shall be designated as the Magistrate Fines and Fees Collection Fund, and the Tax Commissioner shall make
such expenditures from the fund as he or she deems appropriate for the administration of this subsection.

(b)(1) After deduction of the Tax Commissioner’s administration fee, the Tax Commissioner shall remit all remaining amounts withheld pursuant to this section to the clerk of the court that notified the Tax Commissioner of the failure to pay under subsection (a) of this section.

(2) From the amounts received from the Tax Commissioner, the circuit clerk shall distribute the portion thereof that is attributable to costs, fines, fees, forfeitures, restitution or penalties owed to magistrate court to the magistrate clerk and distribute the remainder that is attributable to costs, fines, fees, forfeitures, restitution or penalties owed to circuit court to the appropriate fund or payee, as applicable and listed in section twenty-eight-a, article one, chapter fifty-nine of this code and as otherwise required by law.

(3) From the amounts received from the Tax Commissioner, or from the circuit clerk under subdivision (2) of this subsection, the magistrate clerk shall distribute applicable costs, fines, fees, forfeitures, restitution or penalties owed to the appropriate fund or payee, as applicable and listed in subsection (g), section two-a of this article and as otherwise required by law.

(4) After the costs, fines, fees, forfeitures, restitution or penalties are withheld, the Tax Commissioner shall refund any remaining balance due the defendant.

(5) If the refund is not sufficient to cover all the costs, fines, fees, forfeitures, restitution or penalties to be withheld pursuant to this section, the Tax Commissioner’s administration fee shall be retained by the Tax Commissioner and the remaining money withheld shall be remitted by the Tax Commissioner to the
appropriate clerk. The clerk shall then allocate the money so
remitted on a pro rata basis as provided in the applicable
provisions of subdivisions (2) or (3) of this subsection.

(c) In the event the costs, fines, fees, forfeitures, restitution
or penalties exceed the defendant’s income tax refund, the Tax
Commissioner shall withhold the remaining balance in
subsequent years until such time as the costs, fines, fees,
forfeitures, restitution or penalties owed are paid in full. The Tax
Commissioner shall remit the moneys that he or she collects to
the appropriate clerk no later than July 1 of each year. If the
Court or the magistrate court subsequently determines that
any costs, fines, fees, forfeitures, restitution or penalties were
erroneously imposed, the clerk of the court shall promptly notify
the Tax Commissioner. If the amounts due are paid in full to the
court from a source other than the Tax Commissioner after the
clerk of the court has provided notice of the failure to pay to the
tax commissioner, the clerk of the court shall promptly notify the
Tax Commissioner of the payment. If the refunds have not been
withheld and remitted, the Tax Commissioner may not withhold
and remit payment to the appropriate court and shall so inform
the clerk of the court. If the refunds have already been withheld
and remitted to the court, the Tax Commissioner shall so inform
the clerk of the court. In either event, all refunds for erroneously
imposed costs, fines, forfeitures or penalties shall be made by the
appropriate court and not by the Tax Commissioner.

(d) Rules. — The Tax Commissioner may propose for
legislative approval such rules as may be useful or necessary to
carry out the purpose of this section and to implement the intent
of the Legislature. Rules shall be promulgated in accordance
with article three, chapter twenty-nine-a of this code.
AN ACT to amend and reenact §61-7-11a of the Code of West Virginia, 1931, as amended, relating to providing an exemption for the official mascot of Parkersburg South High School, commonly known as the Patriot, which would allow the mascot to carry a musket on school grounds when the mascot is acting in his or her official capacity.

Be it enacted by the Legislature of West Virginia:

That §61-7-11a of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 7. DANGEROUS WEAPONS.

§61-7-11a. Possessing deadly weapons on premises of educational facilities; reports by school principals; suspension of driver’s license; possessing deadly weapons on premises housing courts of law and in offices of family law master.

(a) The Legislature hereby finds that the safety and welfare of the citizens of this state are inextricably dependent upon assurances of safety for children attending and persons employed by schools in this state and for persons employed by the judicial department of this state. It is for the purpose of providing assurances of safety that subsections (b), (g) and (h) of this section are enacted as a reasonable regulation of the manner in
which citizens may exercise the rights accorded to them pursuant to section twenty-two, article three of the Constitution of the State of West Virginia.

(b) (1) It is unlawful for a person to possess a firearm or other deadly weapon on a school bus as defined in section one, article one, chapter seventeen-a of this code, or in or on a public or private primary or secondary education building, structure, or facility or grounds including a vocational education building, structure, facility or grounds where secondary vocational education programs are conducted or at a school-sponsored function.

(2) This subsection does not apply to:

(A) A law-enforcement officer acting in his or her official capacity;

(B) A person specifically authorized by the board of education of the county or principal of the school where the property is located to conduct programs with valid educational purposes;

(C) A person who, as otherwise permitted by the provisions of this article, possesses an unloaded firearm or deadly weapon in a motor vehicle or leaves an unloaded firearm or deadly weapon in a locked motor vehicle;

(D) Programs or raffles conducted with the approval of the county board of education or school which include the display of unloaded firearms;

(E) The official mascot of West Virginia University, commonly known as the Mountaineer, acting in his or her official capacity; or
(F) The official mascot of Parkersburg South High School, commonly known as the Patriot, acting in his or her official capacity.

(3) A person violating this subsection is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for a definite term of years of not less than two years nor more than ten years, or fined not more than $5,000, or both.

(c) It is the duty of the principal of each school subject to the authority of the State Board of Education to report a violation of subsection (b) of this section discovered by the principal to the State Superintendent of Schools within seventy-two hours after the violation occurs. The State Board of Education shall keep and maintain these reports and may prescribe rules establishing policy and procedures for the making and delivery of the reports as required by this subsection. In addition, it is the duty of the principal of each school subject to the authority of the State Board of Education to report a violation of subsection (b) of this section discovered by the principal to the appropriate local office of the Division of Public Safety within seventy-two hours after the violation occurs.

(d) In addition to the methods of disposition provided by article five, chapter forty-nine of this code, a court which adjudicates a person who is fourteen years of age or older as delinquent for a violation of subsection (b) of this section may, in its discretion, order the Division of Motor Vehicles to suspend a driver’s license or instruction permit issued to the person for a period of time as the court considers appropriate, not to extend beyond the person’s nineteenth birthday. Where the person has not been issued a driver’s license or instruction permit by this state, a court may order the Division of Motor Vehicles to deny the person’s application for a license or permit for a period of
time as the court considers appropriate, not to extend beyond the person’s nineteenth birthday. A suspension ordered by the court pursuant to this subsection is effective upon the date of entry of the order. Where the court orders the suspension of a driver’s license or instruction permit pursuant to this subsection, the court shall confiscate any driver’s license or instruction permit in the adjudicated person’s possession and forward to the Division of Motor Vehicles.

(e) (1) If a person eighteen years of age or older is convicted of violating subsection (b) of this section, and if the person does not act to appeal the conviction within the time periods described in subdivision (2) of this subsection, the person’s license or privilege to operate a motor vehicle in this state shall be revoked in accordance with the provisions of this section.

(2) The clerk of the court in which the person is convicted as described in subdivision (1) of this subsection shall forward to the commissioner a transcript of the judgment of conviction. If the conviction is the judgment of a magistrate court, the magistrate court clerk shall forward the transcript when the person convicted has not requested an appeal within twenty days of the sentencing for the conviction. If the conviction is the judgment of a circuit court, the circuit clerk shall forward a transcript of the judgment of conviction when the person convicted has not filed a notice of intent to file a petition for appeal or writ of error within thirty days after the judgment was entered.

(3) If, upon examination of the transcript of the judgment of conviction, the commissioner determines that the person was convicted as described in subdivision (1) of this subsection, the commissioner shall make and enter an order revoking the person’s license or privilege to operate a motor vehicle in this state for a period of one year or, in the event the person is a
student enrolled in a secondary school, for a period of one year
or until the person's twentieth birthday, whichever is the greater
period. The order shall contain the reasons for the revocation and
the revocation period. The order of suspension shall advise the
person that because of the receipt of the court's transcript, a
presumption exists that the person named in the order of
suspension is the same person named in the transcript. The
commissioner may grant an administrative hearing which
substantially complies with the requirements of the provisions of
section two, article five-a, chapter seventeen-c of this code upon
a preliminary showing that a possibility exists that the person
named in the notice of conviction is not the same person whose
license is being suspended. The request for hearing shall be
made within ten days after receipt of a copy of the order of
suspension. The sole purpose of this hearing is for the person
requesting the hearing to present evidence that he or she is not
the person named in the notice. If the commissioner grants an
administrative hearing, the commissioner shall stay the license
suspension pending the commissioner's order resulting from the
hearing.

(4) For the purposes of this subsection, a person is convicted
when such person enters a plea of guilty or is found guilty by a
court or jury.

(f) (1) It is unlawful for a parent, guardian or custodian of a
person less than eighteen years of age who knows that the person
is in violation of subsection (b) of this section or has reasonable
cause to believe that the person's violation of subsection (b) is
imminent, to fail to immediately report his or her knowledge or
belief to the appropriate school or law-enforcement officials.

(2) A person violating this subsection is guilty of a
misdemeanor and, upon conviction thereof, shall be fined not
131 more than $1,000, or shall be confined in jail not more than one
132 year, or both.

133 (g) (1) It is unlawful for a person to possess a firearm or
134 other deadly weapon on the premises of a court of law, including
135 family courts.

136 (2) This subsection does not apply to:

137 (A) A law enforcement officer acting in his or her official
138 capacity; and

139 (B) A person exempted from the provisions of this
140 subsection by order of record entered by a court with jurisdiction
141 over the premises or offices.

142 (3) A person violating this subsection is guilty of a
143 misdemeanor and, upon conviction thereof, shall be fined not
144 more than $1,000, or shall be confined in jail not more than one
145 year, or both.

146 (h) (1) It is unlawful for a person to possess a firearm or
147 other deadly weapon on the premises of a court of law, including
148 family courts, with the intent to commit a crime.

149 (2) A person violating this subsection is guilty of a felony
150 and, upon conviction thereof, shall be imprisoned in a state
151 correctional facility for a definite term of years of not less than
152 two years nor more than ten years, or fined not more than
153 $5,000, or both.

154 (i) Nothing in this section may be construed to be in conflict
155 with the provisions of federal law.
AN ACT to amend and reenact §9-5-11 of the Code of West Virginia, 1931, as amended, all relating to state Medicaid subrogation; establishing definitions; establishing recipient assignment of subrogation rights against third parties; excluding Medicare benefits from assignment; authorizing release of information; prioritizing the department’s subrogation right; establishing notice requirements for third party claims, civil actions and settlements; permitting the department to enter appearance in an action against a third party; establishing penalties for failure to notify the department; requiring consent to settle; establishing procedures for agreed allocation of award or judgment proceeds from third parties; establishing procedures when allocation is disputed; establishing procedures for jury trial; establishing post-trial payment procedures; establishing allocation of attorneys fees; prohibiting certain class actions and multiple plaintiff actions; and authorizing authority to settle.

Be it enacted by the Legislature of West Virginia:

That §9-5-11 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 5. MISCELLANEOUS PROVISIONS.

§9-5-11. Definitions; Assignment of rights; right of subrogation by the Department for third-party liability; notice
requirement for claims and civil actions; notice requirement for settlement of third-party claim; penalty for failure to notify the department; provisions related to trial; attorneys fees; class actions and multiple plaintiff actions not authorized; and Secretary’s authority to settle.

(a) Definitions.— As used in this section, unless the context otherwise requires:

(1) “Bureau” means the Bureau for Medical Services.

(2) “Department” means the West Virginia Department of Health and Human Resources, or its contracted designee.

(3) “Recipient” means a person who applies for and receives assistance under the Medicaid Program.

(4) “Secretary” means the Secretary of the Department of Health and Human Resources.

(5) “Third-party” means an individual or entity that is alleged to be liable to pay all or part of the costs of a recipient’s medical treatment and medical-related services for personal injury, disease, illness or disability, as well as any entity including, but not limited to, a business organization, health service organization, insurer, or public or private agency acting by or on behalf of the allegedly liable third-party.

(b) Assignment of rights.—

(1) Submission of an application to the department for medical assistance is, as a matter of law, an assignment of the right of the applicant or his or her legal representative to recover from third parties past medical expenses paid for by the Medicaid program.
(2) At the time an application for medical assistance is made, the department shall include a statement along with the application that explains that the applicant has assigned all of his or her rights as provided in this section and the legal implications of making this assignment.

(3) This assignment of rights does not extend to Medicare benefits.

(4) This section does not prevent the recipient or his or her legal representative from maintaining an action for injuries or damages sustained by the recipient against any third-party and from including, as part of the compensatory damages sought to be recovered, the amounts of his or her past medical expenses.

(5) The department shall be legally subrogated to the rights of the recipient against the third party.

(6) The department shall have a priority right to be paid first out of any payments made to the recipient for past medical expenses before the recipient can recover any of his or her own costs for medical care.

(7) A recipient is considered to have authorized all third-parties to release to the department information needed by the department to secure or enforce its rights as assignee under this chapter.

(c) Notice requirement for claims and civil actions.—

(1) A recipient’s legal representative shall provide notice to the department within 60 days of asserting a claim against a third party. If the claim is asserted in a formal civil action, the recipient’s legal representative shall notify the department within 60 days of service of the complaint and summons upon the third party by causing a copy of the summons and a copy of the complaint to be served on the department as though it were named a party defendant.
(2) If the recipient has no legal representative and the third party knows or reasonably should know that a recipient has no representation then the third party shall provide notice to the department within sixty days of receipt of a claim or within thirty days of receipt of information or documentation reflecting the recipient is receiving Medicaid benefits, whichever is later in time.

(3) In any civil action implicated by this section, the department may file a notice of appearance and shall thereafter have the right to file and receive pleadings, intervene and take other action permitted by law.

(4) The department shall provide the recipient and the third party, if the recipient is without legal representation, notice of the amount of the purported subrogation lien within thirty days of receipt of notice of the claim. The department shall provide related supplements in a timely manner, but no later than fifteen days after receipt of a request for same.

(d) Notice of settlement requirement.—

(1) A recipient or his or her representative shall notify the department of a settlement with a third-party and retain in escrow an amount equal to the amount of the subrogation lien asserted by the department. The notification shall include the amount of the settlement being allocated for past medical expenses paid for by the Medicaid program. Within 30 days of the receipt of any such notice, the department shall notify the recipient of its consent or rejection of the proposed allocation. If the department consents, the recipient or his or her legal representation shall issue payment out of the settlement proceeds in a manner directed by the secretary or his or her designee within 30 days of consent to the proposed allocation.

(2) If the total amount of the settlement is less than the department’s subrogation lien, then the settling parties shall
obtain the department’s consent to the settlement before finalizing the settlement. The department shall advise the parties within 30 days and provide a detailed itemization of all past medical expenses paid by the department on behalf of the recipient for which the department seeks reimbursement out of the settlement proceeds.

(3) If the department rejects the proposed allocation, the department shall seek a judicial determination within 30 days and provide a detailed itemization of all past medical expenses paid by the department on behalf of the recipient for which the department seeks reimbursement out of the settlement proceeds.

(A) If judicial determination becomes necessary, the trial court is required to hold an evidentiary hearing. The recipient and the department shall be provided ample notice of the same and be given just opportunity to present the necessary evidence, including fact witness and expert witness testimony, to establish the amount to which the department is entitled to be reimbursed pursuant to this section.

(B) The department shall have the burden of proving by a preponderance of the evidence that the allocation agreed to by the parties was improper. For purposes of appeal, the trial court’s decision should be set forth in a detailed order containing the requisite findings of fact and conclusions of law to support its rulings.

(4) Any settlement by a recipient with one or more third-parties which would otherwise fully resolve the recipient’s claim for an amount collectively not to exceed $20,000 shall be exempt from the provisions of this section.

(5) Nothing herein prevents a recipient from seeking judicial intervention to resolve any dispute as to allocation prior to effectuating a settlement with a third party.
(e) Department failure to respond to notice of settlement.— If the department fails to appropriately respond to a notification of settlement, the amount to which the department is entitled to be paid from the settlement shall be limited to the amount of the settlement the recipient has allocated toward past medical expenses.

(f) Penalty for failure to notify the department.— A legal representative acting on behalf of a recipient or third party that fails to comply with the provisions of this section is liable to the department for all reimbursement amounts the department would otherwise have been entitled to collect pursuant to this section but for the failure to comply. Under no circumstances may a pro se recipient be penalized for failing to comply with the provisions of this section.

(g) Miscellaneous provisions relating to trial.—

(1) Where an action implicated by this section is tried by a jury, the jury may not be informed at any time as to the subrogation lien of the department.

(2) Where an action implicated by this section is tried by judge or jury, the trial judge shall, or in the instance of a jury trial, require that the jury, identify precisely the amount of the verdict awarded that represents past medical expenses.

(3) Upon the entry of judgment on the verdict, the court shall direct that upon satisfaction of the judgment any damages awarded for past medical expenses be withheld and paid directly to the department, not to exceed the amount of past medical expenses paid by the department on behalf of the recipient.

(h) Attorneys' fees.— Irrespective of whether an action or claim is terminated by judgment or settlement without trial, from the amount required to be paid to the department there shall be deducted the reasonable costs and attorneys' fees attributable to
the amount in accordance with and in proportion to the fee arrangement made between the recipient and his or her attorney of record so that the department shall bear the pro-rata share of the reasonable costs and attorneys' fees: Provided, That if there is no recovery, the department shall under no circumstances be liable for any costs or attorneys' fees expended in the matter.

(i) Class actions and multiple plaintiff actions not authorized.— Nothing in this article shall authorize the department to institute a class action or multiple plaintiff action against any manufacturer, distributor or vendor of any product to recover medical care expenditures paid for by the Medicaid program.

(j) Secretary's authority. — The secretary or his or her designee may compromise, settle and execute a release of any claim relating to the department's right of subrogation, in whole or in part.

CHAPTER 128

(Com. Sub. for S. B. 481 - By Senators Palumbo, Unger, Jenkins and Tucker)

[Passed April 12, 2013; in effect ninety days from passage.]
[Approved by the Governor on April 30, 2013.]

AN ACT to amend and reenact §27-4-1 of the Code of West Virginia, 1931, as amended, relating to juvenile mental health, intellectual disability and addiction; permitting acceptance of a notarized application in lieu of in-person application for certain voluntary hospitalization; allowing use of article five, chapter twenty-seven of said code for juveniles in certain situations; requiring parents or
guardians to transport minors for voluntary hospitalization; creating exceptions to that requirement by affidavit to circuit court, mental hygiene commissioner or magistrate court; requiring transfer by county sheriff upon order of circuit court, mental hygiene commissioner or magistrate court; and requiring mental health facilities to make their application immediately accessible in certain situations.

Be it enacted by the Legislature of West Virginia:

That §27-4-1 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 4. VOLUNTARY HOSPITALIZATION.

§27-4-1. Authority to receive voluntary patients.

(a) The chief medical officer of a mental health facility, subject to the availability of suitable accommodations and to the rules promulgated by the board of health, shall admit for diagnosis, care and treatment any individual:

(1) Eighteen years of age or older who is mentally ill, intellectually disabled or addicted or who has manifested symptoms of mental illness, intellectual disability or addiction and who makes application for hospitalization; or

(2) Under eighteen years of age who is mentally ill, intellectually disabled or addicted or who has manifested symptoms of mental illness, intellectual disability or addiction and where there is an application for hospitalization, either made in person at the time of admission or by a notarized written application submitted by facsimile, e-mail or in person prior to, or at the time of, admission, on his or her behalf as follows:

(A) By the parents of such person;

(B) If only one parent is living, then by such parent;
(C) If the parents are living separate and apart, then by the parent who has the custody of such person; or

(D) If there is a guardian who has legal custody of such person, then by such guardian.

(E) If the subject person under eighteen years of age is an emancipated minor, the admission of that person as a voluntary patient shall be conditioned upon the consent of the patient.

(F) If the application for the subject person under eighteen years of age does not satisfy one of paragraphs (A) through (E) of this subdivision, the provisions of article five of this chapter shall be followed with respect to any hospitalization.

(b) For any application for hospitalization made pursuant to subdivision (2) of subsection (a) of this section, the person making the application shall transport the minor to the mental health facility, except as provided in this subsection. If the minor is violent or combative or the parent or guardian faces other circumstances that make the parent or guardian unable to transport the minor to the mental health facility, the parent or guardian may file an affidavit with the circuit court of the county in which the minor resides or of the county in which the minor may be found. The parent or guardian shall give information and state facts in the affidavit as may be required by the form provided for this purpose by the Supreme Court of Appeals. Upon ex parte review of the affidavit, a mental hygiene commissioner or circuit court judge, or when none are available the magistrate designated pursuant to article five of this chapter, may determine that the parent or guardian is unable to transport the minor for voluntary hospitalization and, if such a determination is made, shall enter an order requiring the sheriff of that county to transport the minor to the mental health facility.

(c) No person under eighteen years of age may be admitted under this section to any state hospital unless the person has first
been reviewed and evaluated by a local mental health facility and recommended for admission.

(d) If the candidate for voluntary admission is a minor who is fourteen years of age or older, the admitting health care facility shall determine if the minor consents to or objects to his or her admission to the facility. If the parent or guardian who requested the minor’s admission under this section revokes his or her consent at any time, or if the minor fourteen years of age or older objects at any time to his or her further treatment, the minor shall be discharged within ninety-six hours to the custody of the consenting parent or guardian, unless the chief medical officer of the mental health facility files a petition for involuntary hospitalization, pursuant to the provisions of section three of this article, or the minor’s continued hospitalization is authorized as an involuntary hospitalization pursuant to the provisions of article five of this chapter: Provided, That if the ninety-six hour time period would result in the minor being discharged and released on a Saturday, a Sunday or a holiday on which the court is closed, the period of time in which the patient shall be released by the facility shall be extended until the next day which is not a Saturday, Sunday or legal holiday on which the court is lawfully closed.

(e) Nothing in this section may be construed to obligate the State of West Virginia for costs of voluntary hospitalizations permitted by the provisions of this section.

(f) For the purposes of this section, all mental health facilities in this state shall make a blank copy of their application for admission immediately available to any person or entity who requests the application. The application is “immediately available” if it is promptly sent by facsimile or e-mail to the requesting person or entity, or available through other immediate electronic means, such as posting the blank application on the facility’s public website.
AN ACT to amend and reenact §22-3-11 of the Code of West Virginia, 1931, as amended, relating generally to bonding and special reclamation tax for coal mining permits; providing tax incentives for mine operators who reclaim bond forfeiture sites.

Be it enacted by the Legislature of West Virginia:

That §22-3-11 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 3. SURFACE COAL MINING AND RECLAMATION ACT.

§22-3-11. Bonds; amount and method of bonding; bonding requirements; special reclamation tax and funds; prohibited acts; period of bond liability.

(a) After a surface mining permit application has been approved pursuant to this article, but before a permit has been issued, each operator shall furnish a penal bond, on a form to be prescribed and furnished by the secretary, payable to the State of West Virginia and conditioned upon the operator faithfully performing all of the requirements of this article and of the permit. The penal amount of the bond shall be not less than $1,000 nor more than $5,000 for each acre or fraction of an acre.
type of reclamation bonding shall be $10,000. The bond shall cover: (1) The entire permit area; or (2) that increment of land within the permit area upon which the operator will initiate and conduct surface mining and reclamation operations within the initial term of the permit. If the operator chooses to use incremental bonding, as succeeding increments of surface mining and reclamation operations are to be initiated and conducted within the permit area, the operator shall file with the secretary an additional bond or bonds to cover the increments in accordance with this section: Provided, however, That once the operator has chosen to proceed with bonding either the entire permit area or with incremental bonding, the operator shall continue bonding in that manner for the term of the permit.

(b) The period of liability for bond coverage begins with issuance of a permit and continues for the full term of the permit plus any additional period necessary to achieve compliance with the requirements in the reclamation plan of the permit.

(c) (1) The form of the bond shall be approved by the secretary and may include, at the option of the operator, surety bonding, collateral bonding (including cash and securities), establishment of an escrow account, self bonding or a combination of these methods. If collateral bonding is used, the operator may elect to deposit cash or collateral securities or certificates as follows: Bonds of the United States or its possessions of the Federal Land Bank or of the Homeowners' Loan Corporation; full faith and credit general obligation bonds of the State of West Virginia or other states and of any county, district or municipality of the State of West Virginia or other states; or certificates of deposit in a bank in this state, which certificates shall be in favor of the department. The cash deposit or market value of the securities or certificates shall be equal to or greater than the penal sum of the bond. The secretary shall, upon receipt of any deposit of cash, securities or certificates.
promptly place the same with the Treasurer of the State of West Virginia whose duty it is to receive and hold the deposit in the name of the state in trust for the purpose for which the deposit is made when the permit is issued. The operator making the deposit is entitled, from time to time, to receive from the State Treasurer, upon the written approval of the secretary, the whole or any portion of any cash, securities or certificates so deposited, upon depositing with him or her in lieu thereof cash or other securities or certificates of the classes specified in this subsection having value equal to or greater than the sum of the bond.

(2) The secretary may approve an alternative bonding system if it will: (A) Reasonably assure that sufficient funds will be available to complete the reclamation, restoration and abatement provisions for all permit areas which may be in default at any time; and (B) provide a substantial economic incentive for the permittee to comply with all reclamation provisions.

(d) The secretary may accept the bond of the applicant itself without separate surety when the applicant demonstrates to the satisfaction of the secretary the existence of a suitable agent to receive service of process and a history of financial solvency and continuous operation sufficient for authorization to self insure.

(e) It is unlawful for the owner of surface or mineral rights to interfere with the present operator in the discharge of the operator’s obligations to the state for the reclamation of lands disturbed by the operator.

(f) All bond releases shall be accomplished in accordance with the provisions of section twenty-three of this article.

(g) (1) The Special Reclamation Fund previously created is continued. The Special Reclamation Water Trust Fund is created within the State Treasury into and from which moneys shall be
paid for the purpose of assuring a reliable source of capital to
reclaim and restore water treatment systems on forfeited sites.
The moneys accrued in both funds, any interest earned thereon
and yield from investments by the State Treasurer or West
Virginia Investment Management Board are reserved solely and
exclusively for the purposes set forth in this section and section
seventeen, article one of this chapter. The funds shall be
administered by the secretary who is authorized to expend the
moneys in both funds for the reclamation and rehabilitation of
lands which were subjected to permitted surface mining
operations and abandoned after August 3, 1977, where the
amount of the bond posted and forfeited on the land is less than
the actual cost of reclamation, and where the land is not eligible
for abandoned mine land reclamation funds under article two of
this chapter. The secretary shall develop a long-range planning
process for selection and prioritization of sites to be reclaimed
so as to avoid inordinate short-term obligations of the assets in
both funds of such magnitude that the solvency of either is
jeopardized. The secretary may use both funds for the purpose of
designing, constructing and maintaining water treatment systems
when they are required for a complete reclamation of the
affected lands described in this subsection. The secretary may
also expend an amount not to exceed ten percent of the total
annual assets in both funds to implement and administer the
provisions of this article and, as they apply to the Surface Mine
Board, articles one and four, chapter twenty-two-b of this code.

(2)(A) A tax credit shall be granted against the tax imposed
by subsection (i) of this section to any mine operator who
performs reclamation or remediation at a bond forfeiture site
which otherwise would have been reclaimed using funds from
the Special Reclamation Fund or Special Reclamation Water
Trust Fund. The amount of credit shall be determined as
provided in this section.
(B) The amount of a reclamation tax credit granted under this subsection shall be equal to the amount that the Tax Commissioner determines, based on the project costs, as shown in the records of the secretary, that would have been spent from the Special Reclamation Fund or Special Reclamation Water Trust Fund to accomplish the reclamation or remediation performed by the mine operator, including expenditures for water treatment.

(C) To claim the credit, the mine operator shall from time to time file with the Tax Commissioner a written application seeking the amount of the credit earned. Within thirty days of receipt of the application, the Tax Commissioner shall issue a certification of the amount of tax credit, if any, to be allocated to the eligible taxpayer. Should the amount of the credit certified be less than the amount applied for, the Tax Commissioner shall set forth in writing the reason for the difference. Should no certification be issued within the thirty-day period, the application will be deemed certified. Any decision by the Tax Commissioner is appealable pursuant to the provisions of the “West Virginia Tax Procedure and Administration Act” set forth in article ten, chapter eleven of the code. Applications for certification of the proposed tax credit shall contain the information and be in the detail and form as required by the Tax Commissioner.

(h) The Tax Commissioner may promulgate rules for legislative approval pursuant to the provisions of article three, chapter twenty-nine-a of this code to carry out the purposes of this subdivision two, subsection (g) of this section.

(i)(1) Rate, deposits and review.

(A) For tax periods commencing on and after July 1, 2009, every person conducting coal surface mining shall remit a
special reclamation tax of fourteen and four-tenths cents per ton of clean coal mined, the proceeds of which shall be allocated by the secretary for deposit in the Special Reclamation Fund and the Special Reclamation Water Trust Fund.

(B) For tax periods commencing on and after July 1, 2012, the rate of tax specified in paragraph (A) of this subdivision is discontinued and is replaced by the rate of tax specified in this paragraph (B). For tax periods commencing on and after July 1, 2012, every person conducting coal surface mining shall remit a special reclamation tax of twenty-seven and nine-tenths cents per ton of clean coal mined, the proceeds of which shall be allocated by the secretary for deposit in the Special Reclamation Fund and the Special Reclamation Water Trust Fund. Of that amount, fifteen cents per ton of clean coal mined shall be deposited into the Special Reclamation Water Trust Fund.

(C) The tax shall be levied upon each ton of clean coal severed or clean coal obtained from refuse pile and slurry pond recovery or clean coal from other mining methods extracting a combination of coal and waste material as part of a fuel supply.

(D) Beginning with the tax period commencing on July 1, 2009, and every two years thereafter, the special reclamation tax shall be reviewed by the Legislature to determine whether the tax should be continued: Provided. That the tax may not be reduced until the Special Reclamation Fund and Special Reclamation Water Trust Fund have sufficient moneys to meet the reclamation responsibilities of the state established in this section.

(2) In managing the Special Reclamation Program, the secretary shall; (A) Pursue cost-effective alternative water treatment strategies; and (B) conduct formal actuarial studies every two years and conduct informal reviews annually on the
168 Special Reclamation Fund and Special Reclamation Water Trust Fund.

170 (3) Prior to December 31, 2008, the secretary shall:

171 (A) Determine the feasibility of creating an alternate program, on a voluntary basis, for financially sound operators by which those operators pay an increased tax into the Special Reclamation Fund in exchange for a maximum per-acre bond that is less than the maximum established in subsection (a) of this section;

177 (B) Determine the feasibility of creating an incremental bonding program by which operators can post a reclamation bond for those areas actually disturbed within a permit area, but for less than all of the proposed disturbance and obtain incremental release of portions of that bond as reclamation advances so that the released bond can be applied to approved future disturbance; and

184 (C) Determine the feasibility for sites requiring water reclamation by creating a separate water reclamation security account or bond for the costs so that the existing reclamation bond in place may be released to the extent it exceeds the costs of water reclamation.

189 (4) If the secretary determines that the alternative program, the incremental bonding program or the water reclamation account or bonding programs reasonably assure that sufficient funds will be available to complete the reclamation of a forfeited site and that the Special Reclamation Fund will remain fiscally stable, the secretary is authorized to propose legislative rules in accordance with article three, chapter twenty-nine-a of this code to implement an alternate program, a water reclamation account
This special reclamation tax shall be collected by the State Tax Commissioner in the same manner, at the same time and upon the same tonnage as the minimum severance tax imposed by article twelve-b, chapter eleven of this code is collected: Provided, That under no circumstance shall the special reclamation tax be construed to be an increase in either the minimum severance tax imposed by said article or the severance tax imposed by article thirteen of said chapter.

Every person liable for payment of the special reclamation tax shall pay the amount due without notice or demand for payment.

The Tax Commissioner shall provide to the secretary a quarterly listing of all persons known to be delinquent in payment of the special reclamation tax. The secretary may take the delinquencies into account in making determinations on the issuance, renewal or revision of any permit.

The Tax Commissioner shall deposit the moneys collected with the Treasurer of the State of West Virginia to the credit of the Special Reclamation Fund and Special Reclamation Water Trust Fund.

At the beginning of each quarter, the secretary shall advise the State Tax Commissioner and the Governor of the assets, excluding payments, expenditures and liabilities, in both funds.

To the extent that this section modifies any powers, duties, functions and responsibilities of the department that may require approval of one or more federal agencies or officials in order to avoid disruption of the federal-state relationship
involved in the implementation of the federal Surface Mining Control and Reclamation Act, 30 U. S. C. §1270 by the state, the modifications will become effective upon the approval of the modifications by the appropriate federal agency or official.

CHAPTER 130

(S. B. 462 - By Senators Facemire, Beach, Kirkendoll, Palumbo, Cain, Edgell, Snyder, Stollings, D. Hall, McCabe and Plymale)

[Passed April 11, 2013; in effect ninety days from passage.] [Approved by the Governor on April 29, 2013.]

AN ACT to amend and reenact §22-3-20 and §22-3-21 of the Code of West Virginia, 1931, as amended, all relating to informal conferences on surface mining permit applications; extending time to hold informal conferences; and extending time from an informal conference in which the secretary must issue or deny a surface-mining permit.

Be it enacted by the Legislature of West Virginia:

That §22-3-20 and §22-3-21 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 3. SURFACE COAL MINING AND RECLAMATION ACT.

§22-3-20. Public notice; written objections; public hearings; informal conferences.

(a) At the time of submission of an application for a surface-mining permit or a significant revision of an existing permit
pursuant to the provisions of this article, the applicant shall submit to the department a copy of the required advertisement. At the time of submission, the applicant shall place the advertisement in a local newspaper of general circulation in the county of the proposed surface-mining operation at least once a week for four consecutive weeks. The secretary shall notify various appropriate federal and state agencies as well as local governmental bodies, planning agencies and sewage and water treatment authorities or water companies in the locality in which the proposed surface-mining operation will take place, notifying them of the operator's intention to mine on a particularly described tract of land and indicating the application number and where a copy of the proposed mining and reclamation plan may be inspected. These local bodies, agencies, authorities or companies may submit written comments within a reasonable period established by the secretary on the mining application with respect to the effect of the proposed operation on the environment which is within their area of responsibility. Such comments shall be immediately transmitted by the secretary to the applicant and to the appropriate office of the department. The secretary shall provide the name and address of each applicant to the Commissioner of the Division of Labor who shall within fifteen days from receipt notify the secretary as to the applicant's compliance. If necessary, pursuant to section fourteen, article five, chapter twenty-one of this code.

(b) Any person having an interest which is or may be adversely affected, or the officer or head of any federal, state or local governmental agency, has the right to file written objections to the proposed initial or revised permit application for a surface-mining operation with the secretary within thirty days after the last publication of the advertisement required in subsection (a) of this section. Such objections shall be immediately transmitted to the applicant by the secretary and shall be made available to the public. If written objections are filed and an informal conference requested within thirty days of
the last publication of the above notice, the secretary shall then
hold a conference in the locality of the proposed mining within
a reasonable time after the close of the public comment period.
Those requesting the conference shall be notified and the date,
time and location of the informal conference shall also be
advertised by the secretary in a newspaper of general circulation
in the locality at least two weeks prior to the scheduled
conference date. The secretary may arrange with the applicant,
upon request by any party to the conference proceeding, access
to the proposed mining area for the purpose of gathering
information relevant to the proceeding. An electronic or
stenographic record shall be made of the conference proceeding
unless waived by all parties. The record shall be maintained and
shall be accessible to the parties at their respective expense until
final release of the applicant’s bond or other security posted in
lieu thereof. The secretary’s authorized agent shall preside over
the conference. In the event all parties requesting the informal
conference stipulate agreement prior to the conference and
withdraw their request, a conference need not be held.

§22-3-21. Decision of secretary on permit application; hearing
thereon.

(a) If an informal conference has been held, the secretary
shall issue and furnish the applicant for a permit and persons
who were parties to the informal conference with the written
finding granting or denying the permit, in whole or in part, and
stating the reasons therefor within sixty days of the informal
conference, notwithstanding the requirements of subsection (a),
section eighteen of this article.

(b) If the application is approved, the permit shall be issued.
If the application is disapproved, specific reasons therefor must
be set forth in the notification. Within thirty days after the
applicant is notified of the secretary’s decision, the applicant or
any person with an interest which is or may be adversely
affected may request a hearing before the Surface Mine Board as
provided in article one, chapter twenty-two-b of this code to review the secretary's decision.

CHAPTER 131

(Com. Sub. for H. B. 2815 - By Delegates Miley, Fleischauer, Skinner, Shott and Barill)

[Passed April 10, 2013; in effect ninety days from passage.]
[Approved by the Governor on April 22, 2013.]

AN ACT to amend and reenact §44-10-3 of the Code of West Virginia, 1931, as amended, relating generally to clarifying and modifying the process of appointing and terminating guardians for minors; authorizing concurrent jurisdiction of circuit and family courts for appointment of guardian for a minor; providing venue for petition for appointment; providing proceedings to be conducted in accordance with the Rules of Practice and Procedure for Minor Guardianship Proceedings; providing process for appointment of guardian; setting forth when the circuit clerk is to notify the court of the filing of a petition and when the court is to hold a hearing; setting forth what the court is to consider in appointing a guardian; providing for the appointment of a temporary guardian; providing for the termination or revocation of the guardianship appointment; and providing for the confidentiality of a guardian proceeding.

Be it enacted by the Legislature of West Virginia:

That §44-10-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 10. GUARDIANS AND WARDS GENERALLY.

§44-10-3. Appointment and termination of guardian for a minor.
(a) The circuit court and family court have concurrent jurisdiction to appoint a guardian for a minor.

(b) Venue for a petition for appointment of guardianship is in the county in which the minor has resided for the past six months unless the court finds extraordinary circumstances for a sooner filing. If the child is a nonresident of this state and only the guardianship of the estate is sought the petition may be filed in the county in which the child has an estate.

(c) All proceedings shall be conducted in accordance with the Rules of Practice and Procedure for Minor Guardianship Proceedings.

(d) Any responsible person with knowledge of the facts regarding the welfare and best interests of a minor may petition for an appointment of a guardian except a parent or other person whose rights to the minor have been terminated. No guardianship petition may be considered if the child who is the subject of the petition is involved in another court proceeding relating to custody or guardianship or if the petitioner is a parent seeking custodial rights adverse to the other parent.

(e) Within two days of the filing of a petition for the appointment of a guardian, the circuit clerk shall notify the court. The court shall hold a hearing upon the petition for the appointment of a guardian within ten days after the petition is filed. If all persons entitled to service in accordance with the Rules of Practice and Procedure for Minor Guardianship Proceedings have not been served at least five days prior to the hearing or have not waived service the court shall continue the hearing but may appoint a temporary guardian pursuant to subsection (g) below.

(f) The court may appoint a guardian for a minor if the court finds by clear and convincing evidence that the appointment is in the minor’s best interest and:
(1) The parents consent;

(2) The parents' rights have been previously terminated;

(3) The parents are unwilling or unable to exercise their parental rights;

(4) The parents have abandoned their rights by a material failure to exercise them for a period of more than six months; or

(5) There are extraordinary circumstances that would, in all reasonable likelihood, result in serious detriment to the child if the petition is denied.

(g) Whether or not one or more of the conditions of subsection (f) have been established, the court may appoint a temporary guardian for a minor upon a showing that an immediate need exists or that a period of transition into the custody of a parent is needed so long as the appointment is in the best interest of the minor. The temporary guardian has the authority of a guardian appointed pursuant to subsection (f) but the duration of the temporary guardianship may not exceed six months. A temporary guardianship may be extended beyond six months upon further order of the court finding continued need in the best interest of the minor.

(h) Any suitable person may be appointed as the minor's guardian. A parent shall receive priority subject only to the provisions of subsections (d) and (f) above. However, in every case the competency and fitness of the proposed guardian must be established and a determination made that the appointment is in the best interest of the child.

(i) The court, the guardian or the minor may revoke or terminate the guardianship appointment when:
(1) The minor reaches the age of eighteen and executes a release stating that the guardian’s estate was properly administered and that the minor has received the assets of the estate from the guardian;

(2) The guardian or the minor dies;

(3) The guardian petitions the court to resign and the court enters an order approving the resignation; or

(4) A petition is filed by the guardian, the minor, a parent or an interested person or upon the motion of the court stating that the minor is no longer in need of the assistance or protection of a guardian due to changed circumstances and the termination of the guardianship would be in the minor’s best interest.

(j) For a petition to revoke or terminate a guardianship filed by a parent, the burden of proof is on the moving party to show by a preponderance of the evidence that there has been a material change of circumstances and that a revocation or termination is in the child’s best interest.

(k) A guardianship may not be terminated by the court if there are any assets in the estate due and payable to the minor. Another guardian may be appointed upon the resignation of a guardian whenever there are assets in the estate due and payable to the minor.

(l) Other than court orders and case indexes, all other records of a guardian proceeding involving a minor are confidential and shall not be disclosed to anyone who is not a party to the proceeding, counsel of record for the proceeding, the court presiding over the proceeding or other family or circuit court presiding over another proceeding involving the minor absent a court order permitting examination of such records.
AN ACT to amend and reenact §17A-6-7 of the Code of West Virginia, 1931, as amended, relating to permitting dealers who sell fewer than eighteen new or used motor vehicles during a year to have their dealer licenses renewed.

Be it enacted by the Legislature of West Virginia:

That §17A-6-7 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 6. LICENSING OF DEALERS AND WRECKERS OR DISMANTLERS; SPECIAL PLATES; TEMPORARY PLATES OR MARKERS.

§17A-6-7. When application to be made; expiration of license certificate; renewal.

1 (a) Every license certificate issued in accordance with the provisions of this article shall, unless sooner suspended or revoked, expire on June 30 next following the issuance thereof.

4 (b) A license certificate may be renewed each year in the same manner, for the same fee as prescribed in section ten of this article and upon the same basis as an original license certificate is issued under section six of this article.

8 All applications for the renewal of any license certificate shall be filed with the commissioner at least thirty days before
10 the expiration thereof. Any application for renewal of any
11 license certificate not filed at least thirty days before the
12 expiration may not be renewed except upon payment of the same
13 fee as an original license certificate as prescribed in subsection
14 (a), section ten of this article. The commissioner may allow the
15 delinquent applicant to complete an abbreviated application for
16 renewal in lieu of an original application.

CHAPTER 133

(Com. Sub. for S. B. 448 - By Senators Beach, Plymale,
Fitzsimmons and Williams)

[Passed April 4, 2013; in effect ninety days from passage.]
[Approved by the Governor on April 19, 2013.]

AN ACT to amend and reenact §17A-6-10c of the Code of West
Virginia, 1931, as amended, relating to authorizing the
commissioner to issue no more than ten additional special
demonstration plates, upon a showing of need, to new and used
motor vehicle dealers engaged in the business of selling trailers,
truck-tractors, road-tractors or trucks and that demonstrate the
motor vehicles under actual work conditions to potential
purchasers; and setting fee amount for additional plates.

Be it enacted by the Legislature of West Virginia:

That §17A-6-10c of the Code of West Virginia, 1931, as amended,
be amended and reenacted to read as follows:

ARTICLE 6. LICENSING OF DEALERS AND WRECKERS OR
DISMANTLERS; SPECIAL PLATES; TEMPORARY PLATES OR MARKERS.
§17A-6-10c. Special demonstration plates for dealers in trailers, truck-tractors, road-tractors and trucks; application; fee.

(a) Notwithstanding any other provisions of this code, a new motor vehicle dealer or used motor vehicle dealer engaged in the business of selling trailers, truck-tractors, road-tractors or trucks that demonstrates the motor vehicles under actual work conditions to potential purchasers shall obtain a special demonstration plate from the Division of Motor Vehicles. The motor vehicle dealer may obtain special demonstration plates without first titling or registering each vehicle.

(b) The commissioner shall prescribe the application form for these special demonstration plates and shall require the applicant to submit proof of the applicant's status as a bona fide dealer in motor vehicles and to certify that the applicant needs special demonstration plates in the ordinary course of business. The commissioner, upon approving an application, shall issue to the new motor vehicle dealer or used motor vehicle dealer up to four special demonstration plates which display the term "demonstration" or "demo" and a distinguishing number assigned to the motor vehicle dealer. The commissioner may issue no more than ten additional special demonstration plates to a licensee upon a showing that the licensee has sales or potential sales justifying additional plates. This showing may include, but is not limited to, the dealer's on-site inventory of the applicable type of vehicles, previous sales of applicable vehicles or the geographical divergence of the dealer's customer base.

(c) The annual fee for special demonstration plates is $100 for the first plate and $50 for each additional special
demonstration plate that is issued, not to exceed a total of fourteen plates per dealer.

(d) Each motor vehicle dealer who is issued special demonstration plates shall keep a written record, on a form approved by the commissioner and open to inspection by a police officer or employee of the division, containing the following information:

(1) Identification of the motor vehicles upon which the special demonstration plates are used;

(2) The times and dates during which each special demonstration plate is used;

(3) The name and address of the company or individual using a motor vehicle on which a special demonstration plate is used; and

(4) Other information considered necessary by the commissioner.

(e) Each motor vehicle operated under the provisions of this section is considered to be registered at the maximum vehicle weights allowable under article seventeen, chapter seventeen-c of this code.

(f) A motor vehicle dealer shall not:

(1) Use a special demonstration plate issued under the provisions of this section on a motor vehicle which is not being demonstrated;

(2) Use a special demonstration plate to demonstrate a single motor vehicle for more than seven calendar days in a calendar year for a single customer;

(3) Use a special demonstration plate on a motor vehicle leased or rented to a customer; or
(4) Use a special demonstration plate in any way other than to demonstrate the on-the-job capabilities of a motor vehicle to a potential purchaser.

(g) The motor vehicle dealer is required to furnish a certificate of insurance in the amount required by regulations of the West Virginia Public Service Commission or the United States Department of Transportation for the class of motor carrier for which the motor vehicle is to be demonstrated.

CHAPTER 134

(S. B. 515 - By Senators Cole, Carmichael, Green, D. Hall and Stollings)

[Passed April 13, 2013; in effect ninety days from passage.]
[Approved by the Governor on April 29, 2013.]

AN ACT to amend and reenact §17C-15-42 of the Code of West Virginia, 1931, as amended, relating to equipment installed in motor vehicles; prohibiting video screens, video monitors, televisions and television receivers in view of the driver while a motor vehicle is in motion; exceptions; restrictions; conditions for use; and inapplicability of prohibition to specific devices.

Be it enacted by the Legislature of West Virginia:

That §17C-15-42 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 15. EQUIPMENT.

§17C-15-42. Video screens, video monitors and television receivers in view of driver prohibited; exceptions.
(a) No motor vehicle may be operated on a street or highway in this state when equipped with a television receiver, video monitor, television or video screen unless the receiver, screen or monitor is configured so that the moving images are not in view of the operator while the vehicle is in motion, or it falls within one or more of the categories set forth in subsections (b) or (c) of this section.

(b) This prohibition does not apply to the following equipment installed in a vehicle:

(1) A visual display if it does not show video or television broadcast images in view of the operator while the motor vehicle is in motion;

(2) A global positioning device;

(3) A mapping display;

(4) A visual display used to enhance or supplement the driver's view forward, behind or to the sides of a motor vehicle for the purpose of maneuvering the vehicle;

(5) A visual display used to enhance or supplement a driver's view of vehicle occupants; or

(6) Television-type receiving equipment used exclusively for safety or traffic engineering information.

(c) A television receiver, video monitor, television or video screen or other similar means of visually displaying a television broadcast or video signal is not prohibited if the equipment has an interlock device that, when the motor vehicle is driven, disables the equipment for all uses except as a visual display described in subdivisions (1) through (6) of subsection (b) of this section.
AN ACT to amend and reenact §8-1-5a of the Code of West Virginia, 1931, as amended, relating to continuing the Municipal Home Rule Pilot Program; continuing the Municipal Home Rule Pilot Program; continuing the Municipal Home Rule Board; setting forth legislative findings; authorizing Class I, II, III and IV municipalities to participate in the program; clarifying the voting privileges of members of the Municipal Home Rule Board; clarifying the powers and duties of the board; establishing written plan requirements for municipalities; establishing requirements for the adoption of ordinances; requiring public hearings; setting forth powers and duties of the participating municipalities; prohibiting certain acts by participating municipalities; providing the opportunity for participating municipalities to withdraw from the program; providing for amendments to the written plan; requiring a performance review of the pilot program; establishing reporting requirements; validating the continuance of certain ordinances passed by the municipalities participating in the pilot program; prohibiting municipalities participating in the pilot program from restricting the right of any person to purchase, possess, transfer, own, carry, transport, sell or store any firearm, firearm accessory or accoutrement, or any ammunition or ammunition component; providing limited exceptions to the firearms prohibition; providing for applicability and effective dates of prohibition; and establishing a termination date of the pilot program.
Be it enacted by the Legislature of West Virginia:

That §8-1-5a of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 1. PURPOSE AND SHORT TITLE; DEFINITIONS; GENERAL PROVISIONS; CONSTRUCTION.

§8-1-5a. Municipal Home Rule Pilot Program.

(a) Legislative findings. — The Legislature finds and declares that:

(1) The initial Municipal Home Rule Pilot Program brought innovative results, including novel municipal ideas that became municipal ordinances which later resulted in new statewide statutes;

(2) The initial Municipal Home Rule Pilot Program also brought novel municipal ideas that resulted in court challenges against some of the participating municipalities;

(3) The Municipal Home Rule Board was an essential part of the initial Municipal Home Rule Pilot Program but it lacked some needed powers and duties;

(4) Municipalities still face challenges delivering services required by federal and state law or demanded by their constituents;

(5) Municipalities are sometimes restrained by state statutes, policies and rules that challenge their ability to carry out their duties and responsibilities in a cost-effective, efficient and timely manner;

(6) Continuing the Municipal Home Rule Pilot Program is in the public interest; and
(7) Increasing the powers and duties of the Municipal Home 
Rule Board will enhance the Municipal Home Rule Pilot 
Program.

(b) Continuance of pilot program. — The Municipal Home 
Rule Pilot Program is continued until July 1, 2019. The 
ordinances enacted by the four participating municipalities 
pursuant to the initial Municipal Home Rule Pilot Program are 
hereby authorized and may remain in effect until the ordinances 
are repealed, but are null and void if amended and such 
amendment is not approved by the Municipal Home Rule Board: 
Provided, That any ordinance enacting a municipal occupation 
tax is hereby null and void.

(c) Authorizing participation. —

(1) Commencing July 1, 2013, twenty Class I, Class II, Class 
III and/or Class IV municipalities that are current in payment of 
all state fees may participate in the Municipal Home Rule Pilot 
Program pursuant to the provisions of this section.

(2) The four municipalities participating in the pilot program 
on July 1, 2012, are hereby authorized to continue in the pilot 
program and may amend current written plans and/or submit 
new written plans in accordance with the provisions of this 
section.

(3) If any of the four municipalities participating in the pilot 
program on July 1, 2012, do not want to participate in the pilot 
program, then on or before June 1, 2014, the municipality must 
submit a written letter to the board indicating the municipality’s 
intent not to participate and the board may choose another 
municipality to fill the vacancy: Provided, That if a municipality 
chooses not to participate further in the pilot program, its 
ordinances enacted pursuant to the Municipal Home Rule Pilot 
Program are hereby authorized and may remain in effect until
the ordinances are repealed, but are null and void if amended:

Provided, however, That any ordinance enacting a municipal occupation tax is null and void.

(d) Municipal Home Rule Board. — The Municipal Home Rule Board is hereby continued. The board members serving on the board on July 1, 2012, may continue to serve, except that the chair of the Senate Committee on Government Organization and the chair of the House Committee on Government Organization shall be ex officio nonvoting members. Effective July 1, 2013, the Municipal Home Rule Board shall consist of the following five voting members:

(1) The Governor, or a designee, who shall serve as chair;

(2) The Executive Director of the West Virginia Development Office or a designee;

(3) One member representing the Business and Industry Council, appointed by the Governor with the advice and consent of the Senate;

(4) One member representing the largest labor organization in the state, appointed by the Governor with the advice and consent of the Senate; and

(5) One member representing the West Virginia Chapter of American Institute of Certified Planners, appointed by the Governor with the advice and consent of the Senate.

(e) Board's powers and duties. — The Municipal Home Rule Board has the following powers and duties:

(1) Review, evaluate, make recommendations and approve or reject, by a majority vote of the board, each aspect of the written plan submitted by a municipality;
(2) By a majority vote of the board, select, based on the municipality's written plan, new Class I, Class II, Class III and/or Class IV municipalities to participate in the Municipal Home Rule Pilot Program;

(3) Review, evaluate, make recommendations and approve or reject, by a majority vote of the board, the amendments to the written plans submitted by municipalities;

(4) Approve or reject, by a majority vote of the board, each ordinance submitted by a participating municipality pursuant to its written plan or its amendments to the written plan;

(5) Consult with any agency affected by the written plans or the amendments to the written plans; and

(6) Perform any other powers or duties necessary to effectuate the provisions of this section.

(f) Written plan. — On or before June 1, 2014, a Class I, Class II, Class III or Class IV municipality desiring to participate in the Municipal Home Rule Pilot Program shall submit a written plan to the board stating in detail the following:

(1) The specific laws, acts, resolutions, policies, rules or regulations which prevent the municipality from carrying out its duties in the most cost-efficient, effective and timely manner;

(2) The problems created by the laws, acts, resolutions, policies, rules or regulations;

(3) The proposed solutions to the problems, including all proposed changes to ordinances, acts, resolutions, rules and regulations: Provided, That the specific municipal ordinance instituting the solution does not have to be included in the written plan; and
(4) A written opinion, by an attorney licensed to practice in West Virginia, stating that the proposed written plan does not violate the provisions of this section.

(g) Public hearing on written plan. — Prior to submitting its written plan to the board, the municipality shall:

(1) Hold a public hearing on the written plan;

(2) Provide notice at least thirty days prior to the public hearing by a Class II legal advertisement;

(3) Make a copy of the written plan available for public inspection at least thirty days prior to the public hearing; and

(4) After the public hearing, adopt an ordinance authorizing the municipality to submit a written plan to the Municipal Home Rule Board after the proposed ordinance has been read two times.

(h) Selection of municipalities. — On or after June 1, 2014, by a majority vote, the Municipal Home Rule Board may select from the municipalities that submitted written plans and were approved by the board by majority vote, new Class I, Class II, Class III and/or Class IV municipalities to participate in the Municipal Home Rule Pilot Program.

(i) Ordinance, act, resolution, rule or regulation. — After being selected to participate in the Municipal Home Rule Pilot Program and prior to enacting an ordinance, act, resolution, rule or regulation based on the written plan, the municipality shall:

(1) Hold a public hearing on the proposed ordinance, act, resolution, rule or regulation;

(2) Provide notice at least thirty days prior to the public hearing by a Class II legal advertisement;
(3) Make a copy of the proposed ordinance, act, resolution, rule or regulation available for public inspection at least thirty days prior to the public hearing;

(4) After the public hearing, submit the comments, either in audio or written form, to the Municipal Home Rule Board;

(5) Obtain approval, from the Municipal Home Rule Board by a majority vote, for the proposed ordinance, act, resolution, rule or regulation; and

(6) After obtaining approval from the Municipal Home Rule Board, read the proposed ordinance, act, resolution, rule or regulation at least two times.

(j) Powers and duties of Municipalities. — The municipalities participating in the Municipal Home Rule Pilot Program have the authority to pass an ordinance, act, resolution, rule or regulation, under the provisions of this section, that is not contrary to:

(1) Environmental law;

(2) Bidding on government construction and other contracts;

(3) The Freedom of Information Act;

(4) The Open Governmental Proceedings Act;

(5) Wages for construction of public improvements;

(6) The provisions of this section; and

(7) The municipality's written plan.

(k) Prohibited acts. — The municipalities participating in the Municipal Home Rule Pilot Program do not have the
authority to pass an ordinance, act, resolution, rule or regulation, under the provisions of this section, pertaining to:

(1) The Constitutions of the United States or West Virginia;
(2) Federal law or crimes and punishment;
(3) Chapters sixty-a, sixty-one and sixty-two of this code or state crimes and punishment;
(4) Pensions or retirement plans;
(5) Annexation;

(6) Taxation: Provided, That a participating municipality may enact a municipal sales tax up to one percent if it reduces or eliminates its municipal business and occupation tax: Provided, however, That if a municipality subsequently reinstates or raises the municipal business and occupation tax it previously reduced or eliminated under the Municipal Home Rule Pilot Program, it shall eliminate the municipal sales tax enacted under the Municipal Home Rule Pilot Program: Provided further, That any municipality that imposes a municipal sales tax pursuant to this section shall use the services of the Tax Commissioner to administer, enforce and collect the tax in the same manner as the state consumers sales and service tax and use tax under the provisions of articles fifteen, fifteen-a and fifteen-b, chapter eleven of this code and all applicable provisions of the streamlined sales and use tax agreement: And provided further, That such tax will not apply to the sale of motor fuel or motor vehicles;

(7) Tax increment financing;
(8) Extraction of natural resources;
(9) Persons or property outside the boundaries of the municipality: Provided. That this prohibition under the
Municipal Home Rule Pilot Program does not affect a municipality's powers outside its boundary lines under other sections of this chapter, other chapters of this code or court decisions;

(10) Marriage and divorce laws;

(11) Restricting the carrying of a firearm, as that term is defined in section two, article seven, chapter sixty-one of this code: Provided, That, notwithstanding the provisions of subsection (p) of this section, municipalities may regulate the carrying of a firearm in municipal buildings dedicated to government operations, other than parking buildings or garages: Provided, however, That on other municipal property, municipalities may regulate only those persons not licensed to carry a concealed firearm; and

(12) An occupation tax, fee or assessment payable by a non-resident of a municipality.

(1) Amendments to written plans. — A municipality selected to participate in the Municipal Home Rule Pilot Program may amend its written plan at any time.

(m) Reporting requirements. — Commencing December 1, 2015, and each year thereafter, each participating municipality shall give a progress report to the Municipal Home Rule Board and commencing January 1, 2016, and each year thereafter, the Municipal Home Rule Board shall give a summary report of all the participating municipalities to the Joint Committee on Government and Finance.

(n) Performance Evaluation and Review Division review. — Before January 1, 2019, the Performance Evaluation and Review Division of the Legislative Auditor's office shall conduct a performance review on the pilot program and the
221 participating municipalities. The review shall include the following:

223 (1) An evaluation of the effectiveness of expanded home rule on the participating municipalities;

225 (2) A recommendation as to whether the expanded home rule should be continued, reduced, expanded or terminated;

227 (3) A recommendation as to whether any legislation is necessary; and

229 (4) Any other issues considered relevant.

230 (o) Termination of the pilot program. — The Municipal Home Rule Pilot Program terminates on July 1, 2019. No ordinance, act, resolution, rule or regulation may be enacted by a participating municipality after July 1, 2019, pursuant to the provisions of this section. An ordinance, act, resolution, rule or regulation enacted by a participating municipality under the provisions of this section during the period of the Municipal Home Rule Pilot Program shall continue in full force and effect until repealed, but is null and void if it is amended and such amendment is not approved by the Municipal Home Rule Board.

230 (p) Additional requirements for participation. —

231 (1) The Class I, Class II, Class III and/or Class IV municipalities that wish to participate in the Municipal Home Rule Pilot Program, pursuant to the provisions of this section, must agree to the requirements set forth in this subsection concerning regulation of firearms, ammunition and firearm accessories: Provided, That if the four municipalities participating in the pilot program on July 1, 2012, wish to continue in the pilot program then those municipalities must also agree to comply with the requirements of this subsection.
(2) Definitions. —

As used in this subsection:

(A) “Ammunition” means fixed cartridge ammunition, shotgun shells, the individual components of fixed cartridge ammunition and shotgun shells, projectiles for muzzle-loading firearms and any propellant used in firearms or ammunition.

(B) “Firearm accessory” means a device specifically designed or adapted to enable the wearing or carrying about one’s person, or the storage or mounting in or on a conveyance, of a firearm, or an attachment or device specifically designed or adapted to be inserted into or affixed onto a firearm to enable, alter or improve the functioning or capabilities of the firearm.

(C) “Firearm” has the same meaning as in section two, article seven of chapter sixty-one.

(3) General rule. —

(A) Notwithstanding any other provision of this code to the contrary, except as otherwise provided in this section, municipalities participating in the Municipal Home Rule Pilot Program, pursuant to this section, shall not restrict in any manner the right of any person to purchase, possess, transfer, own, carry, transport, sell or store any revolver, pistol, rifle or shotgun, or any other firearm, or any ammunition or ammunition components to be used therewith, or the keeping of gunpowder so as to directly or indirectly prohibit the ownership of the ammunition, or, to restrict in any manner the right of any person to purchase, possess, transfer, own, carry, transport, sell or store any other firearm accessory or accoutrement, under any order, ordinance or rule promulgated or enforced by the municipality. This subsection may not be construed to prevent any law enforcement official with appropriate authority from enforcing any statute enacted by the state.
(B) The authority of a municipality to regulate firearms, ammunition or firearm accessories may not be inferred from its proprietary authority, home rule status or any other inherent or general power.

(C) Any existing or future orders, ordinances or rules promulgated or enforced in violation of this subsection are null and void.

(4) Applicability and effective dates. —

Ninety days after a new municipality has been selected by the Board to participate in the pilot program, or a previously participating municipality has chosen to continue to participate in the pilot program, any municipal gun ordinances previously authorized by the provisions of section five-a, article twelve of this chapter shall no longer be of any force or effect for any municipality participating in this program to the extent they are in conflict with the provisions of this subsection: Provided, That no provision in this subsection may be construed to limit the authority of a municipality to restrict the commercial use of real estate in designated areas through planning or zoning ordinances.

CHAPTER 136

(Com. Sub. for H. B. 2964 - By Delegates Lawrence, Skaff, Caputo, Diserio, Skinner, R. Phillips, Sponaugle and Westfall)

(Passed April 13, 2013; in effect ninety days from passage.)
[Approved by the Governor on May 3, 2013.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §8-10-1b, relating to the
powers of mayors of Class III cities and Class IV towns or villages with paid police departments not subject to civil service; authorizing the mayor to appoint chief of police; and providing that a Class III city or Class IV town or village may provide by ordinance whether the appointed chief of police shall be reinstated to his or her previous rank following term as chief of police.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §8-10-1b, to read as follows:

ARTICLE 10. POWERS AND DUTIES OF CERTAIN OFFICERS.

§8-10-1b. Authority to appoint police chief; reinstating to previous rank.

(a) Unless otherwise provided by charter, the mayor of a Class III city or Class IV town or village that has a paid police department that is not subject to the civil services provisions set out in article fourteen of this chapter, may appoint a chief of police.

(b) A Class III city or Class IV town or village may provide by ordinance whether the individual appointed chief of police who held a position as a member of the paid police department prior to his or her appointment as chief of police shall be reinstated to the officer's previous rank following his or her term as chief of police.
AN ACT to amend and reenact §8-16-5 of the Code of West Virginia, 1931, as amended, relating to increasing the minimum construction cost of a municipal public works project before competitive bidding is required; and defining terms.

Be it enacted by the Legislature of West Virginia:

That §8-16-5 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 16. MUNICIPAL PUBLIC WORKS; REVENUE BOND FINANCING.

PART III. GENERAL POWERS AND AUTHORITY.

§8-16-5. Powers of board.

1 (a) The board shall have plenary power and authority to take all steps and proceedings, and to make and enter into all contracts or agreements necessary, appropriate, useful, convenient or incidental to the performance of its duties and the execution of its powers and authority under this article: Provided, That any contract or agreement relating to the financing, or the construction, reconstruction, establishment, acquisition, improvement, renovation, extension, enlargement, increase, equipment, operation or maintenance of any such works, and any trust indenture with respect thereto as hereafter provided for, shall be approved by the governing body or bodies.
(b) The board may employ engineers, architects, inspectors, superintendents, managers, collectors, attorneys and such other employees as in its judgment may be necessary in the execution of its powers and duties, and may fix their compensation, all of whom shall do such work as the board may direct. All compensation and expenses incurred in carrying out the provisions of this article shall be paid solely from funds provided under the authority of this article, and the board shall not exercise or carry out any power or authority herein given it so as to bind said board or any municipality beyond the extent to which money shall have been, or may be provided under the authority of this article.

(c) No contract or agreement with any contractor or contractors for labor or materials, or both, exceeding in amount the sum of $25,000 shall be made without advertising for bids, which bids shall be publicly opened and an award made to the lowest responsible bidder, with power and authority in the board to reject any and all bids.

(d) After the construction, reconstruction, establishment, acquisition, renovation or equipment of any such works, the board shall maintain, operate, manage and control the same, and may order and complete any improvements, extensions, enlargements, increase or repair (including replacements) of and to the works that the board may consider expedient, if funds therefor be available, or are made available, as provided in this article, and shall establish rules for the use, maintenance and operation of the works, and do all things necessary or expedient for the successful operation thereof, and for stormwater systems and associated stormwater management programs, those activities which include, but are not limited to, stormwater and surface runoff water quality improvement activities necessary to comply with all federal and state requirements. All public ways or public works damaged or destroyed by the board in carrying out its authority under this article shall be restored or repaired by
the board and placed in their original condition, as nearly as practicable, if requested so to do by proper authority, out of the funds provided under the authority of this article.

CHAPTER 138

(Com. Sub. for S. B. 358 - By Senators Jenkins, Plymale, Chafin and McCabe)

[Passed April 11, 2013; in effect from passage.]
[Approved by the Governor on April 29, 2013.]

AN ACT to amend and reenact §8-22-18a, §8-22-19a and §8-22-25 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §8-22-18c; and to amend and reenact §8-22A-4 and §8-22A-9 of said code, all relating to municipal policemen and firemen pensions; providing additional investigatory and legal powers and duties of the West Virginia Municipal Pensions Oversight Board; liability disclaimer for board acts or omissions concerning investigatory or legal actions; requiring certain notice of lawsuit to the West Virginia Municipal Pensions Oversight Board; limiting certain court orders under certain circumstances; clarifying refunds to members; clarifying circumstances under which a member may retire when the member's service has been interrupted by duty with the armed forces of the United States; extending the cut-off date for the West Virginia Municipal Police Officers and Firefighters Retirement System plan to 2017; and continuing the municipality's disability retirement purchase requirement until 2017.

Be it enacted by the Legislature of West Virginia:

That §8-22-18a, §8-22-19a and §8-22-25 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that said code
be amended by adding thereto a new section, designated §8-22-18c; and that §8-22A-4 and §8-22A-9 of said code be amended and reenacted, all to read as follows:

ARTICLE 22. RETIREMENT BENEFITS GENERALLY; POLICEMEN’S PENSION AND RELIEF FUND; FIREMEN’S PENSION AND RELIEF FUND; PENSION PLANS FOR EMPLOYEES OF WATERWORKS SYSTEM, SEWERAGE SYSTEM OR COMBINED WATERWORKS AND SEWERAGE SYSTEM.

§8-22-18a. West Virginia Municipal Pensions Oversight Board created; powers and duties; management; composition; terms; quorum; expenses; reports.

(a) (1) The West Virginia Municipal Pensions Oversight Board, established in 2009, is hereby continued as a public body corporate for the purpose of monitoring and improving the performance of municipal policemen’s and firemen’s pension and relief funds to assure prudent administration, investment and management of the funds. Management of the oversight board shall be vested solely in the members of the oversight board. Duties of the oversight board shall include, but not be limited to, assisting municipal boards of trustees in performing their duties, assuring the funds’ compliance with applicable laws, providing for actuarial studies, distributing tax revenues to the funds, initiating or joining legal actions on behalf of active or retired pension fund members or municipal boards of trustees to protect interests of the members in the funds and taking other actions as may be reasonably necessary to provide for the security and fiscal integrity of the pension funds. The oversight board’s authority to initiate legal action does not preempt the authority of municipalities, municipal policemen’s and firemen’s boards of trustees or pension fund active members, beneficiaries or
others to initiate legal action to protect interests in the funds. Further, the oversight board may, in its discretion, investigate the actions or practices of municipal boards of trustees or of their administrators or employees that, in the oversight board’s judgment, have the potential to threaten the security or fiscal integrity of the pension funds, and the boards of trustees, administrators and employees shall cooperate with the oversight board in any investigation. Regardless of whether it has previously conducted an investigation, the oversight board may initiate or intervene in legal actions to challenge or prevent any action or practice which, in the oversight board’s judgment, has the potential to threaten the security or fiscal integrity of the pension funds. Establishment of the oversight board does not relieve the municipal funds' boards of trustees from their fiduciary and other duties to the funds, nor does it create any liability for the funds on the part of the state. The failure of the oversight board to investigate or initiate legal actions regarding the actions or practices of municipal boards of trustees, their administrators or employees does not render the oversight board liable for the actions or practices. Members and employees of the oversight board are not liable personally, either jointly or severally, for debts or obligations of the municipal pension and relief funds. Except as otherwise provided herein, members and employees of the oversight board have a fiduciary duty toward the municipal pension and relief funds and are liable for malfeasance or gross negligence. Employees of the oversight board are classified-exempt state employees.

(2) The oversight board shall consist of nine members. The Executive Director of the state’s Investment Management Board and the Executive Director of the state’s Consolidated Public Retirement Board, or their designees, shall serve as voting ex officio members. The other seven members shall be citizens of the state who have been qualified electors of the state for a period of at least one year next preceding their appointment and shall be as follows: An active or retired member of a Municipal
Policemen's Pension and Relief Fund chosen from a list of three persons submitted to the Governor by the state's largest professional municipal police officers organization, an active or retired member of a Municipal Firemen's Pension and Relief Fund chosen from a list of three persons submitted to the Governor by the state's largest professional firefighters organization, an attorney experienced in finance and investment matters related to pensions management, two persons experienced in pension funds management, one person who is a certified public accountant experienced in auditing and one person chosen from a list of three persons submitted to the Governor by the state's largest association of municipalities.

(3) On the effective date of the enactment of this section as amended during the fourth extraordinary session of the Legislature in 2009, the Governor shall forthwith appoint the members, with the advice and consent of the Senate. The Governor may remove any member from the oversight board for neglect of duty, incompetency or official misconduct.

(b) The oversight board has the power to:

(1) Enter into contracts, to sue and be sued, to implead and be impleaded;

(2) Promulgate and enforce bylaws and rules for the management and conduct of its affairs;

(3) Maintain accounts and invest those funds which the oversight board is charged with receiving and distributing;

(4) Make, amend and repeal bylaws, rules and procedures consistent with the provisions of this article and chapter thirty-three of this code;

(5) Notwithstanding any other provision of law, retain or employ, fix compensation, prescribe duties and pay expenses of
legal, accounting, financial, investment, management and other
staff, advisors or consultants as it considers necessary, including
the hiring of legal counsel and actuary; and

(6) Do all things necessary and appropriate to implement and
operate the board in performance of its duties. Expenses shall be
paid from the moneys in the Municipal Pensions Security Fund
created in section eighteen-b of this article or, prior to the
transition provided in section eighteen-b of this article, the
Municipal Pensions and Protection Fund: Provided, That the
board may request special appropriation for special projects. The
oversight board is exempt from provisions of article three,
chapter five-a of this code for the purpose of contracting for
actuarial services, including the services of a reviewing actuary.

(c) Except for ex officio members, the terms of oversight
board members shall be staggered initially from January 1, 2010.
The Governor shall appoint initially one member for a term of
one year, one member for a term of two years, two members for
terms of three years, one member for a term of four years and
two members for terms of five years. Subsequent appointments
shall be for terms of five years. A member serving two full
consecutive terms may not be reappointed for one year after
completion of his or her second full term. Each member shall
serve until that member’s successor is appointed and qualified.
Any member may be removed by the Governor in case of
incompetency, neglect of duty, gross immorality or malfeasance
in office. Any vacancy on the oversight board shall be filled by
appointment by the Governor for the balance of the unexpired
term.

(d) A majority of the full authorized membership of the
oversight board constitutes a quorum. The board shall meet at
least quarterly each year, but more often as duties require, at
times and places that it determines. The oversight board shall
elect a chairperson and a vice chairperson from their
members who shall serve for terms of two years and shall select annually a secretary/treasurer who may be either a member or employee of the board. The oversight board shall employ an executive director and other staff as needed and shall fix their duties and compensation. The compensation of the executive director shall be subject to approval of the Governor. Except for any special appropriation as provided in subsection (b) of this section, all personnel and other expenses of the board shall be paid from revenue collected and allocated for municipal policemen's or municipal firemen's pension and relief funds pursuant to section fourteen-d, article three, chapter thirty-three of this code and distributed through the Municipal Pensions and Protection Fund or the Municipal Pensions Security Fund created in section eighteen-b of this article. Expenses during the initial year of the board's operation shall be from proceeds of the allocation for the municipal pensions and relief funds. Expenditures in years thereafter shall be by appropriation from the Municipal Pensions Security Fund. Money allocated for municipal policemen's and firemen's pension and relief funds to be distributed from the Municipal Pensions and Protection Fund or the Municipal Pensions Security Fund shall be first allocated to pay expenses of the oversight board and the remainder in the fund distributed among the various municipal pension and relief funds as provided in section fourteen-d, article three, chapter thirty-three of this code. The board is exempt from the provisions of sections seven and eleven, article three, chapter twelve of this code relating to compensation and expenses of members, including travel expenses.

(e) Members of the oversight board shall serve the board without compensation for their services: Provided. That no public employee member may suffer any loss of salary or wages on account of his or her service on the board. Each member of the board shall be reimbursed, on approval of the board, for any necessary expenses actually incurred by the member in carrying
(f) The board may contract with other state boards or state agencies to share offices, personnel and other administrative functions as authorized under this article: Provided, That no provision of this subsection may be construed to authorize the board to contract with other state boards or state agencies to otherwise perform the duties or exercise the responsibilities imposed on the board by this code.

(g) The board shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code as necessary to implement the provisions of this article, and may initially promulgate emergency rules pursuant to the provisions of section fifteen, article three, chapter twenty-nine-a of this code.

(h) The oversight board shall report annually to the Legislature’s Joint Committee on Government and Finance and the Joint Committee on Pensions and Retirement concerning the status of municipal policemen’s and firemen’s pension and relief funds and shall present recommendations for strengthening and protecting the funds and the benefit interests of the funds’ members.

(i) The oversight board shall cooperate with the West Virginia Investment Management Board and the Board of Treasury Investments to educate members of the local pension boards of trustees on the services offered by the two state investment boards. No later than October 31, 2013, the board shall report to the Joint Committee on Government and Finance and the Joint Committee on Pensions and Retirement a detailed comparison of returns on long-term investments of moneys held by or allocated to municipal pension and relief funds managed by the West Virginia Investment Management Board and those
184 managed by others than the Investment Management Board. The
185 oversight board shall also report at that time on short-term
186 investment returns by local pension boards using the West
187 Virginia Board of Treasury Investments compared to short-term
188 investment returns by those local boards of trustees not using the
189 Board of Treasury Investments.

190 (j) The oversight board shall establish minimum
191 requirements for training to be completed by each member of the
192 board of trustees of a Municipal Policemen's or Firemen's
193 Pension and Relief Fund. The requirements should include, but
194 not be limited to, training in ethics, fiduciary duty and
195 investment responsibilities.

§8-22-18c. Notice of legal actions by or against municipal
1 policemen's and firemen's pension funds.
2
3 In any legal action in which a municipal policemen's or
4 firemen's pension and relief fund, or the fund's board of trustees,
5 employee or administrator, is named as a party, the plaintiff or
6 petitioner shall serve a copy of the complaint or petition upon the
7 oversight board by certified mail, return receipt requested, within
8 seven days of filing the legal action. Until proof of service is
9 filed with the clerk of the court in which the action was filed,
10 and for sixty days after the filing of the proof of service, no order
11 may be entered by the court that directly or indirectly requires
12 the expenditure or other disposition of pension funds or that
13 determines the eligibility or entitlement of any member to any
14 pension benefit payable from the pension and relief fund:
15 Provided, That the court may enter such temporary or interim
16 orders as may be needed to preserve and protect the assets of the
17 fund. In any legal action involving a municipal policemen's or
18 firemen's pension and relief fund the oversight board is entitled
19 to intervene for the purpose of preserving the security or fiscal
20 integrity of the pension fund.
§8-22-19a. Refunds of member contributions.

After January 1, 2010, any member of a paid police department or fire department who is removed or discharged or who before retirement on any retirement pension or disability pension severs his or her connection with said department, whether or not consecutive, shall, upon request, be refunded all pension and relief fund deductions made from the member’s salary or compensation, but without interest from the fund. The refund shall come from the accounts which originally received the member deductions. For municipalities using the conservation method of funding, the member contributions are to be refunded from both the Municipal Pension and Relief Fund and the city benefit account, in the exact percentages that were initially deposited to the respective accounts. Any member who receives a refund and subsequently wishes to reenter his or her department shall not be allowed to reenter the department unless the police officer or firefighter repays to the pension and relief fund all sums refunded to him or her in a lump sum at the date of reentry, or by monthly payroll deductions within thirty-six months from the date he or she reenters the department, with interest at the rate of eight percent per annum. In the event such refund is made prior to January 1, 1981, and such member subsequently reenters the department such police officer or firefighter shall be allowed membership in such pension and relief fund, however, no credit may be allowed such member for any former service, unless such member repays to the pension and relief fund all sums refunded to the member within one year from the date the member reenters the department with interest at the rate of eight percent per annum: Provided, That for such member who receives such refund prior to January 1, 1980, interest may not be charged for more than three years. Any probationary member of a paid police or fire department who is not given an absolute appointment at the end of the member’s probationary period shall, upon request, be refunded all pension and relief fund deductions made from the member’s salary or
compensation, but without interest. Any member contribution
made in fiscal years beginning on July 1, 1981, and thereafter by
any members of such fund, which is in excess of the percentages,
required in section nineteen of this article of such member’s
salary or compensation as defined in section sixteen of this
article, shall be refunded with eight percent interest to such
member upon completion of the calculation of the member’s
retirement benefit.


(a) Any member of a paid police or fire department who is
entitled to a retirement pension hereunder, and who has been in
the honorable service of such department for twenty years, may,
upon written application to the board of trustees, be retired from
all service in such department without medical examination or
disability. On such retirement the board of trustees shall
authorize the payment of annual retirement pension benefits
commencing upon the member’s retirement or upon the
member’s attaining the age of fifty years, whichever is later,
payable in twelve monthly installments for each year of the
remainder of the member’s life, in an amount equal to sixty
percent of such member’s average annual salary or
compensation received during the three
twelve-consecutive-month periods of employment with such
department in which such member received the member’s
highest salary or compensation while a member of the
department, or an amount of $500 per month, whichever is
greater.

(b) Any member of any such department who is entitled to
a retirement pension under the provisions of subsection (a) of
this section and who has been in the honorable service of such
department for more than twenty years at the time of the
member’s retirement shall receive, in addition to the sixty
percent authorized in said subsection (a):
(1) Two additional percent, to be added to the sixty percent for each of the first five additional years of service completed at the time of retirement in excess of twenty years of service up to a maximum of seventy percent; and

(2) One additional percent, to be added to such maximum of seventy percent, for each of the first five additional years of service completed at the time of retirement in excess of twenty-five years of service up to a maximum of seventy-five percent.

The total additional credit provided for in this subsection may not exceed fifteen additional percent.

(c) Any member of any such department whose service has been interrupted by duty with the armed forces of the United States as provided in section twenty-seven of this article prior to July 1, 1981, shall be eligible for retirement pension benefits immediately upon retirement, regardless of the member's age, if the member shall otherwise be eligible for such retirement pension benefits. In no event are provisions of this subsection to be interpreted to permit retirement before age fifty unless the interruption of the member's service by duty with the armed forces of the United States actually occurred before July 1, 1981. The amendment made to this subsection during the 2013 regular session of the Legislature is not for the purpose of changing the existing law regarding benefits provided to veterans for military service prior to July 1, 1981, but to further clarify that the provisions of this section and any previous enactments of this section do not make a member eligible for retirement before age fifty for a member's service with the armed forces of the United States after July 1, 1981.

Any member or previously retired member of any such department who has served in active duty with the armed forces of the United States as described in section twenty-seven of this
article, whether prior to or subsequent to becoming a member of
a paid police or fire department covered by the provisions of this
article, shall receive, in addition to the sixty percent authorized
in subsection (a) of this section and the additional percent
credit authorized in subsection (b) of this section, one additional
percent for each year so served in active military duty, up to a
maximum of four additional percent. In no event, however, may
the total benefit granted to any member exceed seventy-five
percent of the member's annual average salary calculated in
accordance with subsection (a) of this section.

(d) Any member of a paid police or fire department shall be
retired at the age of sixty-five years in the manner provided in
this subsection. When a member of the paid police or fire
department reaches the age of sixty-five years, the said board of
trustees shall notify the mayor of this fact, within thirty days of
such member's sixty-fifth birthday. The mayor shall cause such
sixty-five-year-old member of the paid police or fire department
to retire within a period of not more than thirty additional days.
Upon retirement under the provisions of this subsection, such
member shall receive retirement pension benefits payable in
twelve monthly installments for each year of the remainder of
the member's life in an amount equal to sixty percent of such
member's average annual salary or compensation received
during the three twelve-consecutive-month periods of
employment with such department in which such member
received the member's highest salary or compensation while a
member of the department, or an amount of $500 per month,
whichever is greater. If such member has been employed in said
department for more than twenty years, the provisions of
subsection (b) of this section shall apply.

(e) It shall be the duty of each member of a paid police or
fire department at the time a fund is hereafter established to
furnish the necessary proof of the member's date of birth to the
said board of trustees, as specified in section twenty-three of this
article, within a reasonable length of time, said length of time to
be determined by the said board of trustees. Then the board of
trustees and the mayor shall proceed to act in the manner
provided in subsection (d) of this section and shall cause all
members of the paid police or fire department who are over the
age of sixty-five years to retire in not less than sixty days from
the date the fund is established. Upon retirement under the
provisions of this subsection (e), such member, whether the
member has been employed in said department for twenty years
or not, shall receive retirement pension benefits payable in
twelve monthly installments for each year of the remainder of
the member's life in an amount equal to sixty percent of such
member's average annual salary or compensation received
during the three twelve-consecutive-month periods of
employment with such department in which such member
received the member's highest salary or compensation while a
member of the department, or an amount of $500 per month,
whichever is greater. If such member has been employed in said
department for more than twenty years, the provisions of
subsection (b) of this section shall apply.

ARTICLE 22A. WEST VIRGINIA MUNICIPAL POLICE
OFFICERS AND FIREFIGHTERS
RETIREMENT SYSTEM.

§8-22A-4. Creation and administration of West Virginia
Municipal Police Officers and Firefighters
Retirement System; specification of actuarial
assumptions.

There is hereby created the West Virginia Municipal Police
Officers and Firefighters Retirement System. The purpose of this
system is to provide for the orderly retirement of certain police
officers and firefighters who become superannuated because of
age or permanent disability and to provide certain survivor death
benefits. Substantially all of the members of the retirement
system shall be qualified public safety employees as defined in
section two of this article. The retirement system shall come into
effect January 1, 2010: Provided, That if the number of members
in the system are fewer than one hundred on January 1, 2017,
then all of the provisions of this article are void and of no force
and effect, and memberships in the system will be merged into
the Emergency Medical Services Retirement System created in
article five-v, chapter sixteen of this code. If merger is required,
the board shall take all necessary steps to see that the voluntary
transfers of persons and assets authorized by this article do not
affect the qualified status with the Internal Revenue Service of
either retirement plan. All business of the system shall be
transacted in the name of the West Virginia Municipal Police
Officers and Firefighters Retirement System. The board shall
specify and adopt all actuarial assumptions for the plan at its first
meeting of every calendar year or as soon thereafter as may be
practicable, which assumptions shall become part of the plan.

§8-22A-9. Retirement; commencement of benefits; insurance
requirements during early period.

(a) To ensure the fiscal integrity of the retirement system
during the start-up phase, no member is entitled to retirement,
disability or death benefits under this retirement system until
January 1, 2017. Participating municipalities shall purchase
insurance for their new plan members to provide coverage in an
amount equal to disability coverage otherwise provided in
sections seventeen and eighteen of this article and death benefits
otherwise provided in sections twenty, twenty-two and twenty-
three of this article for claims arising before January 1, 2013:
Provided, That pursuant to the amendments made to this
subsection during the 2013 regular session of the Legislature,
participating municipalities shall reinstate or purchase the
insurance coverage for all plan members no later than July 1,
2013, and continue coverage through January 1, 2017.
(b) A member may retire and commence to receive retirement income payments on the first day of the calendar month following written application for his or her voluntary petition for retirement coincident with or next following the later of the date the member ceases employment, or the date the member attains early or normal retirement age, in an amount as provided under this article: Provided, That retirement income payments under this plan are subject to the provisions of this article. On receipt of the petition, the board shall promptly provide the member with an explanation of his or her optional forms of retirement benefits and on receipt of properly executed forms from the member, the board shall process a member's request for and commence payments as soon as administratively feasible.

CHAPTER 139

(H. B. 2956 - By Delegates Miley, Boggs, Manchin, Marcum, Ferro, Reynolds and Ashley)

[Passed April 13, 2013; in effect ninety days from passage.]
[Approved by the Governor on May 3, 2013.]

AN ACT to amend and reenact §11-16-3 and §11-16-6 of the Code of West Virginia, 1931, as amended, all relating to nonintoxicating beer distributorships and their licenses, resident brewers and brewpubs; expanding the definition of "person" for purposes of holding a nonintoxicating beer distributorship; allowing individuals, forms, trusts, partnerships, limited partnerships, limited liability companies, associations and corporations to hold a distributor's license; clarifying and amending applicable definitions; clarifying certain requirements and operations relating to distribution and sales at brewpubs; allowing for the limited sale
of nonintoxicating beer and nonintoxicating craft beer by brewpubs for personal consumption off premises and not for resale; amending definition of resident brewers; placing limit on amount of non-intoxicating beer and non-intoxicating craft beer that a resident brewer may self-distribute; prohibiting addition or infusion of non-intoxicating beer or non-intoxicating craft beer with caffeine or any additives masking or altering alcohol effect.

Be it enacted by the Legislature of West Virginia:

That §11-16-3 and §11-16-6 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 16. NONINTOXICATING BEER.

§11-16-3. Definitions.

1. For the purpose of this article, except where the context clearly requires differently:

2. (1) "Brewer" or "manufacturer" means any person, firm, association, partnership or corporation manufacturing, brewing, mixing, concocting, blending, bottling or otherwise producing or importing or transshipping from a foreign country nonintoxicating beer or nonintoxicating craft beer for sale at wholesale to any licensed distributor.

3. (2) "Brewpub" means a place of manufacture of nonintoxicating beer owned by a resident brewer, subject to federal and state regulations and guidelines, a portion of which premises are designated for retail sales of nonintoxicating beer or nonintoxicating craft beer by the resident brewer owning the brewpub.

4. (3) "Class A retail license" means a retail license permitting the retail sale of liquor at a freestanding liquor retail outlet licensed pursuant to chapter sixty of this code.
(4) "Commissioner" means the West Virginia Alcohol Beverage Control Commissioner.

(5) "Distributor" means and includes any person jobbing or distributing nonintoxicating beer or nonintoxicating craft beer to retailers at wholesale and whose warehouse and chief place of business shall be within this state. For purposes of a distributor only, the term "person" means and includes an individual, firm, trust, partnership, limited partnership, limited liability company, association or corporation. Any trust licensed as a distributor or any trust that is an owner of a distributor licensee, and the trustee, or other persons in active control of the activities of the trust relating to the distributor license, is liable for acts of the trust or its beneficiaries relating to the distributor license that are unlawful acts or violations of article eleven of this chapter notwithstanding the liability of trustees in article ten, chapter forty-four-d of this code.

(6) "Freestanding liquor retail outlet" means a retail outlet that sells only liquor, beer, nonintoxicating beer and other alcohol-related products, as defined pursuant to section four, article three-a, chapter sixty of this code.

(7) "Growler" means a glass ceramic or metal container or jug, capable of being securely sealed, utilized by a brewpub for purposes of off-premise sales of nonintoxicating beer or nonintoxicating craft beer for personal consumption not on a licensed premise and not for resale.

(8) "Nonintoxicating beer" means all natural cereal malt beverages or products of the brewing industry commonly referred to as beer, lager beer, ale and all other mixtures and preparations produced by the brewing industry, including malt coolers and nonintoxicating craft beers with no caffeine infusion or any additives masking or altering the alcohol effect containing at least one half of one percent alcohol by volume, but not more
50 than nine and six-tenths of alcohol by weight, or twelve percent
51 by volume, whichever is greater. The word “liquor” as used in
52 chapter sixty of this code does not include or embrace
53 nonintoxicating beer nor any of the beverages, products,
54 mixtures or preparations included within this definition.

55 (9) “Nonintoxicating beer sampling event” means an event
56 approved by the commissioner for a Class A retail Licensee to
57 hold a nonintoxicating beer sampling authorized pursuant to
58 section eleven-a of this article.

59 (10) “Nonintoxicating beer sampling day” means any days
60 and hours of the week where Class A retail licensees may sell
61 nonintoxicating beer pursuant to sub-section (a)(l), section
62 eighteen of this article, and is approved, in writing, by the
63 commissioner to conduct a nonintoxicating beer sampling event.

64 (11) “Nonintoxicating craft beer” means any beverage
65 obtained by the natural fermentation of barley, malt, hops or any
66 other similar product or substitute and containing not less than
67 one half of one percent by volume and not more than twelve
68 percent alcohol by volume or nine and six-tenths percent alcohol
69 by weight with no caffeine infusion or any additives masking or
70 altering the alcohol effect.

71 (12) “Original container” means the container used by the
72 brewer at the place of manufacturing, bottling or otherwise
73 producing nonintoxicating beer for sale at wholesale.

74 (13) “Person” means and includes an individual, firm,
75 partnership, limited partnership, limited liability company,
76 association or corporation.

77 (14) “Resident brewer” means any brewer or manufacturer
78 of non-intoxicating beer or non-intoxicating craft beer whose
79 principal place of business and manufacture is located in the
80 State of West Virginia and which does not brew or manufacture
more than 25,000 barrels of non-intoxicating beer or non-intoxicating craft beer annually, and does not self-distribute more than 10,000 barrels thereof in the State of West Virginia annually.

(15) "Retailer" means any person selling, serving, or otherwise dispensing nonintoxicating beer and all products regulated by this article, including, but not limited to, malt coolers at his or her established and licensed place of business.

(16) "Tax Commissioner" means the Tax Commissioner of the State of West Virginia or the commissioner's designee.

§11-16-6. License in one capacity only; no connection between different licensees; when brewer may act as distributor; credit and rebates proscribed; brewpub.

(a) No person shall be licensed in more than one capacity under the terms of this article, and there shall be no connection whatsoever between any retailer, distributor, resident brewer or brewer, and no person shall be interested directly or indirectly through the ownership of corporate stock, membership in a partnership, or in any other way in the business of a retailer, if such person is at the same time interested in the business of a brewer, resident brewer or distributor. A resident brewer may act as distributor in a limited capacity for his or her own product from such resident brewery, place of manufacture or bottling, but a resident brewer is not permitted to act as a distributor as defined in section three of this article: Provided, That nothing in this article may prevent a resident brewer from using the services of licensed distributors as specified in this article. A resident brewer or distributor may sell to a consumer for personal use and not for resale, draught beer in quantities of one-eighth, one-fourth and one-half barrels in the original containers. A resident brewer owning a brewpub may sell nonintoxicating beer or nonintoxicating craft beer produced by the brewpub in a sealed
(b) It is unlawful for any brewer, resident brewer, manufacturer or distributor to assist any retailer or for any retailer to accept assistance from any brewer, manufacturer or distributor any gifts or loans or forebearance of money or property of any kind, nature or description, or other thing of value or by the giving of any rebates or discounts of any kind whatsoever except as may be permitted by rule, regulation, or order promulgated by the commissioner in accordance with this article.

Notwithstanding paragraphs (a) and (b) above, a brewpub may offer for retail sale nonintoxicating beer or nonintoxicating craft beer so long as the sale of the nonintoxicating beer or nonintoxicating craft beer is limited to the brewpub premises, except for up to two growlers per customer for personal consumption off of a licensed premises and not for resale.

CHAPTER 140

(Com. Sub. for S. B. 172 - By Senator Kessler (Mr. President))

[Passed April 13, 2013; in effect ninety days from passage.]
[Approved by the Governor on May 2, 2013.]
certain disclosures by applicants that are trusts, limited liability companies or associations.

Be it enacted by the Legislature of West Virginia:

That §11-16-3 and §11-16-8 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 16. NONINTOXICATING BEER.

§11-16-3. Definitions.

1 For the purpose of this article, except where the context clearly requires differently:

3 (1) "Brewer" or "manufacturer" means any person, firm, association, partnership or corporation manufacturing, brewing, mixing, concocting, blending, bottling or otherwise producing or importing or transshipping from a foreign country nonintoxicating beer or nonintoxicating craft beer for sale at wholesale to any licensed distributor.

9 (2) "Brewpub" means a place of manufacture of nonintoxicating beer owned by a resident brewer, subject to federal and state regulations and guidelines, a portion of which premises are designated for retail sales of nonintoxicating beer or nonintoxicating craft beer by the resident brewer owning the brewpub.

15 (3) "Class A retail license" means a retail license permitting the retail sale of liquor at a freestanding liquor retail outlet licensed pursuant to chapter sixty of this code.

18 (4) "Commissioner" means the West Virginia Alcohol Beverage Control Commissioner.

20 (5) "Distributor" means and includes any person jobbing or distributing nonintoxicating beer or nonintoxicating craft beer to retailers at wholesale and whose warehouse and chief place of
business shall be within this state. For purposes of a distributor only, the term "person" means and includes an individual, firm, trust, partnership, limited partnership, limited liability company, association or corporation. Any trust licensed as a distributor or any trust that is an owner of a distributor licensee, and the trustee or other persons in active control of the activities of the trust relating to the distributor license, is liable for acts of the trust or its beneficiaries relating to the distributor license that are unlawful acts or violations of article eleven of this chapter notwithstanding the liability of trustees in article ten, chapter forty-four-d of this code.

(6) "Freestanding liquor retail outlet" means a retail outlet that sells only liquor, beer, nonintoxicating beer and other alcohol-related products, as defined pursuant to section four, article three-a, chapter sixty of this code.

(7) "Growler" means a glass ceramic or metal container or jug, capable of being securely sealed, utilized by a brewpub for purposes of off-premise sales of nonintoxicating beer or nonintoxicating craft beer for personal consumption not on a licensed premise and not for resale.

(8) "Nonintoxicating beer" means all natural cereal malt beverages or products of the brewing industry commonly referred to as beer, lager beer, ale and all other mixtures and preparations produced by the brewing industry, including malt coolers and nonintoxicating craft beers with no caffeine infusion or any additives masking or altering the alcohol effect containing at least one half of one percent alcohol by volume, but not more than nine and six-tenths of alcohol by weight, or twelve percent by volume, whichever is greater. The word "liquor" as used in chapter sixty of this code does not include or embrace nonintoxicating beer nor any of the beverages, products, mixtures or preparations included within this definition.

(9) "Nonintoxicating beer sampling event" means an event approved by the commissioner for a Class A retail licensee to
hold a nonintoxicating beer sampling authorized pursuant to section eleven-a of this article.

(10) "Nonintoxicating beer sampling day" means any days and hours of the week where Class A retail licensees may sell nonintoxicating beer pursuant to subdivision (1), subsection (a), section eighteen of this article and is approved, in writing, by the commissioner to conduct a nonintoxicating beer sampling event.

(11) "Nonintoxicating craft beer" means any beverage obtained by the natural fermentation of barley, malt, hops or any other similar product or substitute and containing not less than one half of one percent by volume and not more than twelve percent alcohol by volume or nine and six-tenths percent alcohol by weight with no caffeine infusion or any additives masking or altering the alcohol effect.

(12) "Original container" means the container used by the brewer at the place of manufacturing, bottling or otherwise producing nonintoxicating beer for sale at wholesale.

(13) "Person" means and includes an individual, firm, partnership, limited partnership, limited liability company, association or corporation.

(14) "Resident brewer" means any brewer or manufacturer of nonintoxicating beer or nonintoxicating craft beer whose principal place of business and manufacture is located in the State of West Virginia and which does not brew or manufacture more than twenty-five thousand barrels of non-intoxicating beer or nonintoxicating craft beer annually, and does not self-distribute more than ten thousand barrels thereof in the State of West Virginia annually.

(15) "Retailer" means any person selling, serving, or otherwise dispensing nonintoxicating beer and all products regulated by this article, including, but not limited to, malt coolers at his or her established and licensed place of business.
Ch. 140] NONINTOXICATING BEER

(16) "Tax Commissioner" means the Tax Commissioner of the State of West Virginia or the commissioner's designee.

§11-16-8. Form of application for license; fee and bond; refusal of license.

(a) A license may be issued by the commissioner to any person who submits an application, accompanied by a license fee and, where required, a bond, and states under oath:

(1) The name and residence of the applicant, the duration of such residency, that the applicant has been a resident of the state for a period of two years preceding the date of the application and that the applicant is twenty-one years of age. If the applicant is a firm, association, partnership, limited partnership, limited liability company or corporation, the application shall include the residence of the members or officers for a period of two years preceding the date of such application. If a person, firm, partnership, limited partnership, limited liability company, association, corporation or trust applies for a license as a distributor, such person, or in the case of a firm, partnership, limited partnership, limited liability company, association or trust, the members, officers, trustees or other persons in active control of the activities of the limited liability company, association or trust relating to the license, shall state under oath that each has been a bona fide resident of the state for four years preceding the date of such application. If the applicant is a trust or has a trust as an owner, the trustees or other persons in active control of the activities of the trust relating to the license shall provide a certification of trust as described in section one thousand thirteen, article ten, chapter forty-four-d of this code. This certification of trust shall include the excerpts described in subsection (e), section one thousand thirteen, article ten, chapter forty-four-d of this code and shall further state, under oath, the names, addresses, Social Security numbers and birth dates of the beneficiaries of the trust and certify that the trustee and beneficiaries are twenty-one years of age or older. If a
beneficiary is not twenty-one years of age, the certification of
trust must state that such beneficiary's interest in the trust is
represented by a trustee, parent or legal guardian who is twenty-
one years of age and who will direct all actions on behalf of such
beneficiary related to the trust with respect to the distributor until
the beneficiary is twenty-one years of age. Any beneficiary who
is not twenty-one years of age or older shall have his or her
trustee, parent or legal guardian include in the certification of
trust and state under oath his or her name, address, Social
Security number and birth date.

(2) The place of birth of applicant, that he or she is a citizen
of the United States and of good moral character and, if a
naturalized citizen, when and where naturalized. If the applicant
is a corporation organized or authorized to do business under the
laws of the state, the application must state when and where
incorporated, the name and address of each officer and that each
officer is a citizen of the United States and a person of good
moral character. If the applicant is a firm, association, limited
liability company, partnership, limited partnership, trust or has
a trust as an owner, the application shall provide the place of
birth of each member of the firm, association, limited liability
company, partnership or limited partnership and of the trustees,
beneficiaries or other persons in active control of the activities
of the trust relating to the license and that each member or
trustee, beneficiary or other persons in active control of the
activities of the trust relating to the license is a citizen of the
United States and if a naturalized citizen, when and where
naturalized, each of whom must qualify and sign the application.
The requirements as to residence do not apply to the officers of
a corporation applying for a retailer's license but the officers,
agent or employee who manages and is in charge of the licensed
premises shall possess all of the qualifications required of an
individual applicant for a retailer's license including the
requirement as to residence;
(3) The particular place for which the license is desired and a detailed description thereof;

(4) The name of the owner of the building and, if the owner is not the applicant, that the applicant is the actual and bona fide lessee of the premises;

(5) That the place or building in which is proposed to do business conforms to all applicable laws of health, fire and zoning regulations and is a safe and proper place or building not within three hundred feet of a school or church measured from front door to front door, along the street or streets. This requirement does not apply to a Class B license or to a place occupied by a beer licensee so long as it is continuously so occupied. The prohibition against locating a proposed business in a place or building within three hundred feet of a school does not apply to a college or university that has notified the commissioner, in writing, that it has no objection to the location of a proposed business in a place or building within three hundred feet of the college or university;

(6) That the applicant is not incarcerated and has not during the five years preceding the date of said application been convicted of a felony;

(7) That the applicant is the only person in any manner pecuniarily interested in the business so asked to be licensed and that no other person is in any manner pecuniarily interested during the continuance of the license; and

(8) That the applicant has not during five years preceding the date of the application had a nonintoxicating beer license revoked.

(b) In the case of an applicant that is trust or has a trust as an owner, a distributor license may be issued only upon submission by the trustees or other persons in active control of the activities of the trust relating to the distributor license of a true and correct copy of the written trust instrument to the commissioner for his
or her review. Notwithstanding any provision of law to the contrary, the copy of the written trust instrument submitted to the commissioner pursuant to this section is confidential and is not a public record and is not available for release pursuant to the West Virginia Freedom of Information Act codified in article one, chapter twenty-nine-b of this code.

(c) The provisions and requirements of subsection (a) of this section are mandatory prerequisites for the issuance and if any applicant fails to qualify, the license shall be refused. In addition to the information furnished in any application, the commissioner may make such additional and independent investigation of each applicant and of the place to be occupied as necessary or advisable and, for this reason, all applications, with license fee and bond, must be filed thirty days prior to the beginning of any fiscal year. If the application is for an unexpired portion of a fiscal year, the issuance of license may be withheld for such reasonable time as necessary for investigation.

(d) The commissioner may refuse a license to any applicant under the provisions of this article if the commissioner is of the opinion:

(1) That the applicant is not a suitable person to be licensed;

(2) That the place to be occupied by the applicant is not a suitable place or is within three hundred feet of any school or church measured from front door to front door along the street or streets. This requirement does not apply to a Class B licensee or to a place now occupied by a beer licensee so long as it is continuously so occupied. The prohibition against locating any such place within three hundred feet of a school does not apply to a college or university that has notified the commissioner, in writing, that it has no objection to the location of any such place within three hundred feet; or

(3) That the license should not be issued for reason of conduct declared to be unlawful by this article.
AN ACT to amend and reenact §11-16-9 of the Code of West Virginia, 1931, as amended, relating to sales of nonintoxicating beer; and removing the existing maximum quantities of beer that retailers can sell for off premises consumption.

Be it enacted by the Legislature of West Virginia:

That §11-16-9 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 16. NONINTOXICATING BEER.

§11-16-9. Amount of license tax; Class A and Class B retail dealers; purchase and sale of nonintoxicating beer permitted; distributors; brewers; brewpubs.

There is levied and imposed an annual license tax upon all dealers in and of nonintoxicating beer as defined by this article, which license period begins on July 1, of each year and ends on June 30 of the following year, and, if granted for a less period, it shall be computed semiannually in proportion to the remainder of the fiscal year as follows:

(1) Retail dealers shall be divided into two classes. Class A and Class B. In the case of a Class A retail dealer the license fee is $150 for each place of business; the license fee for social, fraternal or private clubs not operating for profit, and having been in continuous operation for two years or more immediately
preceding the date of application, is $150: Provided, That railroad operating in this state may dispense nonintoxicating beer upon payment of an annual license tax of $10 for each dining, club or buffet car in which the beer is dispensed.

Class A licenses issued for railroad dining, club or buffet cars authorize the licensee to sell nonintoxicating beer at retail for consumption only on the licensed premises where sold. All other Class A licenses authorize the licensee to sell nonintoxicating beer at retail for consumption on or off the licensed premises.

In the case of a Class B retailer, the fee for a Class B license authorizing the sale of both chilled and unchilled beer is $150 for each place of business. A Class B license authorizes the licensee to sell nonintoxicating beer at retail in bottles, cans or other sealed containers only, and only for consumption off the licensed premises. A Class B retailer may sell to a consumer, for personal use and not for resale, draught beer in quantities of one-eighth, one-fourth and one-half barrels in the original containers.

A Class B license may be issued only to the proprietor or owner of a grocery store. For the purpose of this article the term "grocery store" means and includes any retail establishment commonly known as a grocery store or delicatessen and caterer or party supply store, where food or food products are sold for consumption off the premises, and means a separate and segregated portion of any other retail store which is dedicated solely to the sale of food, food products and supplies for the table for consumption off the premises. The commissioner may propose for legislative approval legislative rules pursuant to chapter twenty-nine-a of this code necessary to carry this provision into effect. Caterers or party supply stores are required to purchase the appropriate licenses from the alcohol beverage control administration.

(2) In the case of distributors, the license fee is $1,000 for each place of business.
(3) In the case of a brewer with its principal place of business located in this state, the license fee is $1,500 for each place of manufacture.

(4) In the case of a brewpub, the license fee is $1,000 for each place of manufacture.

CHAPTER 142

(Com. Sub. for S. B. 101 - By Senators McCabe, Cann, Miller, Jenkins and Barnes)

[Passed April 13, 2013; in effect July 1, 2013.]
[Approved by the Governor on April 30, 2013.]

AN ACT to amend and reenact §16-5C-15 of the Code of West Virginia, 1931, as amended, relating to clarifying that the Medical Professional Liability Act applies to nursing homes and their health care providers.

Be it enacted by the Legislature of West Virginia:

That §16-5C-15 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 5C. NURSING HOMES.

§16-5C-15. Unlawful acts; penalties; injunctions; private right of action.

(a) Whoever advertises, announces, establishes or maintains, or is engaged in establishing or maintaining a nursing home without a license granted under section six of this article, or who prevents, interferes with or impedes in any way the lawful enforcement of this article is guilty of a misdemeanor and, upon conviction thereof, shall be punished for the first offense by a
fine of not more than $100, or by confinement in jail for a period
of not more than ninety days, or by both fine and confinement,
at the discretion of the court. For each subsequent offense, the
fine may be increased to not more than $250, with confinement
in jail for a period of not more than ninety days, or by both fine
and confinement, at the discretion of the court. Each day of a
continuing violation after conviction is considered a separate
offense.

(b) The director may in his or her discretion bring an action
to enforce compliance with this article or any rule or order
hereunder whenever it appears to the director that any person has
engaged in, or is engaging in, an act or practice in violation of
this article or any rule or order hereunder, or whenever it appears
to the director that any person has aided, abetted or caused, or is
aiding, abetting or causing, such an act or practice. Upon
application by the director, the circuit court of the county in
which the conduct has occurred or is occurring, or if emergency
circumstances occur the circuit court of Kanawha County, has
jurisdiction to grant without bond a permanent or temporary
injunction, decree or restraining order.

Whenever the director has refused to grant or renew a
license, or has revoked a license required by law to operate or
conduct a nursing home, or has ordered a person to refrain from
conduct violating the rules of the director, and the person has
appealed the action of the director, the court may, during
pendency of the appeal, issue a restraining order or injunction
upon proof that the operation of the nursing home or its failure
to comply with the order of the director adversely affects the
well being or safety of the residents of the nursing home. Should
a person who is refused a license or the renewal of a license to
operate or conduct a nursing home or whose license to operate
is revoked or who has been ordered to refrain from conduct or
activity which violates the rules of the director fails to appeal or
should the appeal be decided favorably to the director, then the
court shall issue a permanent injunction upon proof that the
person is operating or conducting a nursing home without a
license as required by law, or has continued to violate the rules of the director.

(c) Any nursing home that deprives a resident of any right or benefit created or established for the well-being of this resident by the terms of any contract, by any state statute or rule, or by any applicable federal statute or regulation, shall be liable to the resident for injuries suffered as a result of such deprivation. Upon a finding that a resident has been deprived of such a right or benefit, and that the resident has been injured as a result of such deprivation, and unless there is a finding that the nursing home exercised all care reasonably necessary to prevent and limit the deprivation and injury to the resident, compensatory damages shall be assessed in an amount sufficient to compensate the resident for such injury. In addition, where the deprivation of the right or benefit is found to have been willful or in reckless disregard of the lawful rights of the resident, punitive damages may be assessed. A resident may also maintain an action pursuant to this section for any other type of relief, including injunctive and declaratory relief, permitted by law. Exhaustion of any available administrative remedies is not required prior to commencement of suit under this subsection.

(d) The amount of damages recovered by a resident, in an action brought pursuant to this section, is exempt for purposes of determining initial or continuing eligibility for medical assistance under article four, chapter nine of this code, and may neither be taken into consideration nor required to be applied toward the payment or part payment of the cost of medical care or services available under that article.

(e) Any waiver by a resident or his or her legal representative of the right to commence an action under this section, whether oral or in writing, is void as contrary to public policy.

(f) The penalties and remedies provided in this section are cumulative and are in addition to all other penalties and remedies provided by law.
(g) Nothing in this section or any other section of the code shall limit the protections afforded nursing homes or their health care providers under article seven-b, chapter fifty-five of this code. Nursing homes and their health care providers shall be treated in the same manner as any other health care facility or health care provider under article seven-b, chapter fifty-five of this code. The terms "health care facility" and "health care provider" as used in this subsection shall have the same meaning as set forth in subsections (f) and (g), section two, article seven-b, chapter fifty-five of this code.

(h) The amendments to this section enacted during the 2013 Regular Session of the Legislature shall be effective July 1, 2013; Provided, That there shall be no inference, either positive or negative, to any legal action pending pursuant to this section as of July 1, 2013. The amendments to this section in 2013 are not in any way intended to modify, change, expand or contract the Medical Professional Liability Act. The proper construction of this section and the limitations and provisions of article seven-b, chapter fifty-five of this code shall be determined by principles of statutory construction.

CHAPTER 143

(Com. Sub. for H. B. 2747 - By Delegates Morgan, Stephens, Caputo and Craig)

[Passed April 13, 2013: in effect ninety days from passage.]  
[Approved by the Governor on May 3, 2013.]

AN ACT to amend and reenact §6-9A-2 and §6-9A-3 of the Code of West Virginia, 1931, as amended, all relating to public notice of meetings of governing bodies of public agencies; defining terms; clarifying existing notice requirements; requiring state executive
branch agencies to electronically file public meeting notices with
the Secretary of State for publication on Secretary of State’s
website; eliminating the requirement that state executive branch
agency meeting notices be filed in the State Register; and
providing procedural rule-making authority.

Be it enacted by the Legislature of West Virginia:

That §6-9A-2 and §6-9A-3 of the Code of the West Virginia, 1931,
as amended, be amended and reenacted, all to read as follows:

ARTICLE 9A. OPEN GOVERNMENTAL PROCEEDINGS.


1. As used in this article:

2. (1) “Decision” means any determination, action, vote or final
disposition of a motion, proposal, resolution, order, ordinance or
measure on which a vote of the governing body is required at
any meeting at which a quorum is present.

3. (2) “Emergency meeting” means any meeting called by a
governing body for the purpose of addressing an unexpected
event which requires immediate attention because it poses:

4. (A) An imminent threat to public health or safety;

5. (B) An imminent threat of damage to public or private
property; or

6. (C) An imminent material financial loss or other imminent
substantial harm to a public agency, its employees or the
members of the public which it serves.

7. (3) “Executive session” means any meeting or part of a
meeting of a governing body which is closed to the public.

8. (4) “Governing body” means the members of any public
agency having the authority to make decisions for or
recommendations to a public agency on policy or administration, the membership of a governing body consists of two or more members; for the purposes of this article, a governing body of the Legislature is any standing, select or special committee, except the commission on special investigations, as determined by the rules of the respective houses of the Legislature.

(5) "Meeting" means the convening of a governing body of a public agency for which a quorum is required in order to make a decision or to deliberate toward a decision on any matter which results in an official action. Meetings may be held by telephone conference or other electronic means. The term meeting does not include:

(A) Any meeting for the purpose of making an adjudicatory decision in any quasi-judicial, administrative or Court of Claims proceeding;

(B) Any on-site inspection of any project or program;

(C) Any political party caucus;

(D) General discussions among members of a governing body on issues of interest to the public when held in a planned or unplanned social, educational, training, informal, ceremonial or similar setting, without intent to conduct public business even if a quorum is present and public business is discussed but there is no intention for the discussion to lead to an official action; or

(E) Discussions by members of a governing body on logistical and procedural methods to schedule and regulate a meeting.

(6) "Official action" means action which is taken by virtue of power granted by law, ordinance, policy, rule, or by virtue of the office held.

(7) "Public agency" means any administrative or legislative unit of state, county or municipal government, including any
department, division, bureau, office, commission, authority, board, public corporation, section, committee, subcommittee or any other agency or subunit of the foregoing, authorized by law to exercise some portion of executive or legislative power. The term “public agency” does not include courts created by article eight of the West Virginia Constitution or the system of family law masters created by article four, chapter forty-eight-a of this code.

(8) “Quorum” means the gathering of a simple majority of the constituent membership of a governing body, unless applicable law provides for varying the required ratio.

(9) “Regular meeting” means a meeting of a governing body at which the regular business of the public is conducted.

(10) “Special meeting” means a meeting of a governing body other than a regular meeting or an emergency meeting.

§6-9A-3. Proceedings to be open; public notice of meetings.

(a) Except as expressly and specifically otherwise provided by law, whether heretofore or hereinafter enacted, and except as provided in section four of this article, all meetings of any governing body shall be open to the public.

(b) Any governing body may make and enforce reasonable rules for attendance and presentation at any meeting where there is not room enough for all members of the public who wish to attend.

(c) This article does not prohibit the removal from a meeting of any member of the public who is disrupting the meeting to the extent that orderly conduct of the meeting is compromised: Provided, That persons who desire to address the governing body may not be required to register to address the body more than fifteen minutes prior to time the scheduled meeting is to commence.
(d) Each governing body shall promulgate rules by which the date, time, place and agenda of all regularly scheduled meetings and the date, time, place and purpose of all special meetings are made available, in advance, to the public and news media.

(e) Each governing body of the executive branch of the state shall electronically file a notice of each meeting with the Secretary of State for publication on the Secretary of State’s website.

(1) Each notice shall state the date, time, place and purpose of the meeting.

(2) Each notice of a special meeting or a regular meeting shall be filed in a manner to allow each notice to appear on the Secretary of State’s website at least five business days prior to the date of the meeting.

(3) When calculating the days, the day of the meeting is not to be counted. If a meeting notice is filed anytime other than during the Secretary of State’s regular business hours, the date of filing will be considered the next business day.

(f) The Secretary of State shall retain copies of all notices filed for ten years.

(g) The Secretary of State may promulgate procedural rules governing the electronic filing of meeting notices.

(h) In the event of an emergency a governing body may call an emergency meeting.

(1) The governing body of a state executive branch agency shall electronically file a notice for an emergency meeting with the Secretary of State, as soon as practicable prior to the meeting. Any other governing body shall notice an emergency meeting in a manner which is consistent with this article and the Ethics Commission Committee on Open Governmental
Meeting's opinions issued pursuant to the authority of section ten of this article, as soon as practicable prior to the meeting.

(2) The emergency meeting notice shall state the date, time, place and purpose of the meeting and the facts and circumstances of the emergency.

(i) Upon petition by any adversely affected party any court of competent jurisdiction may invalidate any action taken at any meeting for which notice did not comply with the requirements of this section.

CHAPTER 144

(Com Sub. for H. B. 2534 - By Delegates Morgan, Stephens, Diserio, Jones, Paxton and P. Smith)

[Passed April 13, 2013; in effect ninety days from passage.]
[Approved by the Governor on May 1, 2013.]

AN ACT to amend the Code of West Virginia, 1931, as amended by adding thereto a new article, designated §47-26-1, §47-26-2, §47-26-3 and §47-26-4, all relating to the regulation of pawn brokers; defining terms; requiring transaction records; creating offenses; specifying misdemeanor criminal penalty for violations; requiring record retention; and allowing for additional local regulation by municipalities or counties.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §47-26-1, §47-26-2, §47-26-3 and §47-26-4, all to read as follows:
ARTICLE 26. PAWN BROKERS.

§47-26-1. Definitions.

(a) "Pawnbroker" means any person, partnership, association or corporation or employee thereof advancing money in a pawn transaction in exchange for collateral in the property of the pledgor. Pawnbroker does not mean any bank which is regulated by the West Virginia Division of Financial Institutions; the Comptroller of the Currency of the United States; the Federal Deposit Insurance Corporation; the Board of Governors of the Federal Reserve System or any other federal or state authority; and all affiliates thereof and any bank or savings and loan association whose deposits or accounts are eligible for insurance by the Bank Insurance Fund or the Savings Association Insurance Fund or other fund administered by the Federal Deposit Insurance Corporation all affiliates thereof, any state or federally chartered credit union, and any finance company subject to licensing and regulation by the West Virginia Division of Financial Institutions.

(b) "Pawn transaction" means a transaction between a pawnbroker and a pledgor where the pledgor's property is placed in the possession of the pawnbroker as security for money or other valuable consideration provided to the pledgor on the condition that the pledgor may pay a pawn charge and redeem his or her property within a predetermined time frame. Pawn transactions do not include those transactions where securities, titles or printed evidence of indebtedness are used as security for the transaction.

(c) "Pledgor" means a person who delivers the pledge into the possession of a pawnbroker.

(d) "Purchase" or "purchase transaction" means the transfer and delivering of goods by a person to a pawnbroker by
acquisition for value, consignment or trade for other goods. This
definition does not include purchases by pawnbrokers of items
not used or intended for resale, consignment or trade of the item
to another.


(a) All pawnbrokers shall make and maintain a transaction
report on all purchase or pawn transactions, except for refinance
pawn transactions or merchandise bought from a manufacturer
or wholesaler with an established place of business. The required
transaction report shall include the following:

1. The date of the transaction;
2. The name of the seller;
3. The name of the clerk who handled the transaction;
4. The corresponding pawn ticket number;
5. The terms of the loan or purchase;
6. A copy of the seller’s or pledger’s government photo
   identification and type; Provided, That if the seller or pledger
   does not have a government issued photo identification, the
   pawnbroker shall have a photograph of the seller or pledger; and
7. A detailed description of the property.

(b) For purposes of meeting the requirements of subsection
(a) of this section, a detailed description of the property shall
include the following:

1. In the case of firearms, the description shall include the
   brand, model, caliber, type, and serial number;
2. In the case of jewelry, the type of jewelry presented, the
   karat weight, whether it is made of white gold, yellow gold or
   other precious metals, and other description of the stones, shape,
cut, and oddities, etc. which are sufficient to describe the article
of jewelry;

(3) In the case of other types of articles and property, the
description shall include the type of article, brand, model and
serial number on the article, or any other such identifying
information or description to which is sufficient to specifically
describe the item or property.

(c) The seller or pledger shall be required to sign the pawn
transaction statement or purchase transaction statement; and a
signed statement from the seller or pledger affirming ownership
shall appear on the bill of sale or pawn ticket that is completed
by the seller or pledger at the time of the transaction.

(d) The pawnbroker shall maintain the original of all
purchase or pawn transaction statements for three years, and
shall make the original copies of the purchase or pawn
transaction statements available for inspection by law
enforcement officers and law enforcement agencies upon request
during the posted hours of operation of the business.

(e) The information required to be collected pursuant to this
section is confidential, is not public record, and should only be
disclosed as provided in this section or otherwise provided by
law: Provided. That the confidential nature of this information
in no way impedes the pawnbroker’s duty to accurately collect
and timely provide the information to law enforcement.

§47-26-3. Penalties; pawnbroker.

A pawnbroker who violates the provisions of this article is
guilty of a misdemeanor, and shall be fined not less than $100
and not more than $200 for each offense.

§47-26-4. County and municipal regulation of pawnbrokers.

This article may not be construed to prohibit or otherwise
limit any county or municipality of this state from adopting an
ordinance, to the extent that the ordinance does not conflict or create lesser requirements than this article or any other provision of this code, establishing additional requirements of pawnbrokers within its jurisdiction. Pawnbrokers located in a county or municipality in which an ordinance establishes reporting requirements to local law-enforcement officials are not required to provide duplicate information to other law-enforcement officials pursuant to section three of this article.

CHAPTER 145

(S. B. 460 - By Senators Wells, Green, Barnes, Beach, Edgell, Fitzsimmons, Laird, Snyder, Sypolt, Walters, Yost, Unger, Kessler (Mr. President), Stollings, Jenkins, Cann, Plymale and Williams)

[Passed April 13, 2013; in effect ninety days from passage.]
[Approved by the Governor on April 30, 2013.]

AN ACT to amend and reenact §11-21-12e of the Code of West Virginia, 1931, as amended, relating to exempting active duty military pay for resident individuals serving thirty or more continuous days on active duty in the armed forces of the United States, National Guard or armed forces reserves for the taxable year in which the individual has separated from active military service; and providing a limitation.

Be it enacted by the Legislature of West Virginia:

That §11-21-12e of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:
ARTICLE 21. PERSONAL INCOME TAX.

PART II. RESIDENTS.

§11-21-12e. Additional modification reducing federal adjusted gross income.

(a) For taxable years beginning after December 31, 2000, in addition to amounts authorized to be subtracted from federal adjusted gross income pursuant to subsection (c), section twelve of this article, active duty military pay received for the period of time an individual is on active duty as a member of the National Guard or armed forces reserve called to active duty pursuant to an Executive Order of the President of the United States for duty in Operation Enduring Freedom or for domestic security duty is an authorized modification reducing federal adjusted gross income, but only to the extent the active duty military pay is included in federal adjusted gross income for the taxable year in which it is received.

(b) For taxable years beginning after December 31, 2012, in addition to amounts authorized to be subtracted from federal adjusted gross income pursuant to subsection (c), section twelve of this article, active duty military pay received by a resident individual who is on active duty for thirty continuous days or more in the armed forces of the United States, the National Guard or armed forces reserve is an authorized modification reducing federal adjusted gross income for the taxable year in which the individual has separated from active military service, but only to the extent the active duty military pay is included in federal adjusted gross income for the taxable year in which it is received.
AN ACT to amend and reenact §53-8-4 of the Code of West Virginia, 1931, as amended, relating generally to personal safety orders; amending the grounds for issuance of a personal safety order; and establishing venue for issuance of a personal safety order.

Be it enacted by the Legislature of West Virginia:

That §53-8-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 8. PERSONAL SAFETY ORDERS.

§53-8-4. Petition seeking relief.

(a) Underlying acts. – A petitioner may seek relief under this article by filing with a magistrate court a petition that alleges the commission of any of the following acts against the petitioner by the respondent:

1. A sexual offense or attempted sexual offense as defined in section one of this article;

2. A violation of subsection (a), section nine-a, article two, chapter sixty-one of this code; or

3. Repeated credible threats of bodily injury when the person making the threats knows or has reason to know that the threats cause another person to reasonably fear for his or her safety.
(b) Contents. –

The petition shall:

(1) Be verified and provide notice to the petitioner that an individual who knowingly provides false information in the petition is guilty of a misdemeanor and, on conviction, is subject to the penalties specified in subsection (d) of this section;

(2) Subject to the provisions of subsection (c) of this section, contain the address of the petitioner; and

(3) Include all information known to the petitioner of:

(A) The nature and extent of the act specified in subsection (a) of this section for which the relief is being sought, including information known to the petitioner concerning previous harm or injury resulting from an act specified in subsection (a) of this section by the respondent;

(B) Each previous and pending action between the parties in any court; and

(C) The whereabouts of the respondent.

(c) Address may be stricken. – If, in a proceeding under this article, a petitioner alleges, and the court finds, that the disclosure of the address of the petitioner would risk further harm to the petitioner or a member of the petitioner's household, that address may be stricken from the petition and omitted from all other documents filed with, or transferred to, a court.

(d) Providing false information. – An individual who knowingly provides false information in a petition filed under this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $50 nor more than $1,000 or confined in jail not more than ninety days, or both.

(e) Withdrawal or dismissal of a petition prior to adjudication operates as a dismissal without prejudice. – No action for a personal safety order may be dismissed because the
respondent is being prosecuted for a crime against the petitioner. For any action commenced under this article, dismissal of a case or a finding of not guilty, does not require dismissal of the action for a civil protection order.

(f) Venue. – The action may be heard in the county in which any underlying act occurred for which relief is sought in the petition, in the county in which the respondent is living, or in the county in which the petitioner is living, either temporarily or permanently.

CHAPTER 147

(Com. Sub. for H. B. 2888 - By Delegates Miley, Fragale, Manchin, Fleischauer, Longstreth and Caputo)

[Passed April 13, 2013; in effect ninety days from passage.]  
[Approved by the Governor on May 1, 2013.]

AN ACT to amend and reenact §8-14-7 of the Code of West Virginia, 1931, as amended, relating to policemen's civil service commissions; authorizing commissioners to serve on other boards and commissions.

Be it enacted by the Legislature of West Virginia:

That §8-14-7 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 14. LAW AND ORDER; POLICE FORCE OR DEPARTMENTS; POWERS, AUTHORITY AND DUTIES OF LAW-ENFORCEMENT OFFICIALS AND POLICEMEN; POLICE
MATRONS; SPECIAL SCHOOL ZONE AND PARKING LOT OR PARKING BUILDING POLICE OFFICERS; CIVIL SERVICE FOR CERTAIN POLICE DEPARTMENTS.

§8-14-7. Policemen's civil service commission generally.

(a) In every Class I and Class II city having a paid police department, there shall be a "Policemen's Civil Service Commission."

(b) The commission shall consist of three commissioners, as follows:

(1) One shall be appointed by the mayor of the city;

(2) One shall be appointed by the local fraternal order of police; and

(3) One shall be appointed by the local chamber of commerce, or if there is none, by a local business association.

c) The commissioners shall be qualified voters of the city for which they are appointed.

(1) At least two of the commissioners shall be individuals in full sympathy with the purposes of the civil service provisions of this article.

(2) Not more than two of the commissioners, at any one time, may be registered to vote as members of the same political party.

(d) In the event there is no local chamber of commerce or local business association at the time any appointment is to be made by it, the appointment shall be made by the other two commissioners by mutual agreement.
(e) Members shall serve terms of four years, staggered in accordance with prior enactments of this section.

(f) (1) If any commissioner of the civil service commission ceases to be a member of the commission by virtue of death, final removal or other cause, a new commissioner shall be appointed to fill the unexpired term of the commissioner within ten days after the excommissioner has ceased to be a member of the commission.

(2) The appointment shall be made by the officer or body who in the first instance appointed the commissioner who is no longer a member of the commission, except that in the case of a vacancy in an appointment made by the Governor, which vacancy occurs after the effective date of this article, the appointment for the unexpired term shall be made by the mayor.

(g) Each year the three members of the commission shall, together, elect one of their number to act as president of the commission, who serves as president for one year.

(h) The mayor may, at any time, remove any commissioner or commissioners for good cause, which shall be stated in writing and made a part of the records of the commission.

(1) Once the mayor has removed any commissioner, the mayor shall within ten days file in the office of the clerk of the circuit court of the county in which the city or the major portion of the territory of the city is located a petition setting forth in full the reason for the removal and praying for the confirmation by the circuit court of the action of the mayor in so removing the commissioner.

(2) A copy of the petition shall be served upon the commissioner removed simultaneously with its filing in the office of the clerk of the circuit court and has precedence on the docket of the court and shall be heard by the court as soon as
practicable upon the request of the removed commissioner or commissioners.

(i) (1) All rights vested in the circuit court by this section may be exercised by the judge thereof in vacation.

(2) If no term of the circuit court is being held at the time of the filing of the petition, and the judge cannot be reached in the county in which the petition was filed, the petition shall be heard at the next succeeding term of the circuit court, whether regular or special, and the commissioner or commissioners removed remains removed until a hearing is had upon the petition of the mayor.

(3) The court or the judge thereof in vacation shall hear and decide the issues presented by the petition.

(j) (1) The mayor or commissioner or commissioners, as the case may be, against whom the decision of the court or the judge thereof in vacation is rendered, has the right to petition the Supreme Court of Appeals for a review of the decision of the circuit court or the judge thereof in vacation as in other civil cases.

(2) If the mayor fails to file a petition in the office of the clerk of the circuit court within ten days after the removal of the commissioner or commissioners, the commissioner or commissioners shall immediately resume his or her or their position or positions as a member or members of the policemen's civil service commission.

(k) Any resident of the city has the right at any time to file charges against and seek the removal of any member of the policemen's civil service commission of the city.

(1) The charges shall be filed in the form of a petition in the office of the clerk of the circuit court of the county in which the
city or the major portion of the territory of the city is located, and a copy of the petition shall be served upon the commissioner or commissioners sought to be removed.

(2) The petition shall be matured for hearing and heard by the circuit court or the judge thereof in vacation in the same manner as civil proceedings in the circuit courts of this state are heard, and the party against whom the circuit court's decision is rendered has the right to petition the Supreme Court of Appeals for a review of the action of the circuit court, as in other civil cases.

(1) A commissioner may not hold another office under the United States, this state, or any municipality, county or other political subdivision thereof, nor may a commissioner serve on a political committee or take an active part in the management of a political campaign, except that a commissioner may serve as a notary public or on another local, regional or state board or commission in a part-time capacity.

CHAPTER 148

(Com. Sub. for H. B. 2577 - By Delegates Perdue, Perry, Eldridge, Lawrence and Staggers)

[Passed April 13, 2013; in effect July 1, 2013.]
[Approved by the Governor on May 3, 2013.]

AN ACT to repeal §30-5-1a, §30-5-1b, §30-5-2a, §30-5-3a, §30-5-5a, §30-5-5b, §30-5-6a, §30-5-7a, §30-5-7b, §30-5-7c, §30-5-9a, §30-5-10a, §30-5-12c, §30-5-14a, §30-5-14b, §30-5-16a, §30-5-16b, §30-5-16c and §30-5-22a of the Code of West Virginia, 1931, as amended; to amend and reenact §29-29-3 of said code; to
amend and reenact §30-5-1, §30-5-2, §30-5-3, §30-5-4, §30-5-5, §30-5-6, §30-5-7, §30-5-8, §30-5-9, §30-5-10, §30-5-11, §30-5-12, §30-5-13, §30-5-14, §30-5-15, §30-5-16, §30-5-17, §30-5-18, §30-5-19, §30-5-20, §30-5-21, §30-5-22, §30-5-23, §30-5-24, §30-5-26, §30-5-27, §30-5-28 and §30-5-30 of said code; to amend said code by adding thereto six new sections, designated §30-5-25, §30-5-29, §30-5-31, §30-5-32, §30-5-33 and §30-5-34; to amend and reenact §60A-8-7 of said code; to amend and reenact §60A-10-3 of said code; and to amend and reenact §60A-10-5 of said code, all relating to pharmacy practice; prohibiting the practice of pharmacist care without a license; permitting a licensed practitioner to dispense in certain settings; providing other applicable sections; providing definitions; providing for board composition and qualifications; setting forth the powers and duties of the board; clarifying rule-making authority; continuing a special revenue account; establishing license, registration and permit requirements; establishing qualifications for licensure as a pharmacist and registration as a pharmacy technician; creating a scope of practice for pharmacists and pharmacy technicians; establishing requirements for a pharmacy intern to assist in practice of pharmacy care; creating a temporary permit; prohibiting the dispensing of prescription orders in absence of a practitioner-patient relationship; providing for reciprocal licensure; establishing renewal requirements; providing for exemptions from licensure; creating a special volunteer license; providing requirement to participate in collaborative pharmacy practice; providing for collaborative pharmacy practice agreements; providing requirements for dispensing generic drugs; requiring and authorizing registration of pharmacies; establishing for permit for mail-order pharmacies and the manufacturing of drugs; providing requirements of filling prescriptions; providing requirements for the display of a board authorization; establishing requirements for pharmacist-in-charge; setting forth limitations of the article; permitting the board to file an injunction; setting forth grounds for disciplinary actions; allowing for specific disciplinary actions;
providing procedures for investigation of complaints; providing duty to warn; providing for judicial review and appeals of decisions; setting forth hearing and notice requirements; providing for civil causes of action; providing criminal offenses are to be reported to law enforcement; and updating internal references.

Be it enacted by the Legislature of West Virginia:

That §30-5-1a, §30-5-1b, §30-5-2a, §30-5-3a, §30-5-5a, §30-5-5b, §30-5-6a, §30-5-7a, §30-5-7b, §30-5-7c, §30-5-9a, §30-5-10a, §30-5-12c, §30-5-14a, §30-5-14b, §30-5-16a, §30-5-16b, §30-5-16c and §30-5-22a of the Code of West Virginia, 1931, as amended, be repealed; that §29-29-3 of said code be amended and reenacted; that §30-5-1, §30-5-2, §30-5-3, §30-5-4, §30-5-5, §30-5-6, §30-5-7, §30-5-8, §30-5-9, §30-5-10, §30-5-11, §30-5-12, §30-5-13, §30-5-14, §30-5-15, §30-5-16, §30-5-17, §30-5-18, §30-5-19, §30-5-20, §30-5-21, §30-5-22, §30-5-23, §30-5-24, §30-5-26, §30-5-27, §30-5-28 and §30-5-30 of said code be amended and reenacted; that said code be amended by adding thereto six new sections, designated §30-5-25, §30-5-29, §30-5-31, §30-5-32, §30-5-33 and §30-5-34; that §60A-8-7 of said code be amended and reenacted; that §60A-10-3 of said code be amended and reenacted; and that §60A-10-5 of said code be amended and reenacted, all to read as follows:

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

ARTICLE 29. VOLUNTEER FOR NONPROFIT YOUTH ORGANIZATIONS ACT.

§29-29-3. Definitions.

1 As used in this article:

2 (a) "Applicant" means any emergency medical service
3 applicant, law-enforcement applicant or medical services
4 applicant, that is registered as a volunteer of the nonprofit
organization, making application for a nonprofit volunteer permit under the provisions of this article.

(b) "Appropriate licensing agency" means the board, department, division or other agency in each jurisdiction charged with the licensing, certification or permitting of persons performing services of the nature and kind described or duties provided for in this article.

c) "Emergency medical service applicant" means a person authorized to provide emergency medical services in West Virginia, or in another state who but for this article would be required to obtain a certification from the Commissioner of the Bureau for Public Health pursuant to article eight, chapter sixteen of this code to perform emergency medical services in this state.

d) "Law-enforcement applicant" means a person authorized to work as a law-enforcement officer in West Virginia, or in another state who but for this article would be required to obtain authorization pursuant to article twenty-nine, chapter thirty of this code to work as a law-enforcement officer in this state: Provided, That any person authorized to work as a law-enforcement officer in another state shall have completed a training program approved by the governing authority of a political subdivision in order to work as a law-enforcement officer in that state.

e) "Medical services applicant" means a person authorized to provide medical services in West Virginia, or in another state who but for this article would be required to obtain authorization to practice in this state, and who is a:

(1) Practitioner of medicine, surgery or podiatry as defined in article three, chapter thirty of this code;

(2) Physician assistant as defined in section three, article three, chapter thirty of this code;
37 (3) Chiropractor as defined in section three, article sixteen, chapter thirty of this code;
38 (4) Dentist or dental assistant as defined in article four, chapter thirty of this code;
39 (5) Nurse as defined in article seven or seven-a, chapter thirty of this code;
40 (6) Nurse practitioner as defined in section one, article four-b, chapter nine of this code;
41 (7) Occupational therapist as defined in section three, article twenty-eight, chapter thirty of this code;
42 (8) Practitioner of optometry as defined in section three, article eight, chapter thirty of this code;
43 (9) Osteopathic physician or surgeon as defined in article fourteen, chapter thirty of this code;
44 (10) Osteopathic physician assistant as defined in article fourteen-a, chapter thirty of this code;
45 (11) Pharmacist as defined in article five, chapter thirty of this code;
46 (12) Physical therapist as defined in article twenty, chapter thirty of this code;
47 (13) Professional counselor as defined in section three, article thirty-one, chapter thirty of this code;
48 (14) Practitioner of psychology or school psychologist as defined in section two, article twenty-one, chapter thirty of this code;
49 (15) Radiologic technologist, nuclear medicine technologist or practitioner of medical imaging and radiation therapy technology as defined in section four, article twenty-three, chapter thirty of this code; and
(16) Social worker licensed by the state Board of Social Work Examiners pursuant to article thirty, chapter thirty of this code.

(f) "Nonprofit volunteer permit" or "permit" means a permit issued to an applicant pursuant to the provisions of this article.

(g) "Nonprofit volunteer permittee" or "permittee" means a person holding a nonprofit volunteer permit issued under the provisions of this article.

(h) "Nonprofit youth organization" or "organization" means any nonprofit organization, including any subsidiary, affiliated or other related entity within its corporate or business structure, that has been chartered by the United States Congress to help train young people to do things for themselves and others, and that has established an area of at least six thousand contiguous acres within West Virginia in which to provide adventure or recreational activities for these young people and others.

(i) "Nonprofit volunteer organization medical director" means an individual licensed in West Virginia as a practitioner of medicine or surgery pursuant to article three, chapter thirty of this code, or an individual licensed in West Virginia as an osteopathic physician or surgeon pursuant to article fourteen, chapter thirty of this code, that has been designated by the nonprofit volunteer organization to serve as the medical director for an event or program offered by the organization.

CHAPTER 30. PROFESSIONS AND OCCUPATIONS.

ARTICLE 5. PHARMACISTS, PHARMACY TECHNICIANS, PHARMACY INTERNS AND PHARMACIES.

§30-5-1. Short title.

This article shall be known as and may be cited as the "The Larry W. Border Pharmacy Practice Act".
§30-5-2. Unlawful acts.

(a) It is unlawful for any person in this state to practice or offer to practice pharmacist care without a license pursuant to the provisions of this article; or to practice or offer to assist in the practice of pharmacist care without being registered pursuant to the provisions of this article. Further, it is unlawful to advertise or use any title or description tending to convey or give the impression that he or she is a pharmacist or pharmacy technician, unless the person is licensed or registered under the provisions of this article.

(b) A business entity may not render any service or engage in any activity which, if rendered or engaged in by an individual, would constitute the practice of pharmacist care, except through a licensee.

(c) It is unlawful for the proprietor of a pharmacy or an ambulatory health care facility to permit a person, who is not a licensed pharmacist, to practice pharmacist care: Provided, That a charitable clinic pharmacy may permit a licensed prescribing practitioner to act in place of the pharmacist when no pharmacist is present in the charitable clinic.

§30-5-3. Applicable law.

The practices authorized under the provisions of this article and the Board of Pharmacy are subject to article one of this chapter, the provisions of this article, and any rules promulgated pursuant this article.

§30-5-4. Definitions.

As used in this article:

(1) "Ambulatory health care facility" includes any facility defined in section one, article five-b, chapter sixteen of this code, that also has a pharmacy, offers pharmacist care, or is otherwise engaged in the practice of pharmacist care.
(2) "Active Ingredients" means chemicals, substances, or other components of articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of diseases in humans or animals or for use as nutritional supplements.

(3) "Administer" means the direct application of a drug to the body of a patient or research subject by injection, inhalation, ingestion or any other means.

(4) "Board" means the West Virginia Board of Pharmacy.

(5) "Board authorization" means a license, registration or permit issued under this article.

(6) "Chain Pharmacy Warehouse" means a permanent physical location for drugs and/or devices that acts as a central warehouse and performs intracompany sales and transfers of prescription drugs or devices to chain pharmacies, which are members of the same affiliated group, under common ownership and control.

(7) "Charitable clinic pharmacy" means a clinic or facility organized as a not-for-profit corporation that has a pharmacy, offers pharmacist care, or is otherwise engaged in the practice of pharmacist care and dispenses its prescriptions free of charge to appropriately screened and qualified indigent patients.

(8) "Collaborative pharmacy practice" is that practice of pharmacist care where one or more pharmacists have jointly agreed, on a voluntary basis, to work in conjunction with one or more physicians under written protocol where the pharmacist or pharmacists may perform certain patient care functions authorized by the physician or physicians under certain specified conditions and limitations.

(9) "Collaborative pharmacy practice agreement" is a written and signed agreement, which is a physician directed approach,
that is entered into between an individual physician or physician
37
group, an individual pharmacist or pharmacists and an individual
38
patient or the patient’s authorized representative who has given
39
informed consent that provides for collaborative pharmacy
40
practice for the purpose of drug therapy management of a
41
patient, which has been approved by the board, the Board of
42
Medicine in the case of an allopathic physician or the West
43
Virginia Board of Osteopathic Medicine in the case of an
44
osteopathic physician.

(10) “Common Carrier” means any person or entity who
undertakes, whether directly or by any other arrangement, to
transport property including prescription drugs for compensa-
tion.

(11) “Component” means any active ingredient or added
substance intended for use in the compounding of a drug
product, including those that may not appear in such product.

(12) “Compounding” means:

(A) The preparation, mixing, assembling, packaging or
labeling of a drug or device:

(i) As the result of a practitioner’s prescription drug order or
initiative based on the practitioner/patient/pharmacist
relationship in the course of professional practice for sale or
dispensing; or

(ii) For the purpose of, or as an incident to, research,
teaching or chemical analysis and not for sale or dispensing; and

(B) The preparation of drugs or devices in anticipation of
prescription drug orders based on routine, regularly observed
prescribing patterns.

(13) “Deliver” or “delivery” means the actual, constructive
or attempted transfer of a drug or device from one person to
another, whether or not for a consideration.
(14) "Device" means an instrument, apparatus, implement or machine, contrivance, implant or other similar or related article, including any component part or accessory, which is required under federal law to bear the label, "Caution: Federal or state law requires dispensing by or on the order of a physician".

(15) "Digital Signature" means an electronic signature based upon cryptographic methods of originator authentication, and computed by using a set of rules and a set of parameters so that the identity of the signer and the integrity of the data can be verified.

(16) "Dispense" or "dispensing" means the interpretation, evaluation, and implementation of a prescription drug order, including the preparation, verification and delivery of a drug or device to a patient or patient's agent in a suitable container appropriately labeled for subsequent administration to, or use by, a patient.

(17) "Distribute" or "Distribution" means to sell, offer to sell, deliver, offer to deliver, broker, give away, or transfer a drug, whether by passage of title, physical movement, or both. The term does not include:

(A) To dispense or administer;

(B) (i) Delivering or offering to deliver a drug by a common carrier in the usual course of business as a common carrier; or providing a drug sample to a patient by a practitioner licensed to prescribe such drug;

(ii) A health care professional acting at the direction and under the supervision of a practitioner; or the pharmacy of a hospital or of another health care entity that is acting at the direction of such a practitioner and that received such sample in accordance with the Prescription Drug Marketing Act and regulations to administer or dispense;
(iii) Intracompany sales.

(18) "Drop shipment" means the sale of a prescription drug to a wholesale distributor by the manufacturer of the prescription drug or by that manufacturer's colicensed product partner, that manufacturer's third party logistics provider, that manufacturer's exclusive distributor, or by an authorized distributor of record that purchased the product directly from the manufacturer or from one of these entities whereby:

(A) The wholesale distributor takes title to but not physical possession of such prescription drug;

(B) The wholesale distributor invoices the pharmacy, pharmacy warehouse, or other person authorized by law to dispense or administer such drug; and

(C) The pharmacy, pharmacy warehouse or other person authorized by law to dispense or administer such drug receives delivery of the prescription drug directly from the manufacturer or from that manufacturer's colicensed product partner, that manufacturer's third party logistics provider, that manufacturer's exclusive distributor, or from an authorized distributor of record that purchased the product directly from the manufacturer or from one of these entities.

(19) "Drug" means:

(A) Articles recognized as drugs by the United States Food and Drug Administration, or in any official compendium, or supplement;

(B) An article, designated by the board, for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans or other animals;

(C) Articles, other than food, intended to affect the structure or any function of the body of human or other animals; and
(D) Articles intended for use as a component of any articles specified in paragraph (A), (B) or (C) of this subdivision.

(20) “Drug regimen review” includes, but is not limited to, the following activities:

(A) Evaluation of the prescription drug orders and if available, patient records for:

(i) Known allergies;
(ii) Rational therapy-contraindications;
(iii) Reasonable dose and route of administration; and
(iv) Reasonable directions for use.

(B) Evaluation of the prescription drug orders and patient records for duplication of therapy.

(C) Evaluation of the prescription drug for interactions and/or adverse effects which may include, but are not limited to, any of the following:

(i) Drug-drug;
(ii) Drug-food;
(iii) Drug-disease; and
(iv) Adverse drug reactions.

(D) Evaluation of the prescription drug orders and if available, patient records for proper use, including overuse and underuse and optimum therapeutic outcomes.

(21) “Drug therapy management” means the review of drug therapy regimens of patients by a pharmacist for the purpose of evaluating and rendering advice to a physician regarding adjustment of the regimen in accordance with the collaborative pharmacy practice agreement. Decisions involving drug therapy
management shall be made in the best interest of the patient.

Drug therapy management is limited to:

(A) Implementing, modifying and managing drug therapy according to the terms of the collaborative pharmacy practice agreement;

(B) Collecting and reviewing patient histories;

(C) Obtaining and checking vital signs, including pulse, temperature, blood pressure and respiration;

(D) Ordering screening laboratory tests that are dose related and specific to the patient’s medication or are protocol driven and are also specifically set out in the collaborative pharmacy practice agreement between the pharmacist and physician.

(22) “Electronic data intermediary” means an entity that provides the infrastructure to connect a computer system, hand-held electronic device or other electronic device used by a prescribing practitioner with a computer system or other electronic device used by a pharmacy to facilitate the secure transmission of:

(A) An electronic prescription order;

(B) A refill authorization request;

(C) A communication; or

(D) Other patient care information.

(23) “E-prescribing” means the transmission, using electronic media, of prescription or prescription-related information between a practitioner, pharmacist, pharmacy benefit manager or health plan as defined in 45 CFR $160.103, either directly or through an electronic data intermediary. E-prescribing includes, but is not limited to, two-way transmissions between the point of care and the pharmacist.
E-prescribing may also be referenced by the terms “electronic prescription” or “electronic order”.

(24) “Electronic Signature” means an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.

(25) “Electronic transmission” means transmission of information in electronic form or the transmission of the exact visual image of a document by way of electronic equipment.

(26) “Emergency medical reasons” include, but are not limited to, transfers of a prescription drug by one pharmacy to another pharmacy to alleviate a temporary shortage of a prescription drug; sales to nearby emergency medical services, i.e., ambulance companies and firefighting organizations in the same state or same marketing or service area, or nearby licensed practitioners of prescription drugs for use in the treatment of acutely ill or injured persons; and provision of minimal emergency supplies of prescription drugs to nearby nursing homes for use in emergencies or during hours of the day when necessary prescription drugs cannot be obtained.

(27) “Exclusive distributor” means an entity that:

(A) Contracts with a manufacturer to provide or coordinate warehousing, wholesale distribution, or other services on behalf of a manufacturer and who takes title to that manufacturer’s prescription drug, but who does not have general responsibility to direct the sale or disposition of the manufacturer’s prescription drug; and

(B) Is licensed as a wholesale distributor under this article.

(28) “FDA” means the Food and Drug Administration, a federal agency within the United States Department of Health and Human Services.
(29) "Health care entity'' means a person that provides diagnostic, medical, pharmacist care, surgical, dental treatment, or rehabilitative care but does not include a wholesale distributor.

(30) "Health information'' means any information, whether oral or recorded in a form or medium, that:

(A) Is created or received by a health care provider, health plan, public health authority, employer, life insurer, school or university, or health care clearinghouse, and

(B) Relates to the past, present, or future physical or mental health or condition of an individual; or the past, present, or future payment for the provision of health care to an individual.

(31) "HIPAA" is the federal Health Insurance Portability and Accountability Act of 1996 (Public Law 104-191).

(32) "Immediate container'' means a container and does not include package liners.

(33) "Individually identifiable health information'' is information that is a subset of health information, including demographic information collected from an individual and is created or received by a health care provider, health plan, employer, or health care clearinghouse; and relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; and that identifies the individual; or with respect to which there is a reasonable basis to believe the information can be used to identify the individual.

(34) "Intracompany sales'' means any transaction between a division, subsidiary, parent, and/or affiliated or related company under the common ownership and control of a corporate or other legal business entity.
(35) "Label" means a display of written, printed, or graphic matter upon the immediate container of any drug or device.

(36) "Labeling" means the process of preparing and affixing a label to a drug container exclusive, however, of a labeling by a manufacturer, packer or distributor of a nonprescription drug or commercially packaged prescription drug or device.

(37) "Long-Term care facility" means a nursing home, retirement care, mental care, or other facility or institution that provides extended health care to resident patients.

(38) "Mail-order pharmacy" means a pharmacy, regardless of its location, which dispenses greater than twenty-five percent prescription drugs via the mail or other delivery services.

(39) "Manufacturer" means any person who is engaged in manufacturing, preparing, propagating, processing, packaging, repackaging or labeling of a prescription drug, whether within or outside this state.

(40) "Manufacturing" means the production, preparation, propagation or processing of a drug or device, either directly or indirectly, by extraction from substances of natural origin or independently by means of chemical or biological synthesis and includes any packaging or repackaging of the substance or substances or labeling or relabeling of its contents and the promotion and marketing of the drugs or devices. Manufacturing also includes the preparation and promotion of commercially available products from bulk compounds for resale by pharmacies, practitioners or other persons.

(41) "Medical order" means a lawful order of a practitioner that may or may not include a prescription drug order.

(42) "Medication therapy management" is a distinct service or group of services that optimize medication therapeutic outcomes for individual patients. Medication therapy management services are independent of, but can occur in
conjunction with, the provision of a medication or a medical device. Medication therapy management encompasses a broad range of professional activities and responsibilities within the licensed pharmacist’s scope of practice.

These services may include the following, according to the individual needs of the patient:

(A) Performing or obtaining necessary assessments of the patient’s health status pertinent to medication therapy management;

(B) Optimize medication use, performing medication therapy, and formulating recommendations for patient medication care plans;

(C) Developing therapeutic recommendations, to resolve medication related problems;

(D) Monitoring and evaluating the patient’s response to medication therapy, including safety and effectiveness;

(E) Performing a comprehensive medication review to identify, resolve, and prevent medication-related problems, including adverse drug events;

(F) Documenting the care delivered and communicating essential information to the patient’s primary care providers;

(G) Providing verbal education and training designed to enhance patient understanding and appropriate use of his or her medications;

(H) Providing information, support services and resources designed to enhance patient adherence with his or her medication therapeutic regimens;

(I) Coordinating and integrating medication therapy management services within the broader health care management services being provided to the patient; and
Such other patient care services as may be allowed by law.

(43) "Misbranded" means a drug or device that has a label that is false or misleading in any particular; or the label does not bear the name and address of the manufacturer, packer, or distributor and does not have an accurate statement of the quantities of the active ingredients in the case of a drug; or the label does not show an accurate monograph for prescription drugs.

(44) "Nonprescription drug" means a drug which may be sold without a prescription and which is labeled for use by the consumer in accordance with the requirements of the laws and rules of this state and the federal government.

(45) "Normal distribution channel" means a chain of custody for a prescription drug that goes directly or by drop shipment, from a manufacturer of the prescription drug, the manufacturer's third-party logistics provider, or the manufacturer's exclusive distributor to:

(A) A wholesale distributor to a pharmacy to a patient or other designated persons authorized by law to dispense or administer such prescription drug to a patient;

(B) A wholesale distributor to a chain pharmacy warehouse to that chain pharmacy warehouse's intracompany pharmacy to a patient or other designated persons authorized by law to dispense or administer such prescription drug to a patient;

(C) A chain pharmacy warehouse to that chain pharmacy warehouse's intracompany pharmacy to a patient or other designated persons authorized by law to dispense or administer such prescription drug to a patient;

(D) A pharmacy or to other designated persons authorized by law to dispense or administer such prescription drug to a patient; or
(E) As prescribed by the board’s legislative rules.

(46) "Patient counseling" means the communication by the pharmacist of information, as prescribed further in the rules of the board, to the patient to improve therapy by aiding in the proper use of drugs and devices.

(47) "Pedigree" means a statement or record in a written form or electronic form, approved by the board, that records each wholesale distribution of any given prescription drug (excluding veterinary prescription drugs), which leaves the normal distribution channel.

(48) "Person" means an individual, corporation, partnership, association or any other legal entity, including government.

(49) "Pharmacist" means an individual currently licensed by this state to engage in the practice of pharmacist care.

(50) "Pharmacist Care" means the provision by a pharmacist of patient care activities, with or without the dispensing of drugs or devices, intended to achieve outcomes related to the cure or prevention of a disease, elimination or reduction of a patient’s symptoms, or arresting or slowing of a disease process and as provided for in section ten.

(51) "Pharmacist-in-charge" means a pharmacist currently licensed in this state who accepts responsibility for the operation of a pharmacy in conformance with all laws and legislative rules pertinent to the practice of pharmacist care and the distribution of drugs and who is personally in full charge of the pharmacy and pharmacy personnel.

(52) "Pharmacist’s scope of practice pursuant to the collaborative pharmacy practice agreement" means those duties and limitations of duties placed upon the pharmacist by the collaborating physician, as jointly approved by the board and the Board of Medicine or the West Virginia Board of Osteopathic Medicine.
(53) "Pharmacy" means any place within this state where drugs are dispensed and pharmacist care is provided and any place outside of this state where drugs are dispensed and pharmacist care is provided to residents of this state.

(54) "Pharmacy Intern" or "Intern" means an individual who is currently licensed to engage in the practice of pharmacist care while under the supervision of a pharmacist.

(55) "Pharmacy related primary care" means the pharmacist’s activities in patient education, health promotion, selection and use of over the counter drugs and appliances and referral or assistance with the prevention and treatment of health related issues and diseases.

(56) "Pharmacy Technician" means a person registered with the board to practice certain tasks related to the practice of pharmacist care as permitted by the board.

(57) "Physician" means an individual currently licensed, in good standing and without restrictions, as an allopathic physician by the West Virginia Board of Medicine or an osteopathic physician by the West Virginia Board of Osteopathic Medicine.

(58) "Practice of telepharmacy" means the provision of pharmacist care by properly licensed pharmacists located within United States jurisdictions through the use of telecommunications or other technologies to patients or their agents at a different location that are located within United States jurisdictions.

(59) "Practitioner" means an individual authorized by a jurisdiction of the United States to prescribe drugs in the course of professional practices, as allowed by law.

(60) "Prescription drug" means any human drug required by federal law or regulation to be dispensed only by prescription,
including finished dosage forms and active ingredients subject to section 503(b) of the federal food, drug and cosmetic act.

(61) "Prescription or prescription drug order" means a lawful order from a practitioner for a drug or device for a specific patient, including orders derived from collaborative pharmacy practice, where a valid patient-practitioner relationship exists, that is communicated to a pharmacist in a pharmacy.

(62) "Product Labeling" means all labels and other written, printed, or graphic matter upon any article or any of its containers or wrappers, or accompanying such article.

(63) "Repackage" means changing the container, wrapper, quantity, or product labeling of a drug or device to further the distribution of the drug or device.

(64) "Repackager" means a person who repackages.

(65) "Therapeutic equivalence" mean drug products classified as therapeutically equivalent can be substituted with the full expectation that the substituted product will produce the same clinical effect and safety profile as the prescribed product which contain the same active ingredient(s); dosage form and route of administration; and strength.

(66) "Third-party logistics provider" means a person who contracts with a prescription drug manufacturer to provide or coordinate warehousing, distribution or other services on behalf of a manufacturer, but does not take title to the prescription drug or have general responsibility to direct the prescription drug's sale or disposition. A third-party logistics provider shall be licensed as a wholesale distributor under this article and, in order to be considered part of the normal distribution channel, shall also be an authorized distributor of record.

(67) "Valid patient-practitioner relationship" means the following have been established:
(A) A patient has a medical complaint;

(B) A medical history has been taken;

(C) A face-to-face physical examination adequate to establish the medical complaint has been performed by the prescribing practitioner or in the instances of telemedicine through telemedicine practice approved by the appropriate practitioner board; and

(D) Some logical connection exists between the medical complaint, the medical history, and the physical examination and the drug prescribed.

(68) "Wholesale distribution" and "wholesale distributions" mean distribution of prescription drugs, including directly or through the use of a third-party logistics provider or any other situation in which title, ownership or control over the prescription drug remains with one person or entity but the prescription drug is brought into this state by another person or entity on his, her or its behalf, to persons other than a consumer or patient, but does not include:

(A) Intracompany sales, as defined in subdivision thirty-four of this subsection;

(B) The purchase or other acquisition by a hospital or other health care entity that is a member of a group purchasing organization of a drug for its own use from the group purchasing organization or from other hospitals or health care entities that are members of such organizations;

(C) The sale, purchase or trade of a drug or an offer to sell, purchase or trade a drug by a charitable organization described in section 501(c)(3) of the United States Internal Revenue Code of 1986 to a nonprofit affiliate of the organization to the extent otherwise permitted by law;

(D) The sale, purchase or trade of a drug or an offer to sell, purchase or trade a drug among hospitals or other health care
entities that are under common control. For purposes of this article, "common control" means the power to direct or cause the direction of the management and policies of a person or an organization, whether by ownership of stock, voting rights, by contract, or otherwise;

(E) The sale, purchase or trade of a drug or an offer to sell, purchase or trade a drug for "emergency medical reasons" for purposes of this article includes transfers of prescription drugs by a retail pharmacy to another retail pharmacy to alleviate a temporary shortage, except that the gross dollar value of such transfers shall not exceed five percent of the total prescription drug sales revenue of either the transferor or transferee pharmacy during any twelve consecutive month period;

(F) The sale, purchase or trade of a drug, an offer to sell, purchase, or trade a drug or the dispensing of a drug pursuant to a prescription;

(G) The distribution of drug samples by manufacturers' representatives or distributors' representatives, if the distribution is permitted under federal law [21 U. S. C. 353(d)];

(H) Drug returns by a pharmacy or chain drug warehouse to wholesale drug distributor or the drug's manufacturer; or

(J) The sale, purchase or trade of blood and blood components intended for transfusion.

(69) "Wholesale drug distributor" or "wholesale distributor" means any person or entity engaged in wholesale distribution of prescription drugs, including, but not limited to, manufacturers, repackers, own-label distributors, jobbers, private-label distributors, brokers, warehouses, including manufacturers' and distributors' warehouses, chain drug warehouses and wholesale drug warehouses, independent wholesale drug traders, prescription drug repackagers, physicians, dentists, veterinarians,
birth control and other clinics, individuals, hospitals, nursing homes and/or their providers, health maintenance organizations and other health care providers, and retail and hospital pharmacies that conduct wholesale distributions, including, but not limited to, any pharmacy distributor as defined in this section. A wholesale drug distributor shall not include any for hire carrier or person or entity hired solely to transport prescription drugs.

§30-5-5. West Virginia Board of Pharmacy.

(a) The West Virginia Board of Pharmacy is continued. The members of the board in office on July 1, 2013, shall, unless sooner removed, continue to serve until their respective terms expire and until their successors have been appointed and qualified.

(b) The Governor, by and with the advice and consent of the Senate, shall appoint:

(1) Five members who are licensed to practice pharmacist care in this state; and

(2) Two citizen members, who are not licensed under the provisions of this article, and who do not perform any services related to the practice of the pharmacist care regulated under the provisions of this article.

(c) After the initial appointment term, the appointment term is five years. A member may not serve more than two consecutive terms. A member who has served two consecutive full terms may not be reappointed for at least one year after completion of his or her second full term. A member may continue to serve until his or her successor has been appointed and qualified.

(d) Each licensed member of the board, at the time of his or her appointment, shall have held a license in this state for a
period of not less than three years immediately preceding the
appointment.

(e) Each member of the board shall be a resident of this state
during the appointment term.

(f) A vacancy on the board shall be filled by appointment by
the Governor for the unexpired term of the member whose office
is vacant.

(g) The Governor may remove any member from the board
for neglect of duty, incompetency or official misconduct.

(h) A licensed member of the board immediately and
automatically forfeits membership to the board if his or her
license to practice is suspended or revoked in any jurisdiction.

(i) A member of the board immediately and automatically
forfeits membership to the board if he or she is convicted of a
felony under the laws of any jurisdiction or becomes a
nonresident of this state.

(j) The board shall elect annually one of its members as
president, one member as vice president and one member as
treasurer who shall serve at the will and pleasure of the board.

(k) Each member of the board is entitled to receive
compensation and expense reimbursement in accordance with
article one of this chapter.

(l) A simple majority of the membership serving on the
board at a given time is a quorum for the transaction of business.

(m) The board shall hold at least two meetings annually.
Other meetings shall be held at the call of the chairperson or
upon the written request of three members, at the time and place
as designated in the call or request.

(n) Prior to commencing his or her duties as a member of the
board, each member shall take and subscribe to the oath required
by section five, article four of the Constitution of this state.
(o) The members of the board when acting in good faith and
without malice shall enjoy immunity from individual civil
liability while acting within the scope of their duties as board
members.

§30-5-6. Powers and duties of the board.

1 The board has all the powers and duties set forth in this
2 article, by rule, in article one of this chapter and elsewhere in
3 law, including the power to:
4
5 (a) Hold meetings;
6
7 (b) Establish additional requirements for a license, permit
8 and registration;
9
10 (c) Establish procedures for submitting, approving and
11 rejecting applications for a license, permit and registration;
12
13 (d) Determine the qualifications of any applicant for a
14 license, permit and registration;
15
16 (e) Establish a fee schedule;
17
18 (f) Issue, renew, deny, suspend, revoke or reinstate a license,
19 permit, and registration;
20
21 (g) Prepare, conduct, administer and grade written, oral or
22 written and oral examinations for a license and registration and
23 establish what constitutes passage of the examination;
24
25 (h) Contract with third parties to administer the examinations
26 required under the provisions of this article;
27
28 (i) Maintain records of the examinations the board or a third
29 party administers, including the number of persons taking the
30 examination and the pass and fail rate;
31
32 (j) Regulate mail order pharmacies;
33
34 (k) Maintain an office, and hire, discharge, establish the job
35 requirements and fix the compensation of employees and
contract with persons necessary to enforce the provisions of this article. Inspectors shall be licensed pharmacists;

(1) Investigate alleged violations of the provisions of this article, legislative rules, orders and final decisions of the board;

(m) Conduct disciplinary hearings of persons regulated by the board;

(n) Determine disciplinary action and issue orders;

(o) Institute appropriate legal action for the enforcement of the provisions of this article;

(p) Maintain an accurate registry of names and addresses of all persons regulated by the board;

(q) Keep accurate and complete records of its proceedings, and certify the same as may be necessary and appropriate;

(r) Propose rules in accordance with the provisions of article three, chapter twenty-nine-a of this code to implement the provisions of this article;

(s) Sue and be sued in its official name as an agency of this state;

(t) Confer with the Attorney General or his or her assistant in connection with legal matters and questions; and

(u) Take all other actions necessary and proper to effectuate the purposes of this article.

§30-5-7. Rule-making authority.

(a) The board shall propose rules for legislative approval, in accordance with the provisions of article three, chapter
twenty-nine-a of this code, to implement the provisions of this article, and articles two, three, eight, nine and ten of chapter sixty-A including:

(1) Standards and requirements for a license, permit and registration;

(2) Educational and experience requirements;

(3) Procedures for examinations and reexaminations;

(4) Requirements for third parties to prepare, administer or prepare and administer examinations and reexaminations;

(5) The passing grade on the examination;

(6) Procedures for the issuance and renewal of a license, permit and registration;

(7) A fee schedule;

(8) Continuing education requirements;

(9) Set standards for professional conduct;

(10) Establish equipment and facility standards for pharmacies;

(11) Approve courses and standards for training pharmacist technicians;

(12) Regulation of charitable clinic pharmacies;

(13) Regulation of mail order pharmacies: *Provided*, That until the board establishes requirements that provide further conditions for pharmacists whom consult with or who provide pharmacist care to patients regarding prescriptions dispensed in this state by a mail order pharmacy, the pharmacist in charge of the out-of-state mail order pharmacy shall be licensed in West
Virginia and any other pharmacist providing pharmacist care from the mail order pharmacy shall be licensed in the state where the pharmacy is located.

(14) Agreements with organizations to form pharmacist recovery networks;

(15) Create an alcohol or chemical dependency treatment program;

(16) Establish a ratio of pharmacy technicians to on-duty pharmacist operating in any outpatient, mail order or institutional pharmacy;

(17) Regulation of telepharmacy;

(18) The minimum standards for a charitable clinic pharmacy and rules regarding the applicable definition of a pharmacist-in-charge, who may be a volunteer, at charitable clinic pharmacies: Provided, That a charitable clinic pharmacy may not be charged any applicable licensing fees and such clinics may receive donated drugs.

(19) Establish standards for substituted drug products;

(20) Establish the regulations for E-prescribing;

(21) Establish the proper use of the automated data processing system;

(22) Registration and control of the manufacture and distribution of controlled substances within this state.

(23) Regulation of pharmacies;

(24) Sanitation and equipment requirements for wholesalers, distributers and pharmacies.

(25) Procedures for denying, suspending, revoking, reinstating or limiting the practice of a licensee, permittee or registrant;
(26) Regulations on prescription paper as provided in section five, article five-w, chapter sixteen;
(27) Regulations on controlled substances as provided in article two, chapter sixty-a;
(28) Regulations on manufacturing, distributing, or dispensing any controlled substance as provided in article three, chapter sixty-a;
(29) Regulations on wholesale drug distribution as provided in article eight, chapter sixty-a;
(30) Regulations on controlled substances monitoring as provided in article nine, chapter sixty-a;
(31) Regulations on Methamphetamine Laboratory Eradication Act as provided in article ten, chapter sixty-a; and
(32) Any other rules necessary to effectuate the provisions of this article.

(b) The board may provide an exemption to the pharmacist-in-charge requirement for the opening of a new retail pharmacy or during a declared emergency;

(c) The board, the Board of Medicine and the Board of Osteopathic Medicine shall jointly agree and propose rules concerning collaborative pharmacy practice for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of the code;

(d) The board with the advice of the Board of Medicine and the Board of Osteopathic Medicine shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code to perform influenza and pneumonia immunizations, on a person of eighteen years of age or older. These rules shall provide, at a minimum, for the following:
Establishment of a course, or provide a list of approved courses, in immunization administration. The courses shall be based on the standards established for such courses by the Centers for Disease Control and Prevention in the public health service of the United States Department of Health and Human Services;

(2) Definitive treatment guidelines which shall include, but not be limited to, appropriate observation for an adverse reaction of an individual following an immunization;

Prior to administration of immunizations, a pharmacist shall have completed a board approved immunization administration course and completed an American Red Cross or American Heart Association basic life-support training, and maintain certification in the same.

(4) Continuing education requirements for this area of practice;

(5) Reporting requirements for pharmacists administering immunizations to report to the primary care physician or other licensed health care provider as identified by the person receiving the immunization;

(6) Reporting requirements for pharmacists administering immunizations to report to the West Virginia Statewide Immunization Information (WVSII);

(7) That a pharmacist may not delegate the authority to administer immunizations to any other person; unless administered by a licensed pharmacy intern under the direct supervision of a pharmacist of whom both pharmacist and intern have successfully completed all board required training.

(8) Any other provisions necessary to implement the provisions of this section.
(e) The board, the Board of Medicine and the Board of Osteopathic Medicine shall propose joint rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code to permit licensed pharmacists to administer other immunizations such as Hepatitis A, Hepatitis B, Herpes Zoster and Tetanus. These rules shall provide, at a minimum, the same provisions contained in subsection (d)(1) through (d)(8) of this section.

(f) All of the board’s rules in effect and not in conflict with these provisions, shall remain in effect until they are amended or rescinded.

§30-5-8. Fees; special revenue account; administrative fines.

(a) All fees and other moneys, except fines, received by the board shall be deposited in a separate special revenue fund in the State Treasury designated the "Board of Pharmacy Fund", which fund is continued. The fund is used by the board for the administration of this article. Except as may be provided in article one of this chapter, the board shall retain the amounts in the special revenue account from year to year. Any compensation or expense incurred under this article is not a charge against the General Revenue Fund.

(b) The board shall deposit any amounts received as administrative fines imposed pursuant to this article into the General Revenue Fund of the State Treasury.

§30-5-9. Qualifications for licensure as pharmacist.

(a) To be eligible for a license to practice pharmacist care under the provisions of this article, the applicant shall:

(1) Submit a written application to the board;

(2) Be eighteen years of age or older;

(3) Pay all applicable fees;
(4) Graduate from an accredited school of pharmacy;

(5) Complete at least fifteen hundred hours of internship in a pharmacy under the instruction and supervision of a pharmacist;

(6) Pass an examination or examinations approved by the board;

(7) Not be an alcohol or drug abuser, as these terms are defined in section eleven, article one-a, chapter twenty-seven of this code: Provided, That an applicant in an active recovery process, which may, in the discretion of the board, be evidenced by participation in a twelve-step program or other similar group or process, may be considered;

(8) Present to the board satisfactory evidence that he or she is a person of good moral character, has not been convicted of a felony involving controlled substances or violent crime;

(9) Not been convicted in any jurisdiction of a felony or any crime which bears a rational nexus to the individual's ability to practice pharmacist care; and

(10) Has fulfilled any other requirement specified by the board in rule.

(b) An applicant from another jurisdiction shall comply with all the requirements of this article.

§30-5-10. Scope practice for licensed pharmacist.

(a) A licensed pharmacist may:

(1) Provide care related to the interpretation, evaluation, and implementation of medical orders;

(2) Dispense of prescription drug orders; participate in drug and device selection;

(3) Provide drug administration;
(4) Provide drug regimen review;
(5) Provide drug or drug-related research;
(6) Perform patient counseling;
(7) Provide pharmacy related primary care;
(8) Provide pharmacist care in all areas of patient care, including collaborative pharmacy practice;
(9) Compound and label drugs and drug devices;
(10) Proper and safe storage of drugs and devices;
(11) Maintain proper records;
(12) Provide patient counseling concerning the therapeutic value and proper use of drugs and devices;
(13) Order laboratory tests in accordance with drug therapy management; and
(14) Provide medication therapy management.

(b) A licensee meeting the requirements as promulgated by legislative rule may administer immunizations.

(c) The sale of any medicine, if the contents of its container, or any part thereof, taken at one time, are likely to prove poisonous, deleterious, or habit-forming is prohibited by any person other than a registered pharmacist, who shall take precautions to acquaint the purchaser of the nature of the medicine at the time of sale.

§30-5-11. Registration of pharmacy technicians.

(a) To be eligible for registration as a pharmacy technician to assist in the practice of pharmacist care, the applicant shall:

(1) Submit a written application to the board;
(2) Pay the applicable fees;

(3) Have graduated from high school or obtained a Certificate of General Educational Development (GED) or equivalent;

(4) Have:

(A) Graduated from a competency-based pharmacy technician education and training program as approved by legislative rule of the board; or

(B) Completed a pharmacy provided, competency-based education and training program approved by the board;

(5) Effective July 1, 2014, have successfully passed an examination developed using nationally recognized and validated psychometric and pharmacy practice standards approved by the board;

(6) Not be an alcohol or drug abuser, as these terms are defined in section eleven, article one-a, chapter twenty-seven of this code: Provided, That an applicant in an active recovery process, which may, in the discretion of the board, be evidenced by participation in a twelve-step program or other similar group or process, may be considered;

(8) Not have been convicted of a felony in any jurisdiction within ten years preceding the date of application for license, which conviction remains unreversed;

(9) Not have been convicted of a misdemeanor or felony in any jurisdiction if the offense for which he or she was convicted bearing a rational nexus to the practice of pharmacist care, which conviction remains unreversed; and

(10) Have fulfilled any other requirement specified by the board in rule.

(b) A person whose license to practice pharmacist care has been denied, revoked, suspended, or restricted for disciplinary
purposes in any jurisdiction is not eligible to be registered as a pharmacy technician.

(e) A person registered to assist in the practice pharmacist care issued by the board prior to June 30, 2014, shall for all purposes be considered registered under this article and may renew pursuant to the provisions of this article.

§30-5-12. Scope practice for registered pharmacy technician.

(a) A registered pharmacy technician shall, under the direct supervision of the licensed pharmacist, perform at a minimum the following:

1. Assist in the dispensing process;
2. Receive new written or electronic prescription drug orders;
3. Compound; and
4. Stock medications.

(b) A registered pharmacy technician may perform the following under indirect supervision of a licensed pharmacists:

1. Process medical coverage claims; and
2. Cashier.

(c) A registered pharmacy technician may not perform the following:

1. Drug regimen review;
2. Clinical conflict resolution;
3. Contact a prescriber concerning prescription drug order clarification or therapy modification;
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19 (4) Patient counseling;

20 (5) Dispense process validation;

21 (6) Prescription transfer; and

22 (7) Receive new oral prescription drug orders.

23 (d) Indirect supervision of a registered pharmacy technician is permitted to allow a pharmacist to take one break of no more than thirty minutes during any contiguous eight-hour period. The pharmacist may leave the pharmacy area but may not leave the building during the break. When a pharmacist is on break, a pharmacy technician may continue to prepare prescriptions for the pharmacist’s verification. A prescription may not be delivered until the pharmacist has verified the accuracy of the prescription, and counseling, if required, has been provided to or refused by the patient.

23 (e) A pharmacy that permits indirect supervision of a pharmacy technician during a pharmacist’s break shall have either an interactive voice response system or a voice mail system installed on the pharmacy phone line in order to receive new prescription orders and refill authorizations during the break.

23 (f) The pharmacy shall establish protocols that require a registered pharmacy technician to interrupt the pharmacist’s break if an emergency arises.

§30-5-13. Pharmacist interns.

1 (a) To be eligible for a license to assist in the practice of pharmacist care as a pharmacy intern, the applicant shall be:

2 (1) Enrolled and progressing to obtain a degree in a professional degree program of a school or college of pharmacy that has been approved by the board, and is satisfactorily progressing toward meeting the requirements for licensure as a pharmacist; or
(2) A graduate of an approved professional degree program of a school or college of pharmacy or a graduate who has established educational equivalency by obtaining a Foreign Pharmacy Graduate Examination Committee Certificate, who is currently licensed by the board for the purpose of obtaining practical experience as a requirement for licensure as a pharmacist; or

(3) A qualified applicant awaiting examination for licensure or meeting board requirements for relicensure; or

(4) An individual participating in a pharmacy residency or fellowship program.

§30-5-14. Prohibiting the dispensing of prescription orders in absence of practitioner-patient relationship.

A pharmacist may not compound or dispense any prescription order when he or she has knowledge that the prescription was issued by a practitioner without establishing a valid practitioner-patient relationship. An online or telephonic evaluation by questionnaire, or an online or telephonic consultation, is inadequate to establish a valid practitioner-patient relationship: Provided, That this prohibition does not apply:

(1) In a documented emergency;

(2) In an on-call or cross-coverage situation, or

(3) Where patient care is rendered in consultation with another practitioner who has an ongoing relationship with the patient and who has agreed to supervise the patient’s treatment, including the use of any prescribed medications.

§30-5-15. Reciprocal licensure of pharmacists from other states or countries.

(a) The board may by reciprocity license pharmacists in this state who have been authorized to practice pharmacist care in
another state: Provided, That the applicant for licensure meets the requirements of the rules for reciprocity promulgated by the board in accordance with the provisions of chapter twenty-nine-a of this code: Provided, however, That reciprocity is not authorized for pharmacists from another state where that state does not permit reciprocity to pharmacists licensed in West Virginia.

(b) The board may refuse reciprocity to pharmacists from another country unless the applicant qualifies under the legislative rules as may be promulgated by the board for licensure of foreign applicants.

§30-5-16. Renewal requirements.

(a) All persons regulated by this article shall annually or biannually, renew his or her board authorization by completing a form prescribed by the board and submitting any other information required by the board.

(b) The board shall charge a fee for each renewal of an board authorization and shall charge a late fee for any renewal not paid by the due date.

(c) The board shall require as a condition of renewal that each licensee or registrant complete continuing education.

(d) The board may deny an application for renewal for any reason which would justify the denial of an original application.

(e) After June 30, 2014, a previously registered pharmacy technician may renew his or her current registration without having successfully completed the requirements of subdivision six, subsection (a), of section eleven. The previously registered pharmacist may continue to renew his or her registration under this provision.
§30-5-17. Special volunteer pharmacist license; civil immunity for voluntary services rendered to indigents.

1 (a) There is a special volunteer pharmacist license for pharmacists retired or retiring from the active practice of pharmacist care who wish to donate their expertise for the pharmacist care and treatment of indigent and needy patients in the clinic setting of clinics organized, in whole or in part, for the delivery of health care services without charge. The special volunteer pharmacist license shall be issued by the board to pharmacists licensed or otherwise eligible for licensure under this article and the legislative rules promulgated hereunder without the payment of an application fee, license fee or renewal fee, and the initial license shall be issued for the remainder of the licensing period, and renewed consistent with the boards other licensing requirements. The board shall develop application forms for the special license provided in this subsection which shall contain the pharmacist’s acknowledgment that:

16 (1) The pharmacist’s practice under the special volunteer pharmacist license shall be exclusively devoted to providing pharmacist care to needy and indigent persons in West Virginia;

19 (2) The pharmacist may not receive any payment or compensation, either direct or indirect, or have the expectation of any payment or compensation, for any pharmacist care rendered under the special volunteer pharmacist license;

23 (3) The pharmacist will supply any supporting documentation that the board may reasonably require; and

25 (4) The pharmacist agrees to continue to participate in continuing professional education as required by the board for the special volunteer pharmacist license.

(b) Any pharmacist who renders any pharmacist care to indigent and needy patients of a clinic organized, in whole or in part, for the delivery of health care services without charge under
a special volunteer pharmacist license authorized under subsection (a) of this section without payment or compensation or the expectation or promise of payment or compensation is immune from liability for any civil action arising out of any act or omission resulting from the rendering of the pharmacist care at the clinic unless the act or omission was the result of the pharmacist's gross negligence or willful misconduct. In order for the immunity under this subsection to apply, there shall be a written agreement between the pharmacist and the clinic pursuant to which the pharmacist provides voluntary uncompensated pharmacist care under the control of the clinic to patients of the clinic before the rendering of any services by the pharmacist at the clinic: Provided, That any clinic entering into such written agreement is required to maintain liability coverage of not less than $1 million per occurrence.

(c) Notwithstanding the provisions of subsection (b) of this section, a clinic organized, in whole or in part, for the delivery of health care services without charge is not relieved from imputed liability for the negligent acts of a pharmacist rendering voluntary pharmacist care at or for the clinic under a special volunteer pharmacist license authorized under subsection (a) of this section.

(d) For purposes of this section, "otherwise eligible for licensure" means the satisfaction of all the requirements for licensure as listed in section nine of this article and in the legislative rules promulgated thereunder, except the fee requirements of that section and of the legislative rules promulgated by the board relating to fees.

(e) Nothing in this section may be construed as requiring the board to issue a special volunteer pharmacist license to any pharmacist whose license is or has been subject to any disciplinary action or to any pharmacist who has surrendered a license or caused such license to lapse, expire and become invalid in lieu of having a complaint initiated or other action
taken against his or her license, or who has elected to place a pharmacist license in inactive status in lieu of having a complaint initiated or other action taken against his or her license, or who has been denied a pharmacist license.

(f) Any policy or contract of liability insurance providing coverage for liability sold, issued or delivered in this state to any pharmacist covered under the provisions of this article shall be read so as to contain a provision or endorsement whereby the company issuing such policy waives or agrees not to assert as a defense on behalf of the policyholder or any beneficiary thereof, to any claim covered by the terms of such policy within the policy limits, the immunity from liability of the insured by reason of the care and treatment of needy and indigent patients by a pharmacist who holds a special volunteer pharmacist license.

§30-5-18. Pharmacist requirements to participate in a collaborative pharmacy practice agreement.

For a pharmacist to participate in a collaborative pharmacy practice agreement, the pharmacist shall:

(a) Have an unrestricted and current license to practice as a pharmacist in West Virginia;

(b) Personally have or have employer coverage of at least $1 million of professional liability insurance coverage;

(c) Meet one of the following qualifications, at a minimum:

(1) Earned a Certification from the Board of Pharmaceutical Specialties, is a Certified Geriatric Practitioner, or has completed an American Society of Health System Pharmacists (ASHP) accredited residency program, which includes two years of clinical experience approved by the board, or

(2) Successfully completed the course of study and holds the academic degree of Doctor of Pharmacy and has three years of
(3) Successfully completed the course of study and hold the academic degree of Bachelor of Science in Pharmacy and has five years of clinical experience approved by the board and has completed two ACPE approved practice based continuing pharmacy education activity with at least one program in the area of practice covered by a collaborative pharmacy practice agreement.

§30-5-19. Collaborative pharmacy practice agreement.

(a) A pharmacist engaging in collaborative pharmacy practice shall have on file at his or her place of practice the collaborative pharmacy practice agreement. The existence and subsequent termination of the agreement and any additional information the rules may require concerning the agreement, including the agreement itself, shall be made available to the appropriate licensing board for review upon request. The agreement may allow the pharmacist, within the pharmacist’s scope of practice pursuant to the collaborative pharmacy practice agreement, to conduct drug therapy management activities approved by the collaborating physician. The collaborative pharmacy practice agreement shall be a voluntary process, which is a physician directed approach, that is entered into between an individual physician or physician group, an individual pharmacist or pharmacists and an individual patient or the patient’s authorized representative who has given informed consent as per subsection (c).

(b) A collaborative pharmacy practice agreement may authorize a pharmacist to provide drug therapy management. In instances where drug therapy is discontinued, the pharmacist...
shall notify the treating physician of the discontinuance in the
time frame and in the manner established by joint legislative
rules. Each protocol developed, pursuant to the collaborative
pharmacy practice agreement, shall contain detailed direction
concerning the services that the pharmacists may perform for
that patient. The protocol shall include, but need not be limited
to:

(1) The specific drug or drugs to be managed by the
pharmacist;

(2) The terms and conditions under which drug therapy may
be implemented, modified or discontinued;

(3) The conditions and events upon which the pharmacist is
required to notify the physician; and

(4) The laboratory tests that may be ordered in accordance
with drug therapy management.

(c) All activities performed by the pharmacist in conjunction
with the protocol shall be documented in the patient’s medical
record. The pharmacists shall report at least every thirty days to
the physician regarding the patient’s drug therapy management.
The collaborative pharmacy practice agreement and protocols
shall be available for inspection by the board, the West Virginia
Board of Medicine, or the West Virginia Board of Osteopathic
Medicine, depending on the licensing board of the participating
physician. A copy of the protocol shall be filed in the patient’s
medical record.

(d) Collaborative pharmacy agreements may not include the
management of controlled substances.

(e) A collaborative pharmacy practice agreement, meeting
the requirements herein established and in accordance with joint
rules, shall be allowed in the hospital setting, the nursing home
setting, the medical school setting and the hospital,
community-based pharmacy setting and ambulatory care clinics.
53 The pharmacist shall be employed by or under contract to
54 provide services to the hospital, pharmacy, nursing home or
55 medical school, or hold a faculty appointment with one of the
56 schools of pharmacy or medicine in this state.

57 (f) Nothing pertaining to collaborative pharmacy practice
58 shall be interpreted to permit a pharmacist to accept delegation
59 of a physician's authority outside the limits included in the
60 appropriate board's statute and rules.

§30-5-20. Board authorizations shall be displayed.

1 (a) The board shall prescribe the form for an board
2 authorization, and may issue a duplicate upon payment of a fee.
3 (b) Any person regulated by the article shall conspicuously
4 display his or her board authorization at his or her principal
5 business location.

§30-5-21. Responsibility for quality of drugs dispensed; exception;
falseification of labels; deviation from prescription.

1 (a) All persons, whether licensed pharmacists or not, shall be
2 responsible for the quality of all drugs, chemicals and medicines
3 they may sell or dispense, with the exception of those sold in or
4 dispensed unchanged from the original retail package of the
5 manufacturer, in which event the manufacturer shall be
6 responsible.
7 (b) Except as provided in section twelve-b of this article, the
8 following acts shall be prohibited:
9 (1) The falsification of any label upon the immediate
10 container, box and/or package containing a drug;
11 (2) The substitution or the dispensing of a different drug in
12 lieu of any drug prescribed in a prescription without the approval
13 of the practitioner authorizing the original prescription:
14 Provided, That this may not be construed to interfere with the art
of prescription compounding which does not alter the therapeutic
properties of the prescription or appropriate generic substitute;

(3) The filling or refilling of any prescription for a greater
quantity of any drug or drug product than that prescribed in the
original prescription without a written or electronic order or an
oral order reduced to writing, or the refilling of a prescription
without the verbal, written or electronic consent of the
practitioner authorizing the original prescription.

§30-5-22. Pharmacies to be registered.

(a) A pharmacy, an ambulatory health care facility, and a
charitable clinic pharmacy shall register with the board.

(b) A person desiring to operate, maintain, open or establish
a pharmacy shall register with the board.

(c) To be eligible for a registration to operate, maintain, open
or establish a pharmacy the applicant shall:

(1) Submit a written application to the board;

(2) Pay all applicable fees;

(3) Designate a pharmacist-in-charge; and

(4) Successfully complete an inspection by the board.

(d) A separate application shall be made and separate
registration issued for each location.

(e) Registration are not transferable.

(f) Registration expire and shall be renewed annually.

(g) If a registration expires, the pharmacy shall be
reinspected and an inspection fee is required.

(h) A registrant shall employ a pharmacist-in-charge and
operate in compliance with the legislative rules governing the
practice of pharmacist care and the operation of a pharmacy.
The provisions of this section do not apply to the sale of nonprescription drugs which are not required to be dispensed pursuant to a practitioner’s prescription.


(a) A pharmacy shall be under the direction and supervision of a licensed pharmacist who shall be designated by the owner of the pharmacy as the pharmacist-in-charge: Provided, That the Board may permit by rule for a charitable clinic pharmacy to be supervised by a committee of pharmacists-in-charge who accept as a group the responsibilities of the required pharmacist-in-charge. This designation shall be filed with the board within thirty days of the designation.

(b) The pharmacist-in-charge is responsible for the pharmacy’s compliance with state and federal pharmacy laws and regulations and for maintaining records and inventory.

(c) A pharmacist-in-charge may not hold such designated position at more than one pharmacy, whether within or outside the State of West Virginia: Provided, That the Board may permit by rule that he or she may volunteer as the pharmacist-in-charge at a charitable clinic pharmacy while serving as a pharmacist-in-charge in another pharmacy.

(d) An interim pharmacist-in-charge may be designated for a period not to exceed sixty days. The request for an interim pharmacist-in-charge shall detail the circumstances which warrant the change. This change in designation shall be filed with the board within thirty days of the designation.

§30-5-24. Permits for mail-order pharmacy.

(a) A mail-order pharmacy which dispenses drugs shall register with the board.
3 (b) A mail-order pharmacy shall submit an application for a permit to the board. The application shall require the following information:

6 (1) The owner of the mail-order pharmacy, whether an individual, a partnership, or a corporation.

8 (2) The names and titles of all individual owners, partners or corporate officers.

10 (3) The pharmacy manager.


12 (5) The complete address, telephone number and fax number of the mail-order pharmacy.

14 (c) This section does not apply to any mail-order pharmacy which operates solely as a wholesale distributor.

§30-5-25. Permit for manufacture and packaging of drugs, medicines, distribution of prescription drugs.

1 (a) Drugs may not be manufactured, made, produced, packed, packaged or prepared within the state, except under the personal supervision of a pharmacist or other qualified person as may be approved by the board;

5 (b) A person may not manufacture, package or prepare a drug without obtaining a permit from the board.

7 (c) A person, who offers for sale, sells, offers for sale through the method of distribution any prescription drugs is subject to this article.

10 (d) The application for a permit shall be made on a form to be prescribed and furnished by the board and shall be accompanied by an application fee.

13 (e) The board shall promulgate rules on permit requirements and sanitation requirements.
(f) Separate applications shall be made and separate permits issued for each place of manufacture, distribution, making, producing, packing, packaging or preparation.

§30-5-26. Filling of prescriptions more than one year after issuance.

A prescription order may not be dispensed after twelve months from the date of issuance by the practitioner. A pharmacist may fill the prescription after twelve months if the prescriber confirms to the pharmacist that he or she still wants the prescription filled and the pharmacist documents upon the prescription that the confirmation was obtained.

§30-5-27. Partial filling of prescriptions.

(a) The partial filling of a prescription is permissible for any prescription if the pharmacist is unable to supply, or the patient requests less than the full quantity called for in a written, electronic, or oral prescription, provided the pharmacist makes a notation of the quantity supplied on either the written prescription or in the electronic record.

(b) The partial filling of a prescription for a controlled substance listed in Schedule II is permissible if the pharmacist is unable to supply or the patient requests less than the full quantity called for in the prescription. The remaining portion of the prescription may be filled within seventy-two hours of the first partial filling: Provided, That if the remaining portion is not or cannot be filled within the seventy-two hour period, the pharmacist shall notify the prescribing individual practitioner. Further quantity may not be supplied beyond seventy-two hours without a new prescription.

§30-5-28. Partial filling of prescriptions for long-term care facility or terminally ill patients; requirements; records; violations.

(a) As used in this section, “long-term care facility” or “LTCF” means any nursing home, personal care home, or
residential board and care home as defined in section two, article five-c, chapter sixteen of this code which provides extended health care to resident patients: Provided, That the care or treatment in a household, whether for compensation or not, of any person related by blood or marriage, within the degree of consanguinity of second cousin to the head of the household, or his or her spouse, may not be deemed to constitute a nursing home, personal care home or residential board and care home within the meaning of this article. This section does not apply to:

(1) Hospitals, as defined under section one, article five-b, chapter sixteen of this code or to extended care facilities operated in conjunction with a hospital;

(2) State institutions as defined in section six, article one, chapter twenty-seven or in section three, article one, chapter twenty-five, all of this code;

(3) Nursing homes operated by the federal government;

(4) Facilities owned or operated by the state government;

(5) Institutions operated for the treatment and care of alcoholic patients;

(6) Offices of physicians; or

(7) Hotels, boarding homes or other similar places that furnish to their guests only a room and board.

(b) As used in this section, "terminally ill" means that an individual has a medical prognosis that his or her life expectancy is six months or less.

(c) Schedule II prescriptions for patients in a LTCF and for terminally ill patients shall be valid for a period of sixty days from the date of issue unless terminated within a shorter period by the discontinuance of the medication.
(d) A prescription for a Schedule II controlled substance written for a patient in a LTCF or for a terminally ill patient may be filled in partial quantities, including, but not limited to, individual dosage units. The total quantity of Schedule II controlled substances dispensed in all partial filling may not exceed the total quantity prescribed.

(1) If there is any question whether a patient may be classified as having a terminal illness, the pharmacist shall contact the prescribing practitioner prior to partially filling the prescription.

(2) Both the pharmacist and the prescribing practitioner have a corresponding responsibility to assure that the controlled substance is for a terminally ill patient.

(e) The pharmacist shall record on the prescription that the patient is “terminally ill” or a “LTCF patient”. A prescription that is partially filled and does not contain the notation “terminally ill” or “LTCF patient” shall be deemed to have been filled in violation of section three hundred eight, article three, chapter sixty-a of this code.

(f) For each partial filling, the dispensing pharmacist shall record on the back of the prescription, or on another appropriate record which is readily retrievable, the following information:

(1) The date of the partial filling;

(2) The quantity dispensed;

(3) The remaining quantity authorized to be dispensed; and

(4) The identification of the dispensing pharmacist.

(g) Information pertaining to current Schedule II prescriptions for terminally ill and LTCF patients may be maintained in a computerized system if such a system has the capability to permit either by display or printout, for each patient
and each medication, all of the information required by this section as well as the patient's name and address, the name of each medication, original prescription number, date of issue, and prescribing practitioner information. The system shall also allow immediate updating of the prescription record each time a partial filling of the prescription is performed and immediate retrieval of all information required under this section.

§30-5-29. Limitations of article.

(a) This article may not be construed to prevent, restrict or in any manner interfere with the sale of nonnarcotic nonprescription drugs which may be lawfully sold without a prescription in accordance with the United States Food, Drug and Cosmetic Act or the laws of this state, nor may any legislative rule be adopted by the board which shall require the sale of nonprescription drugs by a licensed pharmacist or in a pharmacy or which shall prevent, restrict or otherwise interfere with the sale or distribution of such drugs by any retail merchant. The sale or distribution of nonprescription drugs may not be deemed to be improperly engaging in the practice of pharmacist care.

(b) This article may not be construed to interfere with any legally qualified practitioner of medicine, dentistry or veterinary medicine, who is not the proprietor of the store for the dispensing or retailing of drugs and who is not in the employ of such proprietor, in the compounding of his or her own prescriptions or to prevent him or her from supplying to his or her patients such medicines as he or she may deem proper, if such supply is not made as a sale.

(c) The exception provided in subsection (b) of this section does not apply to an ambulatory health care facility: Provided, That a legally licensed and qualified practitioner of medicine or dentistry may supply medicines to patients that he or she treats in a free clinic and that he or she deems appropriate.
§30-5-30. Actions to enjoin violations.

(a) If the board obtains information that any person has engaged in, is engaging in or is about to engage in any act which constitutes or will constitute a violation of the provisions of this article, the rules promulgated pursuant to this article, or a final order or decision of the board, it may issue a notice to the person to cease and desist in engaging in the act and/or apply to the circuit court in the county of the alleged violation for an order enjoining the act.

(b) The circuit court may issue a temporary injunction pending a decision on the merits, and may issue a permanent injunction based on its findings in the case.

(c) The judgment of the circuit court on an application permitted by the provisions of this section is final unless reversed, vacated or modified on appeal to the West Virginia Supreme Court of Appeals.

§30-5-31. Complaints; investigations; due process procedure; grounds for disciplinary action.

(a) The board may initiate a complaint upon receipt of credible information, and shall upon the receipt of a written complaint of any person, cause an investigation to be made to determine whether grounds exist for disciplinary action under this article or the legislative rules promulgated pursuant to this article.

(b) After reviewing any information obtained through an investigation, the board shall determine if probable cause exists that the licensee, registrant or permittee has violated subsection (g) of this section or rules promulgated pursuant to this article.

(c) Upon a finding of probable cause to go forward with a complaint, the board shall provide a copy of the complaint to the licensee, registrant or permittee.
(d) Upon a finding that probable cause exists that the licensee, registrant or permittee has violated subsection (g) of this section or rules promulgated pursuant to this article, the board may enter into a consent decree or hold a hearing for disciplinary action against the licensee, registrant or permittee. Any hearing shall be held in accordance with the provisions of this article, and shall require a violation to be proven by a preponderance of the evidence.

(e) Any member of the board or the executive director of the board may issue subpoenas and subpoenas duces tecum to obtain testimony and documents to aid in the investigation of allegations against any person regulated by the article.

(f) Any member of the board or its executive director may sign a consent decree or other legal document on behalf of the board.

(g) The board may, after notice and opportunity for hearing, deny or refuse to renew, suspend, restrict or revoke the license, registration or permit of, or impose probationary conditions upon or take disciplinary action against, any licensee, registrant or permittee for any of the following reasons:

1. Obtaining a board authorization by fraud, misrepresentation or concealment of material facts;

2. Being convicted of a felony, other crime involving moral turpitude or a violation of chapter sixty-a of this code;

3. Being guilty of unprofessional conduct which placed the public at risk, as defined by legislative rule of the board;

4. Intentional violation of a lawful order or legislative rule of the board;

5. Having had a board authorization revoked or suspended, other disciplinary action taken, or an application for a board
(6) Aiding or abetting unlicensed practice;

(7) Engaging in an act while acting in a professional capacity which has endangered or is likely to endanger the health, welfare or safety of the public;

(8) Incapacity that prevents a licensee or registrant from engaging in the practice of pharmacist care or assisting in the practice of pharmacist care, with reasonable skill, competence, and safety to the public;

(9) Violation of any laws, including rules pertaining thereto, of this or any other jurisdiction, relating to the practice of pharmacist care, drug samples, drug manufacturing, wholesale or retail drug or device distribution, or controlled substances;

(10) Committing fraud in connection with the practice of pharmacist care;

(11) Disciplinary action taken by another state or jurisdiction against a board authorization to practice pharmacist care based upon conduct by the licensee, registrant or permittee similar to conduct that would constitute grounds for actions as defined in this section;

(12) Failure to report to the board any adverse action taken by another licensing jurisdiction, government agency, law-enforcement agency, or court for conduct that would constitute grounds for action as defined in this section;

(13) Failure to report to the board one’s surrender of a license or authorization to practice pharmacist care in another jurisdiction while under disciplinary investigation by any of those authorities or bodies for conduct that would constitute grounds for action as defined in this section;
(14) Failure to report to the board any adverse judgment, settlement, or award arising from a malpractice claim related to conduct that would constitute grounds for action as defined in this section;

(15) Knowing or suspecting that a licensee or registrant is incapable of engaging in the practice of pharmacist care or assisting in the practice of pharmacist care, with reasonable skill, competence, and safety to the public, and failing to report any relevant information to the board;

(16) Illegal use or disclosure of protected health information;

(17) Engaging in any conduct that subverts or attempts to subvert any licensing examination or the administration of any licensing examination;

(18) Failure to furnish to the board or its representatives any information legally requested by the board, or failure to cooperate with or knowingly engaging in any conduct which obstructs an investigation being conducted by the board;

(19) Agreeing to participate in a prescription drug product conversion program promoted or offered by a manufacturer, wholesaler or distributor of such product for which the pharmacist or pharmacy received any form of financial remuneration, or agreed to participate in a prescription drug program in which the pharmacist or pharmacy is promoted or offered as the exclusive provider of prescription drug products or whereby in any way the public is denied, limited or influenced in selecting pharmacist care or counseling;

(20) Violation of any of the terms or conditions of any order entered in any disciplinary action.

(h) For the purposes of subsection (g) of this section, effective July 1, 2013, disciplinary action may include:
(1) Reprimand;
(2) Probation;
(3) Restrictions;
(4) Suspension;
(5) Revocation;
(6) Administrative fine, not to exceed $1,000 per day per violation;
(7) Mandatory attendance at continuing education seminars or other training;
(8) Practicing under supervision or other restriction; or
(9) Requiring the licensee, registrant or permittee to report to the board for periodic interviews for a specified period of time.

(i) In addition to any other sanction imposed, the board may require a licensee, registrant or permittee to pay the costs of the proceeding.

(j) The board may defer disciplinary action with regard to an impaired licensee or registrant who voluntarily signs an agreement, in a form satisfactory to the board, agreeing not to practice pharmacist care and to enter an approved treatment and monitoring program in accordance with the board's legislative rule. This subsection, provided that this section should not apply to a licensee or registrant who has been convicted of, pleads guilty to, or enters a plea of nolo contendere or a conviction relating to a controlled substance in any jurisdiction.

(k) A person authorized to practice under this article, who reports or otherwise provides evidence of the negligence, impairment or incompetence of another member of this profession to the board or to any peer review organization, is not
liable to any person for making such a report if such report is made without actual malice and in the reasonable belief that such report is warranted by the facts known to him or her at the time.

§30-5-32. Procedures for hearing; right of appeal.

(a) Hearings are governed by the provisions of section eight, article one of this chapter.

(b) The board may conduct the hearing or elect to have an administrative law judge conduct the hearing.

(c) If the hearing is conducted by an administrative law judge, at the conclusion of a hearing he or she shall prepare a proposed written order containing findings of fact and conclusions of law. The proposed order may contain proposed disciplinary actions if the board so directs. The board may accept, reject or modify the decision of the administrative law judge.

(d) Any member or the executive director of the board has the authority to administer oaths, examine any person under oath and issue subpoenas and subpoenas duces tecum.

(e) If, after a hearing, the board determines the licensee, registrant or permittee has violated provisions of this article or the board’s rules, a formal written decision shall be prepared which contains findings of fact, conclusions of law and a specific description of the disciplinary actions imposed.

§30-5-33. Judicial review.

Any person adversely affected by a decision of the board entered after a hearing may obtain judicial review of the decision in accordance with section four, article five, chapter twenty-nine-a of this code, and may appeal any ruling resulting from judicial review in accordance with article six, chapter twenty-nine-a of this code.
§30-5-34. Criminal offenses.
1 When, as a result of an investigation under this article or otherwise, the board has reason to believe that a person authorized under this article has committed a criminal offense the board may bring its information to the attention of an appropriate law-enforcement official.

CHAPTER 60A. UNIFORM CONTROLLED SUBSTANCES ACT.


§60A-8-7. Wholesale drug distributor licensing requirements.
1 (a) Every applicant for a license under this article shall provide the board with the following as part of the application for a license and as part of any renewal of such license:
2 (1) The name, full business address and telephone number of the licensee;
3 (2) All trade or business names used by the licensee;
4 (3) Addresses, telephone numbers and the names of contact persons for all facilities used by the licensee for the storage, handling and distribution of prescription drugs;
5 (4) The type of ownership or operation (i.e., partnership, corporation or sole proprietorship);
6 (5) The name(s) of the owner and operator, or both, of the licensee, including:
7 (A) If a person, the name of the person;
8 (B) If a partnership, the name of each partner and the name of the partnership;
9 (C) If a corporation, the name and title of each corporate officer and director, the corporate names and the name of the state of incorporation; and
(D) If a sole proprietorship, the full name of the sole proprietor and the name of the business entity; and

(6) Any other information or documentation that the board may require.

(b) All wholesale distributors and pharmacy distributors shall be subject to the following requirements:

(1) No person or distribution outlet may act as a wholesale drug distributor without first obtaining a license to do so from the Board of Pharmacy and paying any reasonable fee required by the Board of Pharmacy, such fee not to exceed four hundred dollars per year: Provided, That for licenses that are effective on and after July 1, 2012, the annual fee shall be $750 per license until modified by legislative rule. All fees collected pursuant to this section shall be used for the operation and implementation of the West Virginia Controlled Substances Monitoring Program database or in the same manner as those fees governed by article five, chapter thirty of this code.

(2) The Board of Pharmacy may grant a temporary license when a wholesale drug distributor first applies to the board for a wholesale drug distributor’s license and the temporary license shall remain valid until the Board of Pharmacy finds that the applicant meets or fails to meet the requirements for regular licensure, except that no temporary license shall be valid for more than ninety days from the date of issuance. Any temporary license issued pursuant to this subdivision shall be renewable for a similar period of time not to exceed ninety days pursuant to policies and procedures to be prescribed by the Board of Pharmacy.

(3) No license may be issued or renewed for a wholesale drug distributor to operate unless the distributor operates in a manner prescribed by law and according to the rules promulgated by the Board of Pharmacy with respect thereto.
(4) The Board of Pharmacy may require a separate license for each facility directly or indirectly owned or operated by the same business entity within this state, or for a parent entity with divisions, subsidiaries, or affiliate companies within this state when operations are conducted at more than one location and there exists joint ownership and control among all the entities.

(c) The minimum qualifications for licensure are set forth in this section as follows:

(1) As a condition for receiving and retaining any wholesale drug distributor license issued pursuant to this article, each applicant shall satisfy the Board of Pharmacy that it has and will continuously maintain:

(A) Acceptable storage and handling conditions plus facilities standards;

(B) Minimum liability and other insurance as may be required under any applicable federal or state law;

(C) A security system which includes after hours central alarm or comparable entry detection capability, restricted premises access, adequate outside perimeter lighting, comprehensive employment applicant screening and safeguards against employee theft;

(D) An electronic, manual or any other reasonable system of records describing all wholesale distributor activities governed by this article for the two-year period following disposition of each product and being reasonably accessible as defined by Board of Pharmacy regulations during any inspection authorized by the Board of Pharmacy;

(E) Officers, directors, managers and other persons in charge of wholesale drug distribution, storage and handling, who must at all times demonstrate and maintain their capability of conducting business according to sound financial practices as well as state and federal law;
(F) Complete, updated information to be provided to the Board of Pharmacy as a condition for obtaining and retaining a license about each wholesale distributor to be licensed under this article including all pertinent licensee ownership and other key personnel and facilities information determined necessary for enforcement of this article;

(G) Written policies and procedures which assure reasonable wholesale distributor preparation for protection against and handling of any facility security or operation problems, including, but not limited to, those caused by natural disaster or government emergency, inventory inaccuracies or product shipping and receiving, outdated product or other unauthorized product control, appropriate disposition of returned goods and product recalls;

(H) Sufficient inspection procedures for all incoming and outgoing product shipments; and

(I) Operations in compliance with all federal legal requirements applicable to wholesale drug distribution.

(2) The board of pharmacy shall consider, at a minimum, the following factors in reviewing the qualifications of persons who apply for a wholesale distributor license under this section or for renewal of that license:

(A) Any conviction of the applicant under any federal, state or local laws relating to drug samples, wholesale or retail drug distribution or distribution of controlled substances;

(B) Any felony convictions of the applicant or any key person under federal, state or local laws;

(C) The applicant's past experience in the manufacture or distribution of prescription drugs, including, but not limited to, controlled substances;

(D) The furnishing by the applicant of false or fraudulent material in any application made in connection with drug manufacturing or distribution;
(E) Suspension or revocation by federal, state or local
government of any license currently or previously held by the
applicant for the manufacture or distribution of any drug,
including, but not limited to, controlled substances;

(F) Compliance with licensing requirements under
previously granted licenses, if any;

(G) Whether personnel employed by the applicant in
wholesale drug distribution have appropriate education or
experience, or both education and experience, to assume
responsibility for positions related to compliance with the
requirements of this article;

(H) Compliance with requirements to maintain and make
available to the Board of Pharmacy or to federal, state or local
law-enforcement officials those records required by this article;

(I) Any other factors or qualifications the Board of Pharmacy
considers relevant to and consistent with the public health and
safety, including whether the granting of the license would not
be in the public interest.

(3) All requirements set forth in this subsection shall
conform to wholesale drug distributor licensing guidelines
formally adopted by the United States Food and Drug
Administration (FDA); and in case of conflict between any
wholesale drug distributor licensing requirement imposed by the
Board of Pharmacy pursuant to this subsection and any food and
drug administration wholesale drug distributor licensing
guideline, the latter shall control.

(d) An employee of any licensed wholesale drug distributor
need not seek licensure under this section and may lawfully
possess pharmaceutical drugs when the employee is acting in the
usual course of business or employment.
(e) The issuance of a license pursuant to this article does not change or affect tax liability imposed by this state’s Department of Tax and Revenue on any wholesale drug distributor.

(f) An applicant who is awarded a license or renewal of a license shall give the board written notification of any material change in the information previously submitted in, or with the application for the license or for renewal thereof, whichever is the most recent document filed with the board, within thirty days after the material change occurs or the licensee becomes aware of the material change, whichever event occurs last. Material changes include, but are not limited to:

1. A change of the physical address or mailing address;
2. A change of the responsible individual, compliance officer or other executive officers or board members;
3. A change of the licensee’s name or trade name;
4. A change in the location where the records of the licensee are retained;
5. The felony conviction of a key person of the licensee;
6. Any other material change that the board may specify by rule.

(g) Before denial of a license or application for renewal of a license, the applicant shall be entitled to a hearing in accordance with subsection (h), section eight, article one, chapter thirty of this code.

(h) The licensing of any person as a wholesale drug distributor subjects the person and the person’s agents and employees to the jurisdiction of the board and to the laws of this state for the purpose of the enforcement of this article, article five, chapter thirty of this code and the rules of the board.
However, the filing of an application for a license as a wholesale drug distributor by, or on behalf of, any person or the licensing of any person as a wholesale drug distributor may not, of itself, constitute evidence that the person is doing business within this state.

(i) The Board of Pharmacy may adopt rules pursuant to section nine of this article which permit out-of-state wholesale drug distributors to obtain any license required by this article on the basis of reciprocity to the extent that: (1) An out-of-state wholesale drug distributor possesses a valid license granted by another state pursuant to legal standards comparable to those which must be met by a wholesale drug distributor of this state as prerequisites for obtaining a license under the laws of this state; and (2) such other state would extend reciprocal treatment under its own laws to a wholesale drug distributor of this state.

ARTICLE 10. METHAMPHETAMINE LABORATORY ERADICATION ACT.

§60A-10-3. Definitions.

In this article:

(a) “Board of Pharmacy” or “board” means the West Virginia Board of Pharmacy established by the provisions of article five, chapter thirty of this code.

(b) “Designated precursor” means any drug product made subject to the requirements of this article by the provisions of section ten of this article.

(c) “Distributor” means any person within this state or another state, other than a manufacturer or wholesaler, who sells, delivers, transfers or in any manner furnishes a drug product to any person who is not the ultimate user or consumer of the product.
(d) "Drug product" means a pharmaceutical product that contains ephedrine, pseudoephedrine or phenylpropanolamine or a substance identified on the supplemental list provided in section seven of this article which may be sold without a prescription and which is labeled for use by a consumer in accordance with the requirements of the laws and rules of this state and the federal government.

(e) "Ephedrine" means ephedrine, its salts or optical isomers or salts of optical isomers.

(f) "Manufacturer" means any person within this state who produces, compounds, packages or in any manner initially prepares for sale or use any drug product or any such person in another state if they cause the products to be compounded, packaged or transported into this state.

(g) "National Association of Drug Diversion Investigators" or "NADDI" means the non-profit 501(c)(3) organization established in 1989, made up of members who are responsible for investigating and prosecuting pharmaceutical drug diversion, and that facilitates cooperation between law enforcement, health care professionals, state regulatory agencies and pharmaceutical manufacturers in the investigation and prevention of prescription drug abuse and diversion.

(h) "Multi-State Real-Time Tracking System" or "MSRTTS" means the real-time electronic logging system provided by NADDI at no cost to states that have legislation requiring real-time electronic monitoring of precursor purchases, and agree to use the system. MSRTTS is used by pharmacies and law enforcement to track sales of over-the-counter (OTC) cold and allergy medications containing precursors to the illegal drug, methamphetamine.

(i) "Phenylpropanolamine" means phenylpropanolamine, its salts, optical isomers and salts of optical isomers.
(j) "Pseudoephedrine" means pseudoephedrine, its salts, optical isomers and salts of optical isomers.

(k) "Precursor" means any substance which may be used along with other substances as a component in the production and distribution of illegal methamphetamine.

(l) "Pharmacist" means an individual currently licensed by this state to engage in the practice of pharmacist care as defined in article five, chapter thirty of this code.

(m) "Pharmacy intern" has the same meaning as the term "intern" as set forth in section one-b, article five, chapter thirty of this code.

(n) "Pharmacy" means any drugstore, apothecary or place within this state where drugs are dispensed and sold at retail or display for sale at retail and pharmacist care is provided outside of this state where drugs are dispensed and pharmacist care is provided to residents of this state.

(o) "Pharmacy counter" means an area in the pharmacy restricted to the public where controlled substances are stored and housed and where controlled substances may only be sold, transferred or dispensed by a pharmacist, pharmacy intern or pharmacy technician.

(p) "Pharmacy technician" means a registered technician who meets the requirements for registration as set forth in article five, chapter thirty of this code.

(q) "Retail establishment" means any entity or person within this state who sells, transfers or distributes goods, including over-the-counter drug products, to an ultimate consumer.

(r) "Schedule V" means the schedule of controlled substances set out in section two hundred twelve, section two of this chapter.
§60A-10-5. Restrictions on the sale, transfer or delivery of certain drug products; penalties.

(a) No pharmacy or individual may display, offer for sale or place a drug product containing ephedrine, pseudoephedrine or phenylpropanolamine or other designated precursor where the public may freely access the drug product. All such drug products or designated precursors shall be placed behind a pharmacy counter where access is restricted to a pharmacist, a pharmacy intern, a pharmacy technician or other pharmacy employee.

(b) All storage of drug products regulated by the provisions of this section shall be in a controlled and locked access location that is not accessible by the general public and shall maintain strict inventory control standards and complete records of quantity of the product maintained in bulk form.

(c) No pharmacy may sell, deliver or provide any drug product regulated by the provisions of this section to any person who is under the age of eighteen.

(d) If a drug product regulated by the provisions of this section is transferred, sold or delivered, the individual, pharmacy or retail establishment transferring, selling or delivering the drug product shall offer to have a pharmacist provide patient counseling, as defined by article five, chapter thirty of this code and the rules of the Board of Pharmacy, to the person purchasing, receiving or acquiring the drug product in order to
improve the proper use of the drug product and to discuss contraindications.

(e) If a drug product regulated by the provisions of this section is transferred, sold or delivered, the individual, pharmacy or retail establishment transferring, selling or delivering the drug product shall require the person purchasing, receiving or otherwise acquiring the drug product to:

(1) Produce a valid government-issued photo identification showing his or her date of birth; and

(2) Sign a logbook, in either paper or electronic format, containing the information set forth in subsection (b), section eight of this article and attesting to the validity of the information.

(f) Any person who knowingly makes a false representation or statement pursuant to the requirements of this section is guilty of a misdemeanor and, upon conviction, be confined in a jail for not more than six months, fined not more than $5,000, or both fined and confined.

(g) (1) The pharmacist, pharmacy intern or pharmacy technician processing the transaction shall determine that the name entered in the logbook corresponds to the name provided on the identification.

(2) Beginning January 1, 2013, a pharmacy or retail establishment shall, before completing a sale under this section, electronically submit the information required by section eight of this article to the Multi-State Real-Time Tracking System (MSRTT'S) administered by the National Association of Drug Diversion Investigators (NADDI): Provided, That the system is available to retailers in the state without a charge for accessing the system. This system shall be capable of generating a stop-sale alert, which shall be a notification that completion of the sale would result in the seller or purchaser violating the quantity
limits set forth in this article. The seller may not complete the 
sale if the system generates a stop-sale alert. The system shall 
contain an override function that may be used by a dispenser of 
a drug product who has a reasonable fear of imminent bodily 
harm if he or she does not complete a sale. Each instance in 
which the override function is utilized shall be logged by the 
system. Absent negligence, wantonness, recklessness or 
deliberate misconduct, any retailer utilizing the Multi-State 
Real-Time Tracking System in accordance with this subdivision 
may not be civilly liable as a result of any act or omission in 
carrying out the duties required by this subdivision and is 
immune from liability to any third party unless the retailer has 
violated any provision of this subdivision in relation to a claim 
brought for the violation.

(3) If a pharmacy or retail establishment selling a 
nonprescription product containing ephedrine, pseudoephedrine 
or phenylpropanolamine experiences mechanical or electronic 
failure of the Multi-State Real-Time Tracking System and is 
unable to comply with the electronic sales tracking requirement, 
the pharmacy or retail establishment shall maintain a written log 
or an alternative electronic record keeping mechanism until such 
time as the pharmacy or retail establishment is able to comply 
with the electronic sales tracking requirement.

(h) This section does not apply to drug products that are 
dispensed pursuant to a prescription, are pediatric products 
primarily intended for administration, according to label 
instructions, to children under twelve years of age.

(i) Any violation of this section is a misdemeanor, 
punishable upon conviction by a fine in an amount not more than 
$10,000.

(j) The provisions of this section supersede and preempt all 
local laws, ordinances, rules and regulations pertaining to the 
sale of any compounds, mixtures or preparation containing 
ephedrine, pseudoephedrine or phenylpropanolamine.
AN ACT to amend and reenact §30-3-10 of the Code of West Virginia, 1931, as amended, relating generally to requirements of applicants for a license to practice medicine and surgery or podiatry; eliminating the requirement for all licensure applicants to appear for a personal interview with the Board of Medicine in certain circumstances; and authorizing the board to require applicants, on a case-by-case basis, to appear for a personal interview or to produce original documents for review by the board.

Be it enacted by the Legislature of West Virginia:

That §30-3-10 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 3. WEST VIRGINIA MEDICAL PRACTICE ACT.

§30-3-10. Licenses to practice medicine and surgery or podiatry.

(a) The board shall issue a license to practice medicine and surgery or to practice podiatry to any individual who is qualified to do so in accordance with the provisions of this article.

(b) For an individual to be licensed to practice medicine and surgery in this state, he or she must meet the following requirements:

1. He or she shall submit an application to the board on a form provided by the board and remit to the board a reasonable
fee, the amount of the reasonable fee to be set by the board. The
application must, as a minimum, require a sworn and notarized
statement that the applicant is of good moral character and that
he or she is physically and mentally capable of engaging in the
practice of medicine and surgery;

(2) He or she must provide evidence of graduation and
receipt of the degree of doctor of medicine or its equivalent from
a school of medicine, which is approved by the liaison
committee on medical education or by the board;

(3) He or she must submit evidence to the board of having
successfully completed a minimum of one year of graduate
clinical training in a program approved by the Accreditation
Council for Graduate Medical Education; and

(4) He or she must pass an examination approved by the
board, which examination can be related to a national standard.
The examination shall be in the English language and be
designed to ascertain an applicant’s fitness to practice medicine
and surgery. The board shall before the date of examination
determine what will constitute a passing score: Provided, That
the board, or a majority of it, may accept in lieu of an
examination of applicants the certificate of the National Board
of Medical Examiners: Provided, however, That an applicant is
required to attain a passing score on all components or steps of
the examination within a period of ten consecutive years. The
board need not reject a candidate for a nonmaterial technical or
administrative error or omission in the application process that
is unrelated to the candidate’s professional qualifications as long
as there is sufficient information available to the board to
determine the eligibility of the candidate for licensure.

(c) In addition to the requirements of subsection (b) of this
section, any individual who has received the degree of doctor of
medicine or its equivalent from a school of medicine located
outside of the United States, the Commonwealth of Puerto Rico
and Canada to be licensed to practice medicine in this state must
also meet the following additional requirements and limitations:

(1) He or she must be able to demonstrate to the satisfaction
of the board his or her ability to communicate in the English
language;

(2) Before taking a licensure examination, he or she must
have fulfilled the requirements of the Educational Commission
for Foreign Medical Graduates for certification or he or she must
provide evidence of receipt of a passing score on the
examination of the Educational Commission for Foreign Medical
Graduates: Provided, That an applicant who: (i) Is currently fully
licensed, excluding any temporary, conditional or restricted
license or permit, under the laws of another state, the District of
Columbia, Canada or the Commonwealth of Puerto Rico; (ii) has
been engaged on a full-time professional basis in the practice of
medicine within the state or jurisdiction where the applicant is
fully licensed for a period of at least five years; and (iii) is not
the subject of any pending disciplinary action by a medical
licensing board and has not been the subject of professional
discipline by a medical licensing board in any jurisdiction is not
required to have a certificate from the Educational Commission
for Foreign Medical Graduates;

(3) He or she must submit evidence to the board of either: (i)
Having successfully completed a minimum of two years of
graduate clinical training in a program approved by the
Accreditation Council for Graduate Medical Education; or (ii)
current certification by a member board of the American Board
of Medical Specialties.

(d) For an individual to be licensed to practice podiatry in
this state, he or she must meet the following requirements:

(1) He or she shall submit an application to the board on a
form provided by the board and remit to the board a reasonable
fee, the amount of the reasonable fee to be set by the board. The
application must, as a minimum, require a sworn and notarized statement that the applicant is of good moral character and that he or she is physically and mentally capable of engaging in the practice of podiatric medicine;

(2) He or she must provide evidence of graduation and receipt of the degree of doctor of podiatric medicine or its equivalent from a school of podiatric medicine which is approved by the Council of Podiatry Education or by the board;

(3) He or she must pass an examination approved by the board, which examination can be related to a national standard. The examination shall be in the English language and be designed to ascertain an applicant's fitness to practice podiatric medicine. The board shall before the date of examination determine what will constitute a passing score: Provided, That an applicant is required to attain a passing score on all components or steps of the examination within a period of ten consecutive years; and

(4) He or she must submit evidence to the board of having successfully completed a minimum of one year of graduate clinical training in a program approved by the Council on Podiatric Medical Education or the Colleges of Podiatric Medicine. The board may consider a minimum of two years of graduate podiatric clinical training in the U.S. armed forces or three years' private podiatric clinical experience in lieu of this requirement.

(e) Notwithstanding any of the provisions of this article, the board may issue a restricted license to an applicant in extraordinary circumstances under the following conditions:

(1) Upon a finding by the board that based on the applicant's exceptional education, training and practice credentials, the applicant's practice in the state would be beneficial to the public welfare;
(2) Upon a finding by the board that the applicant's education, training and practice credentials are substantially equivalent to the requirements of licensure established in this article;

(3) Upon a finding by the board that the applicant received his or her post-graduate medical training outside of the United States and its territories;

(4) That the restricted license issued under extraordinary circumstances is approved by a vote of three fourths of the members of the board;

(5) That orders denying applications for a restricted license under this subsection are not appealable; and

(6) That the board report to the President of the Senate and the Speaker of the House of Delegates all decisions made pursuant to this subsection and the reasons for those decisions.

(f) The board shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code, that establish and regulate the restricted license issued to an applicant in extraordinary circumstances pursuant to the provisions of this section.

(g) Personal interviews by board members of all applicants are not required. An applicant for a license may be required by the board, in its discretion, to appear for a personal interview and may be required to produce original documents for review by the board.

(h) All licenses to practice medicine and surgery granted prior to July 1, 2008, and valid on that date shall continue in full effect for the term and under the conditions provided by law at the time of the granting of the license: Provided, That the provisions of subsection (d) of this section do not apply to any person legally entitled to practice chiropody or podiatry in this state prior to June 11, 1965: Provided, however, That all persons licensed to practice chiropody prior to June 11, 1965, shall be
permitted to use the term "chiropody-podiatry" and shall have the rights, privileges and responsibilities of a podiatrist set out in this article.

(i) The board may not issue a license to a person not previously licensed in West Virginia whose license has been revoked or suspended in another state until reinstatement of his or her license in that state.

CHAPTER 150

(Com. Sub. for S. B. 580 - By Senator Stollings)

AN ACT to repeal §30-4-8a, §30-4-10a, §30-4-25, §30-4-26, §30-4-27, §30-4-28 and §30-4-29 of the Code of West Virginia, 1931, as amended; to repeal §30-4A-6a, §30-4A-6b, §30-4A-6c, §30-4A-6d and §30-4A-18 of said code; to repeal §30-4B-5, §30-4B-6, §30-4B-7 and §30-4B-8 of said code; to amend and reenact §30-4-1, §30-4-2, §30-4-3, §30-4-4, §30-4-5, §30-4-6, §30-4-7, §30-4-8, §30-4-9, §30-4-10, §30-4-11, §30-4-12, §30-4-13, §30-4-14, §30-4-15, §30-4-16, §30-4-17, §30-4-18, §30-4-19, §30-4-20, §30-4-21, §30-4-22, §30-4-23 and §30-4-24 of said code; to amend and reenact §30-4A-1, §30-4A-2, §30-4A-3, §30-4A-4, §30-4A-5, §30-4A-6, §30-4A-7, §30-4A-8, §30-4A-9, §30-4A-10, §30-4A-11, §30-4A-12, §30-4A-13, §30-4A-14, §30-4A-15, §30-4A-16 and §30-4A-17 of said code; and to amend and reenact §30-4B-1, §30-4B-2, §30-4B-3 and §30-4B-4 of said code, all relating to the practice of dentistry; prohibiting the practice of dentistry without a license; providing other applicable sections; providing definitions; providing for board composition; setting forth the powers and duties of the board; clarifying
rule-making authority; continuing a special revenue account; establishing license, certification and permit requirements; continuing a scope of practice; creating temporary permits; establishing renewal requirements; providing for exemptions from licensure; providing requirements for the display of a board authorization; permitting the board to file an injunction; setting forth grounds for disciplinary actions; allowing for specific disciplinary actions; providing procedures for investigation of complaints; providing for judicial review and appeals of decisions; setting forth hearing and notice requirements; providing for civil causes of action; providing criminal penalties; updating the requirements concerning the use of anesthesia; updating the requirements of dental laboratory services and updating references.

Be it enacted by the Legislature of West Virginia:

That §30-4-8a, §30-4-10a, §30-4-25, §30-4-26, §30-4-27, §30-4-28 and §30-4-29 of the Code of West Virginia, 1931, as amended, be repealed; that §30-4A-6a, §30-4A-6b, §30-4A-6c, §30-4A-6d and §30-4A-18 of said code be repealed; that §30-4B-5, §30-4B-6, §30-4B-7 and §30-4B-8 of said code be repealed; that §30-4-1, §30-4-2, §30-4-3, §30-4-4, §30-4-5, §30-4-6, §30-4-7, §30-4-8, §30-4-9, §30-4-10, §30-4-11, §30-4-12, §30-4-13, §30-4-14, §30-4-15, §30-4-16, §30-4-17, §30-4-18, §30-4-19, §30-4-20, §30-4-21, §30-4-22, §30-4-23 and §30-4-24 of said code be amended and reenacted; that §30-4A-1, §30-4A-2, §30-4A-3, §30-4A-4, §30-4A-5, §30-4A-6, §30-4A-7, §30-4A-8, §30-4A-9, §30-4A-10, §30-4A-11, §30-4A-12, §30-4A-13, §30-4A-14, §30-4A-15, §30-4A-16 and §30-4A-17 of said code be amended and reenacted; and that §30-4B-1, §30-4B-2, §30-4B-3 and §30-4B-4 of said code be amended and reenacted; all to read as follows:

ARTICLE 4. WEST VIRGINIA DENTAL PRACTICE ACT.

§30-4-1. Unlawful acts.

1 (a) It is unlawful for any person to practice or offer to practice dentistry or dental hygiene in this state without a license, issued under the provisions of this article, or advertise
4 or use any title or description tending to convey or give the 
impression that they are a dentist or dental hygienist, unless the 
person is licensed under the provisions of this article.

(b) A business entity may not render any service or engage 
in any activity which, if rendered or engaged in by an individual, 
would constitute the practice of dentistry, except through a 
licensee.

§30-4-2. Applicable law.

The practices authorized under the provisions of this article 
and the Board of Dentistry are subject to article one of this 
chapter, the provisions of this article and any rules promulgated 
hereunder.

§30-4-3. Definitions.

As used in articles four, four-a and four-b, the following 
words and terms have the following meanings:

(1) "AAOMS" means the American Association of Oral and 
Maxillofacial Surgeons;

(2) "AAPD" means the American Academy of Pediatric 
Dentistry;

(3) "ACLS" means Advanced Cardiac Life Support;

(4) "ADA" means the American Dental Association;

(5) "AMA" means the American Medical Association;

(6) "ASA" means American Society of Anesthesiologists;

(7) "Anxiolysis/minimal sedation" means removing, 
eliminating or decreasing anxiety by the use of a single anxiety 
or analgesia medication that is administered in an amount 
consistent with the manufacturer’s current recommended dosage 
for the unsupervised treatment of anxiety, insomnia or pain, in 
conjunction with nitrous oxide and oxygen. This does not 
include multiple dosing or exceeding current normal dosage.
limits set by the manufacturer for unsupervised use by the patient at home for the treatment of anxiety;

(8) "Approved dental hygiene program" means a program that is approved by the board and is accredited or its educational standards are deemed by the board to be substantially equivalent to those required by the Commission on Dental Accreditation of the American Dental Association;

(9) "Approved dental school, college or dental department of a university" means a dental school, college or dental department of a university that is approved by the board and is accredited or its educational standards are deemed by the board to be substantially equivalent to those required by the Commission on Dental Accreditation of the American Dental Association;

(10) "Authorize" means that the dentist is giving permission or approval to dental auxiliary personnel to perform delegated procedures in accordance with the dentist’s diagnosis and treatment plan;

(11) "BLS" means Basic Life Support;

(12) "Board" means the West Virginia Board of Dentistry;

(13) "Business entity" means any firm, partnership, association, company, corporation, limited partnership, limited liability company or other entity;

(14) "Central Nervous System Anesthesia" means an induced, controlled state of unconsciousness or depressed consciousness produced by a pharmacologic method;

(15) "Certificate of qualification" means a certificate authorizing a dentist to practice a specialty;

(16) "CPR" means Cardiopulmonary Resuscitation;

(17) "Conscious sedation/Moderate sedation" means an induced, controlled state of depressed consciousness, produced
through the administration of nitrous oxide and oxygen and/or
the administration of other agents whether enteral or parenteral,
in which the patient retains the ability to independently and
continuously maintain an airway and to respond purposefully to
physical stimulation and to verbal command;

(18) "CRNA" means Certified Registered Nurse Anesthetist;

(19) "Defibrillator" means a device used to sustain asthmatic
heartbeat in an emergency and includes an automatic electronic
defibrillator (AED);

(20) "Delegated procedures" means those procedures
specified by law or by rule of the board and performed by dental
auxiliary personnel under the supervision of a licensed dentist;

(21) "Dentist Anesthesiologist" means a dentist who is
trained in the practice of anesthesiology and has completed an
additional approved anesthesiology education course;

(22) "Dental assistant" means a person qualified by
education, training or experience who aids or assists a dentist in
the delivery of patient care in accordance with delegated
procedures as specified by the board by rule or who may perform
nonclinical duties in the dental office;

(23) "Dental auxiliary personnel" or "auxiliary" means
dental hygienists and dental assistants who assist the dentist in
the practice of dentistry;

(24) "Dental Hygiene" means the performance of
educational, preventive or therapeutic dental services and as
further provided in section eleven and legislative rule;

(25) "Dental hygienist" means a person licensed by the
board to practice and who provides dental hygiene and other
services as specified by the board by rule to patients in the dental
office and in a public health setting;

(26) "Dental laboratory" means a business performing dental
laboratory services;
(27) "Dental laboratory services" means the fabricating, repairing or altering of a dental prosthesis;

(28) "Dental laboratory technician" means a person qualified by education, training or experience who has completed a dental laboratory technology education program and who fabricates, repairs or alters a dental prosthesis in accordance with a dentist's work authorization;

(29) "Dental office" means the place where the licensed dentist and dental auxiliary personnel are practicing dentistry;

(30) "Dental prosthesis" means an artificial appliance fabricated to replace one or more teeth or other oral or peri-oral structure in order to restore or alter function or aesthetics;

(31) "Dentist" means an individual licensed by the board to practice dentistry;

(32) "Dentistry" means the evaluation, diagnosis, prevention and treatment of diseases, disorders and conditions of the oral cavity, maxillofacial area and the adjacent and associated structures provided by a dentist;

(33) "Direct supervision" means supervision of dental auxiliary personnel provided by a licensed dentist who is physically present in the dental office or treatment facility when procedures are being performed;

(34) "Facility Permit" means a permit for a facility where sedation procedures are used that correspond with the level of anesthesia provided;

(35) "General anesthesia" means an induced, controlled state of unconsciousness in which the patient experiences complete loss of protective reflexes, as evidenced by the inability to independently maintain an airway, the inability to respond purposefully to physical stimulation or the inability to respond purposefully to verbal command.
“Deep conscious sedation/general anesthesia” includes partial loss of protective reflexes and the patient retains the ability to independently and continuously maintain an airway;

“General supervision” means a dentist is not required to be in the office or treatment facility when procedures are being performed by the auxiliary dental personnel, but has personally diagnosed the condition to be treated, has personally authorized the procedures and will evaluate the treatment provided by the dental auxiliary personnel;

“Good moral character” means a lack of history of dishonesty;

“Health Care Provider BLS/CPR” means Health Care Provider Basic Life Support/Cardiopulmonary Resuscitation;

“License” means a license to practice dentistry or dental hygiene;

“Licensee” means a person holding a license;

“Mobile Dental Facility” any self-contained facility in which dentistry or dental hygiene will be practiced which may be moved, towed or transported from one location to another;

“Portable dental unit” means any nonfacility in which dental equipment, utilized in the practice of dentistry, is transported to and utilized on a temporary basis an out-of-office location, including but not limited to, patients’ homes, schools, nursing homes or other institutions;

“Other dental practitioner” means those persons excluded from the definition of the practice of dentistry under the provisions of subdivisions (3), (4) and (5), section twenty-four, article four of this chapter and also those persons who hold teaching permits which have been issued to them under the provisions of section fourteen, article four of this chapter;
(45) “PALS” means Pediatric Advanced Life Support;

(46) “Pediatric patient” means infants and children;

(47) “Physician anesthesiologist” means a physician, medical doctor or doctor of osteopathy, who is specialized in the practice of anesthesiology;

(48) “Public health practice” means treatment or procedures in a public health setting which shall be designated by a rule promulgated by the board to require direct, general or no supervision of a dental hygienist by a dentist;

(49) “Public health setting” means hospitals, schools, correctional facilities, jails, community clinics, long-term care facilities, nursing homes, home health agencies, group homes, state institutions under the West Virginia Department of Health and Human Resources, public health facilities, homebound settings, accredited dental hygiene education programs and any other place designated by the board by rule;

(50) “Qualified monitor” means an individual who by virtue of credentialing and/or training is qualified to check closely and document the status of a patient undergoing anesthesia and observe utilized equipment;

(51) “Relative analgesia /minimal sedation” means an induced, controlled state of minimally depressed consciousness, produced solely by the inhalation of a combination of nitrous oxide and oxygen or single oral premedication without the addition of nitrous oxide and oxygen in which the patient retains the ability to independently and continuously maintain an airway and to respond purposefully to physical stimulation and to verbal command.

(52) “Specialty” means the practice of a certain branch of dentistry;

(53) “Subcommittee” means West Virginia Board of Dentistry Subcommittee on Anesthesia; and
(54) "Work authorization" means a written order for dental laboratory services which has been issued by a licensed dentist or other dental practitioner.

§30-4-4. Board of Dental Examiners.

(a) The West Virginia Board of Dental Examiners is continued and on July 1, 2013, the board shall be renamed the West Virginia Board of Dentistry. The members of the board in office on the date this section takes effect shall, unless sooner removed, continue to serve until their respective terms expire and until their successors have been appointed and qualified.

(b) The Governor, by and with the advice and consent of the Senate, shall appoint:

(1) Six licensed dentists;

(2) One licensed dental hygienist;

(3) One nationally certified dental assistant or currently practicing dental assistant with a minimum of ten years experience; and

(4) One citizen member who is not licensed under the provisions of this article and does not perform any services related to the practice of dentistry.

(c) The West Virginia Dental Association may submit recommendations to the Governor for the appointment of the licensed dentists board members, the West Virginia Association of Dental Hygienists may submit recommendations to the Governor for the appointment of a Dental Hygienist board member and the West Virginia Dental Assistant Association may submit recommendations to the Governor for the appointment of a dental assistant board member.

(d) A person connected with a commercial entity that may derive financial gain from the profession of dentistry and a
person employed as full-time faculty with a dental college, school or dental department of a university are not eligible for appointment to the board.

(e) After the initial appointment term, the appointment term is five years. A member may not serve more than two consecutive terms. A member who has served two consecutive full terms may not be reappointed for at least one year after completion of bis or her second full term. A member may continue to serve until his or her successor has been appointed and qualified.

(t) Each licensed member of the board, at the time of his or her appointment, shall have held a license in this state for a period of not less than five years immediately preceding the appointment.

(g) Each member of the board shall be a resident of this state during the appointment term.

(h) A vacancy on the board shall be filled by appointment by the Governor for the unexpired term of the member whose office is vacant.

(i) The Governor may remove any member from the board for neglect of duty, incompetency or official misconduct.

(j) A licensed member of the board immediately and automatically forfeits membership to the board if his or her license to practice is suspended or revoked in any jurisdiction.

(k) A member of the board immediately and automatically forfeits membership to the board if he or she is convicted of a felony under the laws of any jurisdiction or becomes a nonresident of this state.

(I) The board shall elect annually one of its members as president and one member as secretary who shall serve at the will and pleasure of the board.
(m) Each member of the board is entitled to receive compensation and expense reimbursement in accordance with article one of this chapter.

(n) A simple majority of the membership serving on the board at a given time is a quorum for the transaction of business.

(o) The board shall hold at least two meetings annually. Other meetings shall be held at the call of the president or upon the written request of four members, at the time and place as designated in the call or request.

(p) Prior to commencing his or her duties as a member of the board, each member shall take and subscribe to the oath required by section five, article four of the Constitution of this state.

(q) The members of the board, when acting in good faith and without malice, shall enjoy immunity from individual civil liability while acting within the scope of their duties as board members.

§30-4-5. Powers of the board.

1 The board has all the powers and duties set forth in this article, by rule, in article one of this chapter and elsewhere in law, including:

(1) Hold meetings;

(2) Establish procedures for submitting, approving and rejecting applications for a license, certificate and permit;

(3) Determine the qualifications of any applicant for a license, certificate and permit;

(4) Establish the fees charged under the provisions of this article;

(5) Issue, renew, deny, suspend, revoke or reinstate a license, certificate and permit;
(6) Prepare, conduct, administer and grade written, oral or written and oral examinations for a license;

(7) Contract with third parties to administer the examinations required under the provisions of this article;

(8) Maintain records of the examinations the board or a third party administers, including the number of persons taking the examination and the pass and fail rate;

(9) Maintain an office and hire, discharge, establish the job requirements and fix the compensation of employees and contract with persons necessary to enforce the provisions of this article.

(10) Employ investigators, attorneys, hearing examiners, consultants and other employees as may be necessary who are exempt from the classified service and who serve at the will and pleasure of the board.

(11) Investigate alleged violations of the provisions of this article and articles four-a and four-b of this chapter and legislative rules, orders and final decisions of the board;

(12) Conduct disciplinary hearings of persons regulated by the board;

(13) Determine disciplinary action and issue orders;

(14) Institute appropriate legal action for the enforcement of the provisions of this article;

(15) Maintain an accurate registry of names and addresses of all persons regulated by the board;

(16) Keep accurate and complete records of its proceedings, and certify the same as may be necessary and appropriate;

(17) Propose rules in accordance with the provisions of article three, chapter twenty-nine-a of this code to implement the provisions of this article;
(18) Sue and be sued in its official name as an agency of this state; and

(19) Confer with the Attorney General or his or her assistant in connection with legal matters and questions.

§30-4-6. Rule-making authority.

(a) The board shall propose rules for legislative approval, in accordance with the provisions of article three, chapter twenty-nine-a of this code to implement the provisions of this article and articles four-a and four-b of this chapter including:

(1) Standards and requirements for licenses, certifications and permits;

(2) Requirements for third parties to prepare and/or administer examinations and reexaminations;

(3) Educational and experience requirements;

(4) Continuing education requirements and approval of continuing education courses;

(5) Procedures for the issuance and renewal of licenses, certifications and permits;

(6) Establish a fee schedule;

(7) Regulate dental specialities;

(8) Delegate procedures to be performed by a dental hygienist;

(9) Delegate procedures to be performed by a dental assistant;

(10) Designate the services and procedures performed under direct supervision, general supervision in public health practice;

(11) Designate additional public health settings;
(12) Regulate the use of firm or trade names;
(13) Regulate dental corporations;
(14) Regulate mobile dental facilities;
(15) Regulate portable dental units;
(16) Regulate professional limited liability companies;
(17) Establish professional conduct requirements;
(18) Establish the procedures for denying, suspending, revoking, reinstating or limiting the practice of licensees, certifications and permittees;
(19) Establish requirements for inactive or revoked licenses, certifications and permits;
(20) Regulate dental anesthesia, including:
   (A) Fees;
   (B) Evaluations;
   (C) Equipment;
   (D) Emergency drugs;
   (E) Definitions;
   (F) Qualified monitor requirements; and
   (G) Education;
(21) Any other rules necessary to implement this article.
(b) All of the board’s rules in effect and not in conflict with these provisions shall remain in effect until they are amended or rescinded.

§30-4-7. Fees; special revenue account; administrative fines.
(a) All fees and other moneys, except administrative fines, received by the board shall be deposited in a separate special
revenue fund in the State Treasury designated the Board of Dentists and Dental Hygienist Special Fund, which is continued and shall be known as the Board of Dentistry Special Fund. The fund is used by the board for the administration of this article. Except as may be provided in article one of this chapter, the board retains the amount in the special revenue account from year to year. No compensation or expense incurred under this article is a charge against the General Revenue Fund.

(b) Any amounts received as administrative fines imposed pursuant to this article shall be deposited into the general revenue fund of the State Treasury.

§30-4-8. License to practice dentistry.

(a) The board shall issue a license to practice dentistry to an applicant who meets the following requirements:

1. Is at least eighteen years of age;
2. Is of good moral character;
3. Is a graduate of and has a diploma from a school accredited by the Commission on Dental Accreditation or equivalently approved dental college, school or dental department of a university as determined by the board;
4. Has passed the National Board examination as given by the Joint Commission on National Dental Examinations and a clinical examination as specified by the board by rule;
5. Has not been found guilty of cheating, deception or fraud in the examination or any part of the application;
6. Has paid the application fee specified by rule; and
7. Not be an alcohol or drug abuser, as these terms are defined in section eleven, article one-a, chapter twenty-seven of
Provided, That an applicant in an active recovery process, which may, in the discretion of the board, be evidenced by participation in a twelve-step program or other similar group or process, may be considered.

(b) A dentist may not represent to the public that he or she is a specialist in any branch of dentistry or limit his or her practice to any branch of dentistry unless first issued a certificate of qualification in that branch of dentistry by the board.

(c) A license to practice dentistry issued by the board shall for all purposes be considered a license issued under this section: Provided, That a person holding a license shall renew the license.

§30-4-9. Scope of practice of a dentist.

The practice of dentistry includes the following:

(1) Coordinate dental services to meet the oral health needs of the patient;

(2) Examine, evaluate and diagnose diseases, disorders and conditions of the oral cavity, maxillofacial area and adjacent and associated structures;

(3) Treat diseases, disorders and conditions of the oral cavity, maxillofacial area and the adjacent and associated structures;

(4) Provide services to prevent diseases, disorders and conditions of the oral cavity, maxillofacial area and the adjacent and associated structures;

(5) Fabricate, repair or alter a dental prosthesis;

(6) Administer anesthesia in accordance with the provisions of article four-a of this chapter;

(7) Prescribe drugs necessary for the practice of dentistry;
(8) Execute and sign a death certificate when it is required in the practice of dentistry;

(9) Employ and supervise dental auxiliary personnel;

(10) Authorize delegated procedures to be performed by dental auxiliary personnel; and

(11) Perform any other work included in the curriculum of an approved dental school, college or dental department of a university.

§30-4-10. License to practice dental hygiene.

(a) The board shall issue a dental hygienist license to an applicant who meets the following requirements:

(1) Is at least eighteen years of age;

(2) Is of good moral character;

(3) Is a graduate with a degree in dental hygiene from an approved dental hygiene program of a college, school or dental department of a university:

(4) Has passed the national board dental hygiene examination, a regional or state clinical examination and a state law examination that tests the applicant’s knowledge of subjects specified by the board by rule;

(5) Has not been found guilty of cheating, deception or fraud in the examination or any part of the application;

(6) Has paid the application fee specified by rule; and,

(7) Not be an alcohol or drug abuser, as these terms are defined in section eleven, article one-a, chapter twenty-seven of this code: Provided, That an applicant in an active recovery process, which may, in the discretion of the board, be evidenced by participation in a twelve-step program or other similar group or process, may be considered.
(b) A dental hygienist license issued by the board and in good standing on the effective date of the amendments to this section shall for all purposes be considered a dental hygienist license issued under this section: Provided, That a person holding a dental hygienist license shall renew the license.

§30-4-11. Scope of practice for a dental hygienist.

The practice of dental hygiene includes the following:

1. (1) Perform a complete prophylaxis, including the removal of any deposit, accretion or stain from supra and subgingival, the surface of a tooth or a restoration;

2. (2) Apply a medicinal agent to a tooth for a prophylactic purpose;

3. (3) Take a radiograph for interpretation by a dentist;

4. (4) Instruct a patient on proper oral hygiene practice;

5. (5) Place sealants on a patient's teeth without a prior examination by a licensed dentist: Provided, That for this subdivision, the dental hygienist has a public health practice permit issued by the board, and subject to a collaborative agreement with a supervising dentist and the patient is referred for a dental examination within six months of sealant application;

6. (6) Perform all delegated procedures of a dental hygienist specified by rule by the board; and

7. (7) Performing all delegated procedures of a dental assistant specified by rule by the board.

§30-4-12. License renewal.

(a) All persons regulated by this article shall annually or biannually, renew his or her board authorization by completing
a form prescribed by the board and submitting any other
information required by the board.

(b) The board shall charge a fee for each renewal of a board
authorization and shall charge a late fee for any renewal not paid
by the due date.

(c) The board shall require as a condition of renewal that
each licensee, certificate holder or permittee complete
continuing education.

(d) The board may deny an application for renewal for any
reason which would justify the denial of an original application.

§30-4-13. Board authorizations shall be displayed.

(a) The board shall prescribe the form for a board
authorization, and may issue a duplicate upon payment of a fee.

(b) Any person regulated by the article shall conspicuously
display his or her board authorization at his or her principal
business location.

§30-4-14. Dental intern, resident, or teaching permit.

(a) The board may issue a dental intern or dental resident
permit to an applicant who has been accepted as a dental intern
or dental resident by a licensed hospital or dental school in this
state which maintains an established dental department under the
supervision of a licensed dentist and meets the following
qualifications:

(1) Has graduated from a Commission on Dental
Accreditation or equivalent approved dental college, school or
dental department of a university with a degree in dentistry;

(2) Has paid the application fee specified by rule; and

(3) Meets the other qualifications specified by rule.
(b) The dental intern or dental resident permit may be renewed and expires on the earlier of:

(1) The date the permit holder ceases to be a dental intern or dental resident; or

(2) One year after the date of issue.

(c) The board may issue a teaching permit to an applicant who is not otherwise licensed to practice dentistry in this state and who meets the following conditions:

(1) Is authorized or is eligible, as determined by the board, for a authorization to practice dentistry in another jurisdiction;

(2) Has met or been approved under the credentialing standards of a dental school or an academic medical center with which the person is to be affiliated: Provided, That the dental school or academic medical center is accredited by the Commission on Dental Accreditation or Joint Commission on Accreditation of Health Care Organizations;

(3) The permittee may teach and practice dentistry in or on behalf of a dental school or college offering a doctoral degree in dentistry operated and conducted in this state, in connection with an academic medical center or at any teaching hospital adjacent to a dental school or an academic medical center;

(4) Shall successfully complete the West Virginia Dental Law Examination;

(5) Shall pay annual renewal fees to the board;

(6) Shall comply with continuing education requirements;

(7) Has had no disciplinary actions taken or pending against him or her by any other jurisdiction.

(d) A teaching permit may be renewed annually with a written recommendation from the dental school dean.
(e) While in effect, a permittee is subject to the restrictions and requirements imposed by this article to the same extent as a licensee. In addition, a permittee may not receive any fee for service other than a salary paid by the hospital or dental school.

§30-4-15. Special volunteer dentist or dental hygienist license; civil immunity for voluntary services rendered to indigents.

(a) There is continued a special volunteer dentist and dental hygienist license for dentist and dental hygienists retired or retiring from the active practice of dentistry and dental hygiene who wish to donate their expertise for the care and treatment of indigent and needy patients in the clinic setting of clinics organized, in whole or in part, for the delivery of health care services without charge. The special volunteer dentist or dental hygienist license shall be issued by the board to dentist or dental hygienists licensed or otherwise eligible for licensure under this article and the legislative rules promulgated hereunder without the payment of an application fee, license fee or renewal fee, shall be issued for the remainder of the licensing period and renewed consistent with the boards other licensing requirements. The board shall develop application forms for the special license provided in this subsection which shall contain the dental hygienist’s acknowledgment that:

(1) The dentist or dental hygienist’s practice under the special volunteer dentist or dental hygienist license will be exclusively devoted to providing dentistry or dental hygiene care to needy and indigent persons in West Virginia;

(2) The dentist or dental hygienist will not receive any payment or compensation, either direct or indirect, or have the expectation of any payment or compensation, for any dentistry or dental hygiene services rendered under the special volunteer dentist or dental hygienist license;
(3) The dentist or dental hygienist will supply any supporting documentation that the board may reasonably require; and

(4) The dentist or dental hygienist agrees to continue to participate in continuing professional education as required by the board for the special volunteer dentist or dental hygienist.

(b) Any dentist or dental hygienist who renders any dentistry or dental hygiene service to indigent and needy patients of a clinic organized, in whole or in part, for the delivery of health care services without charge under a special volunteer dentist or dental hygienist license authorized under subsection (a) of this section without payment or compensation or the expectation or promise of payment or compensation is immune from liability for any civil action arising out of any act or omission resulting from the rendering of the dental hygiene service at the clinic unless the act or omission was the result of the dentist's or dental hygienist's gross negligence or willful misconduct. In order for the immunity under this subsection to apply, there shall be a written agreement between the dentist or dental hygienist and the clinic pursuant to which the dentist or dental hygienist will provide voluntary uncompensated dental hygiene services under the control of the clinic to patients of the clinic before the rendering of any services by the dentist or dental hygienist at the clinic: Provided, That any clinic entering into such written agreement is required to maintain liability coverage of not less than one million dollars per occurrence.

(c) Notwithstanding the provisions of subsection (b) of this section, a clinic organized, in whole or in part, for the delivery of health care services without charge is not relieved from imputed liability for the negligent acts of a dentist or dental hygienist rendering voluntary dental hygiene services at or for the clinic under a special volunteer dentist or dental hygienist license authorized under subsection (a) of this section.

(d) For purposes of this section, "otherwise eligible for licensure" means the satisfaction of all the requirements for
licensure as listed in section eight of this article and in the
legislative rules promulgated thereunder, except the fee
requirements of subdivision (6) of said section and of the
legislative rules promulgated by the board relating to fees.

(e) Nothing in this section may be construed as requiring the
board to issue a special volunteer dentist or dental hygienist
license to any dental hygienist whose license is or has been
subject to any disciplinary action or to any dentist or dental
hygienist who has surrendered a license or caused such license
to lapse, expire and become invalid in lieu of having a complaint
initiated or other action taken against his or her dentist or dental
hygienist license, or who has elected to place a dentist or dental
hygienist license in inactive status in lieu of having a complaint
initiated or other action taken against his or her license, or who
has been denied a dentist or dental hygienist license.

(f) Any policy or contract of liability insurance providing
coverage for liability sold, issued or delivered in this state to any
dentist or dental hygienist covered under the provisions of this
article shall be read so as to contain a provision or endorsement
whereby the company issuing such policy waives or agrees not
to assert as a defense on behalf of the policyholder or any
beneficiary thereof, to any claim covered by the terms of such
policy within the policy limits, the immunity from liability of the
insured by reason of the care and treatment of needy and
indigent patients by a dentist or dental hygienist who holds a
special volunteer dentist or dental hygienist license.

§30-4-16. Dental corporations.

(a) Dental corporations are continued.

(b) One or more dentists may organize and become a
shareholder or shareholders of a dental corporation domiciled
within this state under the terms and conditions and subject to
the limitations and restrictions specified by rule.
(c) No corporation may practice dentistry, or any of its branches, or hold itself out as being capable of doing so without a certificate of authorization from the board.

(d) When the Secretary of State receives a certificate of authorization to act as a dental corporation from the board, he or she shall attach the authorization to the corporation application and, upon compliance with the applicable provisions of chapter thirty-one of this code, the Secretary of State shall issue to the incorporators a certificate of incorporation for the dental corporation.

(e) A corporation holding a certificate of authorization shall renew annually, on or before June 30, on a form prescribed by the board and pay an annual fee in an amount specified by rule.

(f) A dental corporation may practice dentistry only through an individual dentist or dentists licensed to practice dentistry in this state, but the dentist or dentists may be employees rather than shareholders of the corporation.

(g) A dental corporation holding a certificate of authorization shall cease to engage in the practice of dentistry upon being notified by the board that any of its shareholders is no longer a licensed dentist or when any shares of the corporation have been sold or disposed of to a person who is not a licensed dentist: Provided, That the personal representative of a deceased shareholder has a period, not to exceed twenty-four months from the date of the shareholder’s death, to dispose of the shares; but nothing contained herein may be construed as affecting the existence of the corporation or its right to continue to operate for all lawful purposes other than the practice of dentistry.

§30-4-17. Reinstatement.

(a) A licensee against whom disciplinary action has been taken under the provisions of this article shall be afforded an opportunity to demonstrate the qualifications to resume practice.
4 The application for reinstatement shall be in writing and subject
to the procedures specified by the board by rule.

6 (b) A licensee who does not complete annual renewal, as
specified by the board by rule, and whose license has lapsed for
one year or longer, shall make application for reinstatement as
specified by the board by rule.

10 (c) The board, at its discretion and for cause, may require an
applicant for reinstatement to undergo a physical and/or mental
evaluation to determine a licensee is competent to practice or if
the licensee is impaired by drugs or alcohol.

§30-4-18. Actions to enjoin violations.

1 (a) If the board obtains information that any person has
engaged in, is engaging in or is about to engage in any act which
constitutes or will constitute a violation of the provisions of this
article, the rules promulgated pursuant to this article or a final
order or decision of the board, it may issue a notice to the person
to cease and desist in engaging in the act and/or apply to the
circuit court in the county of the alleged violation for an order
enjoining the act.

9 (b) The circuit court may issue a temporary injunction
pending a decision on the merits and may issue a permanent
injunction based on its findings in the case.

12 (c) The judgment of the circuit court on an application
permitted by the provisions of this section is final unless
reversed, vacated or modified on appeal to the West Virginia
Supreme Court of Appeals.

§30-4-19. Complaints; investigations; due process procedure;
grounds for disciplinary action.

1 (a) The board may initiate a complaint upon receipt of
credible information and shall, upon the receipt of a written
complaint of any person, cause an investigation to be made to
4 determine whether grounds exist for disciplinary action under this article or the legislative rules promulgated pursuant to this article.

7 (b) After reviewing any information obtained through an investigation, the board shall determine if probable cause exists that the licensee, certificate holder or permittee has violated subsection (g) of this section or rules promulgated pursuant to this article.

12 (c) Upon a finding of probable cause to go forward with a complaint, the board shall provide a copy of the complaint to the licensee, certificate holder or permittee.

15 (d) Upon a finding that probable cause exists that the licensee, certificate holder or permittee has violated subsection (g) of this section or rules promulgated pursuant to this article, the board may enter into a consent decree or hold a hearing for disciplinary action against the licensee, certificate holder or permittee. Any hearing shall be held in accordance with the provisions of this article and shall require a violation to be proven by a preponderance of the evidence.

23 (e) A member of the complaint committee or the executive director of the board may issue subpoenas and subpoenas duces tecum to obtain testimony and documents to aid in the investigation of allegations against any person regulated by the article.

28 (f) Any member of the board or its executive director may sign a consent decree or other legal document on behalf of the board.

31 (g) The board may, after notice and opportunity for hearing, deny or refuse to renew, suspend, restrict or revoke the license, certificate or permit of, or impose probationary conditions upon or take disciplinary action against, any licensee, certificate holder or permittee for any of the following reasons:
(1) Obtaining a board authorization by fraud, misrepresentation or concealment of material facts;

(2) Being convicted of a felony or a misdemeanor crime of moral turpitude;

(3) Being guilty of unprofessional conduct which placed the public at risk, as defined by legislative rule of the board;

(4) Intentional violation of a lawful order or legislative rule of the board;

(5) Having had a board authorization revoked or suspended, other disciplinary action taken, or an application for a board authorization denied by the proper authorities of another jurisdiction;

(6) Aiding or abetting unlicensed practice;

(7) Engaging in an act while acting in a professional capacity which has endangered or is likely to endanger the health, welfare or safety of the public;

(8) Having an incapacity that prevents a licensee from engaging in the practice of dentistry or dental hygiene, with reasonable skill, competence and safety to the public;

(9) Committing fraud in connection with the practice of dentistry or dental hygiene;

(10) Failing to report to the board one's surrender of a license or authorization to practice dentistry or dental hygiene in another jurisdiction while under disciplinary investigation by any of those authorities or bodies for conduct that would constitute grounds for action as defined in this section;

(11) Failing to report to the board any adverse judgment, settlement or award arising from a malpractice claim arising related to conduct that would constitute grounds for action as defined in this section;
(12) Being guilty of unprofessional conduct as contained in the American Dental Association principles of ethics and code of professional conduct. The following acts are conclusively presumed to be unprofessional conduct:

(A) Being guilty of any fraud or deception;

(B) Committing a criminal operation or being convicted of a crime involving moral turpitude;

(C) Abusing alcohol or drugs;

(D) Violating any professional confidence or disclosing any professional secret;

(E) Being grossly immoral;

(F) Harassing, abusing, intimidating, insulting, degrading or humiliating a patient physically, verbally or through another form of communication;

(G) Obtaining any fee by fraud or misrepresentation;

(H) Employing directly or indirectly, or directing or permitting any suspended or unlicensed person so employed, to perform operations of any kind or to treat lesions of the human teeth or jaws or correct malimposed formations thereof;

(I) Practicing, or offering or undertaking to practice dentistry under any firm name or trade name not approved by the board;

(J) Having a professional connection or association with, or lending his or her name to another, for the illegal practice of dentistry, or professional connection or association with any person, firm or corporation holding himself or herself, themselves or itself out in any manner contrary to this article;

(K) Making use of any advertising relating to the use of any drug or medicine of unknown formula;
(L) Advertising to practice dentistry or perform any operation thereunder without causing pain;

(M) Advertising professional superiority or the performance of professional services in a superior manner;

(N) Advertising to guarantee any dental service;

(O) Advertising in any manner that is false or misleading in any material respect;

(P) Soliciting subscriptions from individuals within or without the state for, or advertising or offering to individuals within or without the state, a course or instruction or course materials in any phase, part or branch of dentistry or dental hygiene in any journal, newspaper, magazine or dental publication, or by means of radio, television or United States mail, or in or by any other means of contacting individuals:

Provided, That the provisions of this paragraph may not be construed so as to prohibit:

(i) An individual dentist or dental hygienist from presenting articles pertaining to procedures or technique to state or national journals or accepted dental publications; or

(ii) Educational institutions approved by the board from offering courses or instruction or course materials to individual dentists and dental hygienists from within or without the state; or

(Q) Engaging in any action or conduct which would have warranted the denial of the license.

(13) Knowing or suspecting that a licensee is incapable of engaging in the practice of dentistry or dental hygiene, with reasonable skill, competence and safety to the public, and failing to report any relevant information to the board;

(14) Using or disclosing protected health information in an unauthorized or unlawful manner;
(15) Engaging in any conduct that subverts or attempts to subvert any licensing examination or the administration of any licensing examination;

(16) Failing to furnish to the board or its representatives any information legally requested by the board or failing to cooperate with or engaging in any conduct which obstructs an investigation being conducted by the board;

(17) Announcing or otherwise holding himself or herself out to the public as a specialist or as being specially qualified in any particular branch of dentistry or as giving special attention to any branch of dentistry or as limiting his or her practice to any branch of dentistry without first complying with the requirements established by the board for the specialty and having been issued a certificate of qualification in the specialty by the board;

(18) Failing to report to the board within seventy-two hours of becoming aware thereof any life threatening occurrence, serious injury or death of a patient resulting from dental treatment or complications following a dental procedure;

(19) Failing to report to the board any driving under the influence and/or driving while intoxicated offense; or

(20) Violation of any of the terms or conditions of any order entered in any disciplinary action.

(h) For the purposes of subsection (g) of this section, effective July 1, 2013, disciplinary action may include:

(1) Reprimand;
(2) Probation;
(3) Restrictions;
(4) Suspension;
(5) Revocation;

(6) Administrative fine, not to exceed $1,000 per day per violation;

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

(8) Practicing under supervision or other restriction; or

(9) Requiring the licensee or permittee to report to the board for periodic interviews for a specified period of time.

(i) In addition to any other sanction imposed, the board may require a licensee or permittee to pay the costs of the proceeding.

(j) A person authorized to practice under this article who reports or otherwise provides evidence of the negligence, impairment or incompetence of another member of this profession to the board or to any peer review organization is not liable to any person for making the report if the report is made without actual malice and in the reasonable belief that the report is warranted by the facts known to him or her at the time.

§30-4-20. Procedures for hearing; right of appeal.

(a) Hearings are governed by the provisions of section eight, article one of this chapter.

(b) The board may conduct the hearing or elect to have an administrative law judge conduct the hearing.

(c) If the hearing is conducted by an administrative law judge, at the conclusion of a hearing he or she shall prepare a proposed written order containing findings of fact and conclusions of law. The proposed order may contain proposed disciplinary actions if the board so directs. The board may accept, reject or modify the decision of the administrative law judge.
12 (d) Any member or the executive director of the board has
13 the authority to administer oaths, examine any person under
14 oath.

15 (e) If, after a hearing, the board determines the licensee or
16 permittee has violated provisions of this article or the board’s
17 rules, a formal written decision shall be prepared which contains
18 findings of fact, conclusions of law and a specific description of
19 the disciplinary actions imposed.


A person adversely affected by a decision of the board
2 denying an application or entered after a hearing may obtain
3 judicial review of the decision in accordance with section four,
4 article five, chapter twenty-nine-a of this code and may appeal
5 any ruling resulting from judicial review in accordance with
6 article six of said chapter.

§30-4-22. Criminal offenses.

(a) When, as a result of an investigation under this article or
2 otherwise, the board has reason to believe that a person
3 authorized under this article has committed a criminal offense
4 under this article, the board may bring its information to the
5 attention of an appropriate law-enforcement official.

(b) Any person who intentionally practices, or holds himself
7 or herself out as qualified to practice dentistry or dental hygiene,
8 or uses any title, word or abbreviation to indicate to or induce
9 others to believe he or she is licensed to practice as a dentist or
dental hygienist without obtaining an active, valid West Virginia
11 license to practice that profession or with a license that is:

12 (1) Expired, suspended or lapsed; or

13 (2) Inactive, revoked, suspended as a result of disciplinary
14 action, or surrendered, is guilty of a misdemeanor and, upon
15 conviction thereof, shall be fined not more than $10,000.
§30-4-23. Single act evidence of practice.

In any action brought under this article, article four-a or article four-b any proceeding initiated under this article, evidence of the commission of a single act prohibited by this article is sufficient to justify a penalty, injunction, restraining order or conviction without evidence of a general course of conduct.

§30-4-24. Inapplicability of article.

The provisions of this article do not apply to:

(1) A licensed physician or surgeon in the practice of his or her profession when rendering dental relief in emergency cases, unless he or she undertakes to reproduce or reproduces lost parts of the human teeth or to restore or replace lost or missing teeth in the human mouth;

(2) A dental laboratory in the performance of dental laboratory services, while the dental laboratory, in the performance of the work, conforms in all respects to the requirements of article four-b of this chapter and further does not apply to persons performing dental laboratory services under the direct supervision of a licensed dentist or under the direct supervision of a person authorized under this article to perform any of the acts in this article defined to constitute the practice of dentistry while the work is performed in connection with, and as a part of, the dental practice of the licensed dentist or other authorized person and for his or her dental patients;

(3) A student enrolled in and regularly attending any dental college recognized by the board, provided their acts are done in the dental college and under the direct and personal supervision of their instructor;

(4) A student enrolled in and regularly attending any dental college, recognized by the board, practicing dentistry in a public
health setting, provided their acts are done under the direct supervision of their instructor, adjunct instructor or a dentist;

(5) An authorized dentist of another state temporarily operating a clinic under the auspices of a organized and reputable dental college or reputable dental society, or to one lecturing before a reputable society composed exclusively of dentists; or

(6) A dentists whose practice is confined exclusively to the service of the United States Army, the United States Navy, the United States Air Force, The United States Coast Guard, the United States Public Health Service, the United States Veteran's Bureau or any other authorized United States government agency or bureau.

ARTICLE 4A. ADMINISTRATION OF ANESTHESIA BY DENTISTS.

§30-4A-1. Requirement for anesthesia permit; qualifications and requirements for qualified monitors.

(a) No dentist may induce central nervous system anesthesia without first having obtained an anesthesia permit for the level of anesthesia being induced.

(b) The applicant for an anesthesia permit shall pay the appropriate permit fees and renewal fees, submit a completed board-approved application and consent to an office evaluation.

(c) Permits shall be issued to coincide with the annual renewal dates for licensure.

(d) Permit holders shall report the names and qualifications of each qualified monitor providing services to that permit holder. A qualified monitor may not perform the functions and responsibilities specified in this article for any level of anesthesia, other than relative analgesia/minimal sedation, without certification by the board. Qualified monitors shall apply
for certification and pay the appropriate application fees and renewal fees. Qualified monitors are required to renew annually by the 30th day of June. To be certified as a qualified monitor, the applicant must meet the following minimum qualifications:

1. Possess a current health care provider BLS/CPR certification;

2. For monitoring, conscious sedation/moderate sedation or general anesthesia/deep conscious sedation procedures, successful completion of an AAOMS or AAPD anesthesia assistants certification program; and

3. For monitoring a nitrous oxide unit, successful completion of a board-approved course in nitrous oxide monitoring.

(e) A dentist shall hold a class permit equivalent to or exceeding the anesthesia level being provided unless the provider of anesthesia is a physician anesthesiologist or another licensed dentist who holds a current anesthesia permit issued by the board.


(a) In any hearing where a question exists as to the level of central nervous system depression a licensee has induced, as outlined in this article, the board may base its findings on, among other things, the types, dosages and routes of administration of drugs administered to the patient and what result can reasonably be expected from those drugs in those dosages and routes administered in a patient of that physical and psychological status.

(b) No permit holder may have more than one person under conscious sedation/moderate sedation and/or general anesthesia/deep conscious sedation at the same time, exclusive of recovery.

1. (a) The board shall issue the following permits:

2. (1) Class 2 Permit: A Class 2 Permit authorizes a dentist to induce anxiolysis/minimal sedation.

3. (2) Class 3 Permit: A Class 3 Permit authorizes a dentist to induce conscious sedation/moderate sedation as limited enteral (3a) and/or comprehensive parenteral (3b) and anxiolysis/minimal sedation.

4. (3) Class 4 Permit: A Class 4 Permit authorizes a dentist to induce general anesthesia/deep conscious sedation, conscious sedation/moderate sedation and anxiolysis/minimal sedation.

(b) When anesthesia services are provided in dental facilities by a medical doctor or doctor of osteopathy physician anesthesiologist or dentist anesthesiologist, the dental facility shall be inspected and approved for a Class 4 permit and the dentist shall have a minimum of a Class 2 permit. If anesthesia services are provided by a CRNA, the dental facility shall be inspected and approved for a Class 4 permit and the supervising dentist shall have the same level of permit for the level of anesthesia provided by the CRNA.

§30-4A-4. Qualifications, standards and continuing education requirements for relative analgesia/minimal sedation use.

1. (a) The board shall allow administration of relative analgesia/minimal sedation if the practitioner:

2. (1) Is a licensed dentist in the state;

3. (2) Holds valid and current documentation showing successful completion of a Health Care Provider BLS/CPR course; and
(3) Has completed a training course of instruction in dental school, continuing education or as a postgraduate in the administration of relative analgesia/minimal sedation.

(b) A practitioner who administers relative analgesia/minimal sedation shall have the following facilities, equipment and drugs available during the procedure and during recovery:

(1) An operating room large enough to adequately accommodate the patient on an operating table or in an operating chair and to allow delivery of age appropriate care in an emergency situation;

(2) An operating table or chair which permits the patient to be positioned so that the patient's airway can be maintained, quickly alter the patient's position in an emergency and provide a firm platform for the administration of basic life support;

(3) A lighting system which permits evaluation of the patient's skin and mucosa color and a backup lighting system of sufficient intensity to permit completion of any operation underway in the event of a general power failure;

(4) Suction equipment which permits aspiration of the oral and pharyngeal cavities;

(5) An oxygen delivery system with adequate age appropriate full face masks and appropriate connectors that is capable of delivering high flow oxygen to the patient under positive pressure, together with an adequate backup system;

(6) A nitrous oxide delivery system with a fail-safe mechanism that will ensure appropriate continuous oxygen delivery and a scavenger system; and

(7) A defibrillator device: Provided, That this requirement is only for Class 2, 3 and 4 permittees.
(c) All equipment used shall be appropriate for the height and weight and age of the patient.

(d) Before inducing relative analgesia/minimal sedation by means of nitrous oxide or a single premedication agent, a practitioner shall:

(1) Evaluate the patient;

(2) Give instruction to the patient or, when appropriate due to age or psychological status of the patient, the patient's guardian; and

(3) Certify that the patient is an appropriate candidate for relative analgesia/minimal sedation.

(e) A practitioner who administers relative analgesia/minimal sedation shall see that the patient's condition is visually monitored. At all times, the patient shall be observed by a qualified monitor until discharge criteria have been met.

(f) A qualified monitor's record shall include documentation of all medications administered with dosages, time intervals and route of administration including local anesthesia.

(g) A discharge entry shall be made in the patient's record indicating the patient's condition upon discharge.

(h) A qualified monitor shall hold valid and current documentation:

(1) Showing successful completion of a Health Care Provider BLS/CPR course; and

(2) Have received training and be competent in the recognition and treatment of medical emergencies, monitoring vital signs, the operation of nitrous oxide delivery systems and the use of the sphygmomanometer and stethoscope.
(i) The practitioner shall assess the patient's responsiveness using preoperative values as normal guidelines and discharge the patient only when the following criteria are met:

(1) The patient is alert and oriented to person, place and time as appropriate to age and preoperative neurological status;

(2) The patient can talk and respond coherently to verbal questioning or to preoperative neurological status;

(3) The patient can sit up unaided or without assistance or to preoperative neurological status;

(4) The patient can ambulate with minimal assistance or to preoperative neurological status; and

(5) The patient does not have uncontrollable nausea, vomiting or dizziness.

§30-4A-5. Qualifications, standards, and continuing education requirements for a Class 2 Permit.

(a) The board shall issue a Class 2 Permit to an applicant who:

(1) Is a licensed dentist in West Virginia;

(2) Holds valid and current documentation showing successful completion of a Health Care Provider BLS/CPR; and

(3) Has completed a board approved course of at least six hours didactic and clinical of either predoctoral dental school or postgraduate instruction.

(b) A dentist who induces relative analgesia/minimal sedation and anxiolysis/minimal sedation shall have the following facilities, properly maintained equipment and appropriate drugs available during the procedures and during recovery:
(1) An operating room large enough to adequately accommodate the patient on an operating table or in an operating chair and to allow an operating team of at least two individuals to freely move about the patient;

(2) An operating table or chair which permits the patient to be positioned so the operating team can maintain the patient’s airway, quickly alter the patient’s position in an emergency and provide a firm platform for the administration of basic life support;

(3) A lighting system which permits evaluation of the patient’s skin and mucosal color and a backup lighting system of sufficient intensity to permit completion of any operation underway in the event of a general power failure;

(4) Suction equipment which permits aspiration of the oral and pharyngeal cavities;

(5) An oxygen delivery system with adequate age appropriate full face mask and appropriate connectors that is capable of delivering high flow oxygen to the patient under positive pressure, together with an adequate backup system;

(6) A nitrous oxide delivery system with a fail-safe mechanism that will ensure appropriate continuous oxygen delivery and a scavenger system;

(7) A recovery area that has available oxygen, adequate lighting, suction and electrical outlets. The recovery area can be the operating room;

(8) Sphygmomanometer, stethoscope and pulse oximeter;

(9) Emergency drugs as specified by rule;

(10) A defibrillator device; and

(11) All equipment and medication dosages shall be in accordance with the height and weight and age of the patient being treated.
(c) Before inducing anxiolysis/minimal sedation, a dentist shall:

(1) Evaluate the patient by using the ASA Patient Physical Status Classification of the ASA that the patient is an appropriate candidate for anxiolysis/minimal sedation; and

(2) Obtain written informed consent from the patient or patient’s guardian for the anesthesia. The obtaining of the informed consent shall be documented in the patient’s record.

(d) The dentist shall monitor and record the patient’s condition or shall use a qualified monitor to monitor and record the patient’s condition. The documented requirements of a qualified monitor monitoring anxiolysis/minimal sedation cases are as specified by rule. A Class 2 Permit holder may have no more than one person under anxiolysis/minimal sedation at the same time.

(e) The patient shall be monitored as follows:

(1) Patients shall have continuous monitoring using pulse oximetry. The patient’s blood pressure, heart rate and respiration shall be recorded at least once before, during and after the procedure and these recordings shall be documented in the patient record. At all times, the patient shall be observed by a qualified monitor until discharge criteria have been met. If the dentist is unable to obtain this information, the reasons shall be documented in the patient’s record. The record shall also include documentation of all medications administered with dosages, time intervals and route of administration including local anesthesia.

(2) A discharge entry shall be made by the dentist in the patient’s record indicating the patient’s condition upon discharge.

(f) A permit holder who uses anxiolysis/minimal sedation shall see that the patient’s condition is visually monitored. The
patient shall be monitored as to response to verbal stimulation, oral mucosal color and preoperative and postoperative vital signs.

(g) The dentist shall assess the patient’s responsiveness using preoperative values as normal guidelines and discharge the patient only when the following criteria are met:

(1) Vital signs including blood pressure, pulse rate and respiratory rate are stable;

(2) The patient is alert and oriented to person, place and time as appropriate to age and preoperative neurological status;

(3) The patient can talk and respond coherently to verbal questioning or to preoperative neurological status;

(4) The patient can sit up unaided or to preoperative neurological status;

(5) The patient can ambulate with minimal assistance or to preoperative neurological status; and

(6) The patient does not have uncontrollable nausea or vomiting and has minimal dizziness.

(h) A dentist may not release a patient who has undergone anxiolysis/minimal sedation except to the care of a responsible adult third party.

§30-4A-6. Qualifications, standards, and continuing education requirements for Class 3 Anesthesia Permit.

(a) The board shall issue or renew a Class 3 Permit to an applicant who:

(1) Is a licensed dentist in West Virginia;

(2) Holds valid and current documentation showing successful completion of a Health Care Provider BLS/CPR
course, ACLS and/or a PALS course if treating pediatric patients; and

(3) Satisfies one of the following criteria:

(A) Certificate of completion of a comprehensive training program in conscious sedation that satisfies the requirements described in the ADA Guidelines for Teaching Pain Control and Sedation to Dentists and Dental Students and the ADA Guidelines for the Use of Sedation and General Anesthesia by Dentists at the time training was commenced.

(B) Certificate of completion of an ADA-accredited postdoctoral training program which affords comprehensive and appropriate training necessary to administer and manage conscious sedation commensurate with these guidelines.

(C) In lieu of these requirements, the board may accept documented evidence of equivalent training or experience in conscious sedation anesthesia for Limited Enteral Permit as Class 3a or comprehensive Parenteral Permit as Class 3b as specified by rule.

(b) A dentist who induces conscious sedation shall have the following facilities, properly maintained age appropriate equipment and age appropriate medications available during the procedures and during recovery:

(1) An operating room large enough to adequately accommodate the patient on an operating table or in an operating chair and to allow an operating team of at least two individuals to freely move about the patient;

(2) An operating table or chair which permits the patient to be positioned so the operating team can maintain the patient’s airway, quickly alter the patient’s position in an emergency, and provide a firm platform for the administration of basic life support;
(3) A lighting system which permits evaluation of the patient’s skin and mucosal color and a backup lighting system of sufficient intensity to permit completion of any operation underway in the event of a general power failure;

(4) Suction equipment which permits aspiration of the oral and pharyngeal cavities and a backup suction device which will function in the event of a general power failure;

(5) An oxygen delivery system with adequate age appropriate full face mask and appropriate connectors that is capable of delivering high flow oxygen to the patient under positive pressure, together with an adequate backup system;

(6) A nitrous oxide delivery system with a fail-safe mechanism that will ensure appropriate continuous oxygen delivery and a scavenger system;

(7) A recovery area that has available oxygen, adequate lighting, suction and electrical outlets. The recovery area can be the operating room;

(8) Sphygmomanometer, pulse oximeter, oral and nasopharyngeal airways, intravenous fluid administration equipment and/or equipment required for the standard of care or as specified by rule;

(9) Emergency drugs as specified by rule; and

(10) A defibrillator device.

(c) Before inducing conscious sedation, a dentist shall:

(1) Evaluate the patient and document, using the ASA Patient Physical Status Classifications, that the patient is an appropriate candidate for conscious sedation;

(2) Give written preoperative and postoperative instructions to the patient or, when appropriate due to age or neurological status of the patient, the patient’s guardian; and
(3) Obtain written informed consent from the patient or patient’s guardian for the anesthesia.

(d) The dentist shall ensure that the patient’s condition is monitored and recorded on a contemporaneous record. The dentist shall use a qualified monitor to monitor and record the patient’s condition in addition to the chair side dental assistant. A qualified monitor shall be present to monitor the patient at all times.

(e) The patient shall be monitored as follows:

(1) Patients shall have continuous monitoring using pulse oximetry and/or equipment required for the standard of care or as specified by rule by a qualified monitor until discharge criteria have been met. The documented requirements of a qualified monitor monitoring limited enteral or comprehensive parenteral sedations cases are as specified by rule. The patient’s blood pressure, heart rate and respiration shall be recorded every five minutes and these recordings shall be documented in the patient record. The record shall also include documentation of preoperative and postoperative vital signs, all medications administered with dosages, time intervals and route of administration including local anesthesia. If the dentist is unable to obtain this information, the reasons shall be documented in the patient’s record.

(2) During the recovery phase, the patient shall be monitored by a qualified monitor.

(3) A discharge entry shall be made by the dentist in the patient’s record indicating the patient’s condition upon discharge and the name of the responsible party to whom the patient was discharged.

(f) A dentist may not release a patient who has undergone conscious sedation/moderate sedation except to the care of a responsible adult third party.
(g) When discharging a pediatric patient the dentist shall follow the current edition of AAPD Guidelines for Monitoring and Management of Pediatric Patients During and After Sedation for Diagnostic and Therapeutic Procedures.

(h) The dentist shall assess the patient's responsiveness using preoperative values as normal guidelines and discharge the patient only when the following criteria are met:

1. Vital signs including blood pressure, pulse rate and respiratory rate are stable;
2. The patient is alert and oriented to person, place and time as appropriate to age and preoperative neurological status;
3. The patient can talk and respond coherently to verbal questioning or to preoperative neurological status;
4. The patient can sit up unaided or to preoperative neurological status;
5. The patient can ambulate with minimal assistance or to preoperative neurological status; and
6. The patient does not have uncontrollable nausea or vomiting and has minimal dizziness.

(i) A dentist who induces conscious sedation shall employ the services of a qualified monitor and a chair side dental assistant at all times who each shall hold a valid BLS/CPR certification and maintains certification as specified by rule.


(a) A Class 4 Permit permits the use of general anesthesia/deep conscious sedation, conscious sedation/moderate sedation and anxiolysis/minimal sedation.

(b) The board shall issue or renew a Class 4 Permit to an applicant who:
(1) Is a licensed dentist in West Virginia;

(2) Holds a valid and current documentation showing successful completion of a Healthcare Provider BLS/CPR course, Advanced Cardiac Life Support (ACLS) and/or Pediatric Advanced Life Support (PALS) course if treating pediatric patients;

(3) Satisfies one of the following criteria:

(A) Completion of an advanced training program in anesthesia and related subjects beyond the undergraduate dental curriculum that satisfies the requirements described in the ADA Guidelines for Teaching Pain Control and Sedation to Dentists and Dental Students and the ADA Guidelines for the Use of Sedation and General Anesthesia by Dentists at the time training was commenced;

(B) Completion of an ADA- or AMA-accredited postdoctoral training program which affords comprehensive and appropriate training necessary to administer and manage general anesthesia, commensurate with these guidelines;

(C) In lieu of these requirements, the board may accept documented evidence of equivalent training or experience in general anesthesia/deep conscious sedation.

(c) A dentist who induces general anesthesia/deep conscious sedation shall have the following facilities, properly maintained age appropriate equipment and age appropriate drugs available during the procedure and during recovery:

(1) An operating room large enough to adequately accommodate the patient on an operating table or in an operating chair and to allow an operating team of at least three individuals to freely move about the patient;

(2) An operating table or chair which permits the patient to be positioned so the operating team can maintain the patient’s
airway, quickly alter the patient's position in an emergency and provide a firm platform for the administration of basic life support;

(3) A lighting system which permits evaluation of the patient's skin and mucosal color and a backup lighting system of sufficient intensity to permit completion of any operation underway in the event of a general power failure;

(4) Suction equipment which permits aspiration of the oral and pharyngeal cavities and a backup suction device which will function in the event of a general power failure;

(5) An oxygen delivery system with adequate age appropriate full face mask and appropriate connectors that is capable of delivering high flow oxygen to the patient under positive pressure, together with an adequate backup system;

(6) A nitrous oxide delivery system with a fail-safe mechanism that will insure appropriate continuous oxygen delivery and a scavenger system;

(7) A recovery area that has available oxygen, adequate lighting, suction and electrical outlets. The recovery area can be the operating room;

(8) Equipment as specified by rule;

(9) Emergency drugs as specified by rule;

(10) A defibrillator device.

(d) Before inducing general anesthesia/deep conscious sedation the dentist shall:

(1) Evaluate the patient and document, using the ASA Patient Physical Status Classifications, that the patient is an appropriate candidate for general anesthesia or deep conscious sedation;
(2) Shall give written preoperative and postoperative instructions to the patient or, when appropriate due to age or neurological status of the patient, the patient’s guardian; and

(3) Shall obtain written informed consent from the patient or patient’s guardian for the anesthesia.

(e) A dentist who induces general anesthesia/deep conscious sedation shall ensure that the patient’s condition is monitored and recorded on a contemporaneous record. The dentist shall use a qualified monitor to monitor and record the patient’s condition on a contemporaneous record and a chair side dental assistant. The documented requirements of a qualified monitor monitoring general anesthesia/deep conscious sedation cases are as specified by rule. No permit holder may have more than one patient under general anesthesia at the same time.

(f) The patient shall be monitored as follows:

(1) Patients shall have continuous monitoring using pulse oximetry and/or equipment required for the standard of care or as specified by rule by a qualified monitor until discharge criteria have been met. The patient’s blood pressure, heart rate and oxygen saturation shall be assessed every five minutes and shall be contemporaneously documented in the patient record. The record shall also include documentation of preoperative and postoperative vital signs, all medications administered with dosages, time intervals and route of administration including local anesthesia. The person administering the anesthesia may not leave the patient while the patient is under general anesthesia;

(2) During the recovery phase, the patient shall be monitored, including the use of pulse oximetry, by a qualified monitor; and

(3) A dentist may not release a patient who has undergone general anesthesia/deep conscious sedation except to the care of a responsible adult third party.
(4) When discharging a pediatric patient the dentist shall follow the current edition of AAPD Guidelines for the Monitoring and Management of Pediatric Patients During and After Sedation for Diagnostic and Therapeutic Procedures.

(g) The dentist shall assess the patient's responsiveness using preoperative values as normal guidelines and discharge the patient only when the following criteria are met:

(1) Vital signs including blood pressure, pulse rate and respiratory rate are stable;

(2) The patient is alert and oriented to person, place and time as appropriate to age and preoperative neurological status;

(3) The patient can talk and respond coherently to verbal questioning or to preoperative neurological status;

(4) The patient can sit up unaided or to preoperative neurological status;

(5) The patient can ambulate with minimal assistance or to preoperative neurological status; and

(6) The patient does not have uncontrollable nausea or vomiting and has minimal dizziness.

(7) A discharge entry shall be made in the patient's record by the dentist indicating the patient's condition upon discharge and the name of the responsible party to whom the patient was discharged.

(h) A dentist who induces general anesthesia shall employ the services of a qualified monitor and a chair side dental assistant at all times, who each shall hold a valid BLS/CPR certification and maintains certification as specified by rule.
§30-4A-8. Board to review, inspect and reinspect dentists for issuance of permits.

(a) By making application to the board for an anesthesia permit, a dentist consents and authorizes the board to review his or her credentials, inspect or reinspect his or her facilities and investigate any alleged anesthesia mortalities, misadventure or other adverse occurrences. The board shall conduct an in-office review or on-site inspection of any dentist applying for or holding a permit to administer anesthesia.

Prior to issuing a permit, the board shall conduct an on-site inspection of facility, equipment and auxiliary personnel of the applicant to determine if, in fact, all the requirements for the permit have been met. This inspection or evaluation, if required, shall be carried out by at least two members of the subcommittee. This evaluation is to be carried out in a manner following the principles, but not necessarily the procedures, set forth by the current edition of the AAOMS Office Anesthesia Evaluation Manual. On-site inspections are required and shall be performed for all Class 3a, 3b and 4 permittees. The board may reinspect annually, at its discretion, but shall perform an on-site inspection for all permit holders at least once every five years except Class 2 permit holders. The board reserves the right to conduct an on-site inspection whenever it deems necessary for all permit holders. All on-site inspections shall be held during regular business hours.

(b) Cancellation or failure to appear or be present for a scheduled evaluation by a permit holder, for an unexplained or unexcusable reason, shall be assessed a penalty fee two times the permit holders normal annual renewal fee. The penalty fee shall be separate from the annual renewal fees.


(a) The in-office evaluation shall include:
(1) Observation of one or more cases of anesthesia to determine the appropriateness of technique and adequacy of patient evaluation and care;

(2) Inspection of facilities, which shall include but not be limited to, the inspection of equipment, drugs and patient records and qualified monitor's certifications and documentation; and

(3) The evaluation shall be performed by a team appointed by the board and shall include a member of the subcommittee who holds a current anesthesia permit in the same class or in a higher class than that held by the permit holder being evaluated.

(4) Class 2 permit holders may be audited periodically as determined by the committee; and

(5) Class 3 and 4 permit holders shall be evaluated once every five years.

(b) A dentist utilizing a licensed dentist who holds a current anesthesia permit issued by the board shall have his or her office inspected to the level of a Class 4 permit as specified by section twelve of this article. The office is only approved at that level when the anesthesia permit holder is present and shall have the number of qualified monitors present as required by this article.

(c) In addition to the requirements of this article, a treating dentist who applies for a certificate to allow a CRNA to administer anesthesia and sedation to a patient shall maintain a permit as follows:

(1) A treating dentist who allows a CRNA to administer limited enteral sedation to a patient shall maintain a Class 3a permit for themselves and the administration site shall be inspected to a Class 4 permit level;

(2) A treating dentist who allows a CRNA to administer comprehensive parenteral sedation to a patient shall maintain a Class 3b permit for themselves and the administration site shall be inspected to a Class 4 permit level; and
§30-4A-10. Reporting of death, serious complications or injury.

If a death, any serious complication or any injury occurs which may have resulted from the administration of general anesthesia/deep conscious sedation, conscious sedation/moderate sedation, anxiolysis/minimal sedation, or relative analgesia/minimal sedation, the licensee performing the dental procedure shall submit a written detailed report to the board within seventy-two hours of the incident along with copies of the patient’s original complete dental records. If the anesthetic agent was administered by a person other than the person performing the dental procedure, that person shall also submit a detailed written report. The detailed report(s) shall include:

(1) Name, age and address of patient;

(2) Name of the licensee and other persons present during the incident along with their names and addresses;

(3) Address where the incident took place;

(4) Type of anesthesia and dosages of drugs administered to the patient including local anesthesia;

(5) A narrative description of the incident including approximate times and evolution of symptoms; and

(6) The anesthesia record and the signed informed consent form for the anesthesia.

§30-4A-11. Immunity from liability.

(a) Notwithstanding any other provision of law, no person providing information to the board or to the subcommittee may
be held, by reason of having provided the information, to be civilly liable under any law unless the information was false and the person providing information knew or had reason to believe the such information was false.

(b) No member or employee of the board or the subcommittee may be held by reason of the performance by him or her of any duty, function or activity authorized or required of the board or the subcommittee to be civilly liable. The foregoing provisions of this subsection do not apply with respect to any action taken by any individual if the individual, in taking the action, was motivated by malice toward any person affected by the action.

§30-4A-12. Facility inspections.

(a) The board shall perform an onsite evaluation of Class 3 and 4 applicants dental facilities, equipment, techniques and personnel prior to issuing a permit. The board may conduct further on-site evaluations.

(b) The board may inspect Class 2 applicants facilities.


Upon the recommendation of the subcommittee, the board shall issue permits to applicable dentists. An anesthesia permit shall be renewed annually: Provided, That the permittee meets the requirements of this article and has not been subject to disciplinary action prohibiting issuance of the permit.

§30-4A-14. Waiting period for reapplication or reinpection of facilities.

A dentist whose application has been denied for failure to satisfy the requirements in the application procedure or the on-site evaluation shall wait thirty days from the date of the denial prior to reapplying and shall submit to another on-site evaluation.
§30-4A-15. Application and annual renewal of regular permits; fees.

The board shall require an initial application fee and an annual renewal fee for Class 2, Class 3 and 4 Permits. Permits expire annually. The board shall renew permits for the use of anesthesia after the permittee satisfies the application for renewal.

§30-4A-16. Violations of article; penalties for practicing anesthesia without a permit.

Violations of any of the provisions of this article, whether intentional or unintentional, may result in the revocation or suspension of the dentist's permit to administer anesthesia; multiple or repeated violations or gross infractions, such as practicing anesthesia without a valid permit may result in suspension of the dentist's license to practice dentistry for up to one year as well as other disciplinary measures as deemed appropriate by the board.

§30-4A-17. Appointment of Subcommittee; credentials review; and on-site inspections.

(a) The board shall appoint a subcommittee to carry out the review and on-site inspection of any dentist applying for or renewing a permit under this article.

(b) The subcommittee shall make a recommendation for issuing or revoking a permit under this article.

(c) This subcommittee shall be known as the West Virginia Board of Dentistry Subcommittee on Anesthesia. The
subcommittee shall, at a minimum, consist of one member of the board who shall act as chairman of the subcommittee and two members holding a Class 4 permit and two members holding a Class 3 permit.

(d) The subcommittee shall adopt policies and procedures related to the regulation of general anesthesia/deep conscious sedation, conscious sedation/moderate sedation, anxiolysis/minimal sedation, and relative analgesia/minimal sedation with the same being approved by the board. The subcommittee members shall be paid and reimbursed expenses pursuant to article one of this chapter.

ARTICLE 4B. DENTAL LABORATORY SERVICES.

§30-4B-1. Unlawful acts.

(a) It is unlawful for any person, other than a dentist or other dental practitioner, to sell, offer for sale or furnish any dental prosthesis or other dental laboratory service to any person who is not a dentist or other dental practitioner.

(b) It is unlawful for any person to perform dental laboratory services without a work authorization: Provided, That this subsection does not apply to a dentist or other dental practitioner, or to their employees working under their direct supervision, performing dental laboratory services as a part of their own dental practice and for their own dental patients.

(c) It is unlawful for any dental laboratory to perform any dental laboratory service without the issuance of a work authorization by a dentist or other dental practitioner.

(d) It is unlawful for any dental laboratory or dentist who fabricates a full upper or full lower set of prosthetic dentures not to affix upon the dentures, in a nonremovable manner, the name of the patient, the initials of the dentist's state of practice and license identification.
PROFESSIONS AND OCCUPATIONS

19 (e) It is unlawful for any dental laboratory either directly or indirectly:

21 (1) To advertise that it is engaged in the business of performing dental laboratory services;

23 (2) To advertise it performs dental laboratory services for members of the public;

25 (3) To advertise a price for the performance of dental laboratory services; or

27 (4) To advertise techniques used or materials employed by it in the performance of dental laboratory services: Provided, that this subsection does not prevent dental laboratories from advertising in dental journals or in other professional dental publications or from communicating directly to a dentist and other dental practitioner or from listing the dental laboratory in business and telephone directories if the business and telephone directory announcements are limited to name, address and telephone number and do not occupy more than the number of lines necessary to disclose the information, or from displaying the trade name and address of the dental laboratory on the door of its place of business or on name plates or door plates exhibited on the interior or exterior of the place of business.

§30-4B-2. Work authorization required; contents; retention.

1 (a) No dental laboratory technician may perform any dental laboratory service without the issuance of a work authorization by a dentist or other dental practitioner.

4 (b) Each work authorization shall contain:

5 (1) The name and address of the dental laboratory to which it is directed;
7 (2) The case identification;

8 (3) A specification of the materials to be used;

9 (4) A description of the work to be done and, if necessary, diagrams thereof;

11 (5) The date of issue; and

12 (6) The signature and address of the dentist or other dental practitioner issuing the work authorization.

14 (c) A separate work authorization shall be issued for each patient of the dentist or other dental practitioner for whom a dental laboratory service is to be performed.

17 (d) Every work authorization shall be made in duplicate with the original being delivered to the dental laboratory to which it is directed and the copy being retained in the office of the issuing dentist or other dental practitioner. A work authorization shall be saved for a period of two years from its date of issue.

§30-4B-3. Denture identification.

A dental laboratory or a dentist who engages in dental laboratory services and who fabricates any full upper or full lower set of prosthetic dentures shall affix upon the dentures, in a nonremovable manner, the name of the patient for whom the dentures are made and the initials of the dentist’s state of practice and license identification number.

§30-4B-4. Review of dental laboratory services.

The board may review the dental laboratory services of a dental laboratory on a random and general basis without any requirement of a formal complaint or suspicion of impropriety.
AN ACT to amend and reenact §30-6-8 of the Code of West Virginia, 1931, as amended, relating to qualifications for a license to practice embalming; and clarifying the education, apprentice and examination requirements.

Be it enacted by the Legislature of West Virginia:

That §30-6-8 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 6. BOARD OF FUNERAL SERVICE EXAMINERS.

§30-6-8. Embalmer license requirements.

1. (a) The board shall issue a license to practice embalming to an applicant who:

2. (1) Is of good moral character;

3. (2) Is eighteen years of age or over;

4. (3) Is a citizen of the United States or is eligible for employment in the United States;

5. (4) Has a high school diploma or its equivalent;

6. (5) Has completed one of the following education requirements, as evidenced by a transcript submitted to the board for evaluation:
(A) (i) Has an associate degree from an accredited college or university; or

(ii) Has successfully completed at least sixty semester hours or ninety quarter hours of academic work in an accredited college or university toward a baccalaureate degree with a declared major field of study; and

(iii) Has graduated from a school of mortuary science, accredited by the American Board of Funeral Service Education, Inc., which requires as a prerequisite to graduation the completion of a course of study of not less than twelve months; or

(B) Has a bachelor degree in mortuary science from an accredited college or university;

(6) Has completed a one-year apprenticeship, under the supervision of a licensed embalmer and funeral director actively and lawfully engaged in the practice of embalming and funeral directing in this state, which apprenticeship consisted of:

(A) Diligent attention to the work in the course of regular and steady employment and not as a side issue to another employment; and

(B) The apprentice taking an active part in:

(i) The operation of embalming not less than thirty-five dead human bodies; and

(ii) Conducting not less than thirty-five funeral services;

(7) Passes, with an average score of not less than seventy-five percent, the following examinations:

(A) The National Conference of Funeral Services examination at a testing site provided by the national conference,
which passage is a condition precedent to taking the state law examination;

(B) The state law examination administered by the board, which examination must be offered at least twice each year; and

(C) Any other examination required by the board; and

(8) Has paid all the appropriate fees.

(b) A license to practice embalming issued by the board prior to July 1, 2012, shall for all purposes be considered a license issued under this section: Provided, That a person holding a license issued prior to July 1, 2012, must renew the license pursuant to the provisions of this article.

CHAPTER 152

(Com. Sub. for S. B. 401 - By Senators Snyder and Chafin)

[Passed April 30, 2013; in effect July 1, 2013.]
[Approved by the Governor on May 2, 2013.]

AN ACT to amend and reenact §30-13-6, §30-13-13, §30-13-15 and §30-13-17 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §30-13-13a, all relating to the Board of Registration for Professional Engineers; providing requirements for registration and certification of engineers, engineer interns and engineering businesses; providing for compensation of, and reimbursement for, members of the board at same rate as legislative interim pay; providing for registration of engineers generally; adding additional classifications of registration; setting forth qualifications for engineer interns; establishing designations for engineers ineligible
to practice; updating examination provisions to comport with changes at the national level; providing emergency rule-making authority to comply with changes in standardized tests; and clarifying the certificate of authorization requirements.

Be it enacted by the Legislature of West Virginia:

That §30-13-6, §30-13-13, §30-13-15 and §30-13-17 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto a new section, designated §30-13-13a, all to read as follows:

ARTICLE 13. ENGINEERS.

§30-13-6. Compensation and expenses.

Each member of the board shall receive compensation for time spent, and reimbursement for reasonable and necessary expenses incurred, in the performance of board-related duties pursuant to section eleven, article one of this chapter.

§30-13-13. Requirements for registration of professional engineers and certification of engineer interns.

(a) General requirements. – Every person who desires to be certified as an engineer intern or to be registered as a professional engineer in this state must comply with the following requirements:

(1) Submission of a completed application specified by the board and payment of the application fee specified by rule of the board;

(2) Be at least eighteen years of age;

(3) Be of good moral character;

(4) Submit statements of reference as specified by rule of the board;
(5) Graduate from a four-year engineering curriculum accredited by the Engineering Accreditation Commission of the Accreditation Board for Engineering and Technology (EAC/ABET), or an equivalent as approved by the board as being of satisfactory standing; and

(6) Be free of any grounds for disqualification as set forth in subsection of (a) of section twenty-one of this article.

(b) Certification of an engineer intern. – In addition to the foregoing general requirements, an applicant must meet the following requirements to be certified as an engineer intern in this state:

(1) Satisfactorily complete the required examination on the fundamentals of engineering; and

(2) Complete each additional requirement that the board may specify by legislative rule.

(c) Registration of a professional engineer. – In addition to the general requirements specified in subsection (a) of this section, an applicant must meet the following requirements to be certified as a professional engineer in this state:

(1) Meet all the requirements for certification as an engineer intern;

(2) Submit a record of four years or more of progressive experience in engineering work of a grade and a character that indicates to the board that the applicant may be competent to practice engineering;

(3) Satisfactorily complete the required examination on the principles and practice of engineering;

(4) Complete each additional requirement that the board may specify by legislative rule.
(d) Registration of a professional engineer through comity or reciprocal registration. — Notwithstanding the requirements of the foregoing subsection of this section, the board may issue a license to an applicant who holds a valid license or other authorization to practice engineering from another state, if the applicant satisfies the general requirements of subsection (a) of this section, satisfies the additional requirements specified by rule of the board and meets one of the following requirements:

1. Holds a license or other authorization to engage in the practice of engineering issued by a proper authority of any jurisdiction, based on requirements that do not conflict with the provisions of this article and possesses credentials that are, in the judgment of the board, of a standard equivalent to or not lower than that specified in the applicable licensure act and rules in effect in this state at the time such license was issued, upon application, which may include a council record with NCEES;

2. Holds a valid council record with NCEES, which is the compilation of documents maintained by NCEES of an applicant’s qualifications as a professional engineer, including official transcripts, engineering examination results, employment verifications and references, which indicates that the applicant meets the requirements of this article.

(e) Certification or registration of qualified applicants. — The board shall issue a certification to a qualified applicant who meets the requirements for certification as an engineer intern and shall issue a professional engineer registration to a qualified applicant who meets the requirements for registration as a professional engineer.

(f) Continuation of existing registrations and certificates. — A registration or certificate issued by the board prior to July 1, 2013, shall for all purposes be considered a registration or
certificate issued under this article: Provided, That a person registered or certified prior to July 1, 2013, must renew the registration or certification pursuant to the provisions of this article and the rules of the board.


The board may designate a professional engineer as ineligible to practice or offer to practice engineering in this state using one of the following terms:

(1) Professional engineer-retired. – A registrant may apply for retired status upon certification that he or she is no longer practicing or offering to practice engineering in this state for remuneration.

(2) Professional engineer-inactive. – A registrant may request inactive status upon affirmation that he or she is no longer practicing or offering to practice engineering in this state.

(3) Professional engineer-lapsed. – A registrant’s license is lapsed when the registrant does not respond to renewal notices or pay the required renewal fees.

(4) Professional engineer-invalidated. – A registrant’s license is invalidated when he or she is unable to provide sufficient proof that any condition of renewal set forth in this article or by board rule has been met.


(a) The board has the power to establish, by legislative rule, the requirements for examination for registration as a professional engineer and certification as an engineer intern including, but not limited to, the following criteria: subject matter, prerequisites for testing, passing score, examination sites and schedules, entities authorized to administer examinations,
prerequisites for testing and form of testing, including examination by electronic or other means.

(b) The board's rules for examination shall include the following minimum requirements:

(1) An examination to qualify to be an engineer intern, to test the applicant's knowledge and understanding of the fundamentals of engineering; and

(2) An examination to qualify as a professional engineer, to test the applicant's knowledge and understanding of the principles and practice of engineering.

(c) If the board determines that the safe and ethical practice of engineering in this state requires examination of matters specific to the law and practice in this state, the board may also establish criteria, by legislative rule, for an examination of the applicant's knowledge and understanding of this state's statutes, rules, professional ethics and design requirements.

(d) A candidate for registration as a professional engineer who fails the examination of the principles and practice of engineering may retake the examination one time upon payment of the fee established by the board. In the event of a second failure, the candidate may not repeat the examination unless the examinee demonstrates to the board that he or she has pursued additional instruction or training to correct the candidate's deficit areas of knowledge.

(e) In the event that examination requirements, test administration procedures, scoring or testing methods are modified by a board-approved testing entity providing standard tests for use by the board, the board has the authority to promulgate emergency rules to adopt and reflect those changes.
§30-13-17. Certificates of authorization required; naming of engineering firms.

(a) No person or firm is authorized to practice or offer to practice engineering in this state until the person or firm has been issued a certificate of authorization by the board.

(b) A person or firm desiring a certificate of authorization must file all the required information with the board on an application form specified by the board. The required information shall include the sworn statement of the engineer in responsible charge who is a professional engineer registered in this state. The board shall issue a certificate of authorization to an applicant who has met all the requirements and paid the fees set forth in board rules.

(c) No person or firm is relieved of responsibility for the conduct or acts of its agents, employees, officers or partners due to compliance with the provisions of this article. No individual practicing engineering under the provisions of this article is relieved of responsibility for engineering services performed due to his or her employment or other relationship with a person or firm holding a certificate of authorization.

(d) An engineer who renders occasional, part-time or contract engineering services to or for a firm may not be designated as being in responsible charge for the professional activities of the firm unless that engineer is an owner or principal of the firm.

(e) The Secretary of State shall not issue a certificate of authority or business registration or license to an applicant whose business includes, among the objectives for which it is established, the words engineer, engineering or any modification or derivation thereof unless the board of registration for this profession has issued to the applicant a certificate of
authorization or a letter indicating eligibility to receive the certificate. The certificate or letter from the board shall be filed with the application filed with the Secretary of State to do business in West Virginia.

(f) The Secretary of State shall decline to register a trade name or service mark which includes the words engineer, engineering or modifications or derivatives thereof in its business name or logotype except those businesses holding a certificate of authorization issued under the provisions of this article.

(g) The certificate of authorization may be renewed in accordance with board rule upon payment of the required renewal fee.

(h) Every holder of a certificate of authorization has a duty to notify the board promptly of any change in information previously submitted to the board in an application for a certificate of authorization.

CHAPTER 153

(Com. Sub. for S. B. 586 - By Senators Plymale, Prezioso, Snyder and Beach)

[Passed April 13, 2013; in effect from passage.]
[Approved by the Governor on May 3, 2013.]

AN ACT to repeal §30-27-15 of the Code of West Virginia, 1931, as amended; to amend and reenact §30-27-3, §30-27-5, §30-27-8, §30-27-11 and §30-27-12 of said code; and to amend and reenact §30-37-7 of said code, all relating to the Board of Barbers and Cosmetologists; licensing schools of aesthetics, barbering, cosmetology, manicuring and massage; transferring authority to
approve licensure for certain schools; clarifying powers and duties of the board; providing requirements for professional licensing, license renewal and work permits; establishing certain student registration requirements; and providing definitions.

Be it enacted by the Legislature of West Virginia:

That §30-27-15 of the Code of West Virginia, 1931, as amended, be repealed; that §30-27-3, §30-27-5, §30-27-8, §30-27-11 and §30-27-12 of said code be amended and reenacted; and that §30-37-7 of said code be amended and reenacted, all to read as follows:

ARTICLE 27. BOARD OF BARBERS AND COSMETOLOGISTS.


1 As used in this article, the following words and terms have the following meanings, unless the context clearly indicates otherwise:

4 (a) "Aesthetics" or "esthetics" means any one or any combination of the following acts when done on the human body for compensation and not for the treatment of disease:

7 (1) Administering cosmetic treatments to enhance or improve the appearance of the skin, including cleansing, toning, performing effleurage or other related movements, stimulating, exfoliating or performing any other similar procedure on the skin of the human body or scalp;

12 (2) Applying, by hand or with a mechanical or electrical apparatus, any cosmetics, makeups, oils, powders, clays, antiseptics, tonics, lotions, creams or chemical preparations necessary for the practice of aesthetics to another person's face, neck, back, shoulders, hands, elbows and feet up to and including the knee;
(3) The rubbing, cleansing, exercising, beautifying or grooming of another person’s face, neck, back, shoulders, hands, elbows and feet up to and including the knee;

(4) The waxing, tweezing and threading of hair on another person’s body;

(5) The wrapping of another person’s body in a body wrap;

(6) Applying artificial eyelashes and eyebrows; and

(7) The lightening of hair on the body except the scalp.

(b) “Aesthetician” or “esthetician” means a person licensed under the provisions of this article who engages in the practice of aesthetics.

(c) “Applicant” means a person making application for a professional license, license, certificate, registration, permit or renewal under the provisions of this article.

(d) “Barber” means a person licensed under the provisions of this article who engages in the practice of barbering.

(e) “Barbering” means any one or any combination of the following acts when done on the human body for compensation and not for the treatment of disease:

(1) Shaving, shaping and trimming the beard, or both;

(2) Cutting, singeing, shampooing, arranging, dressing, tinting, bleaching, or applying lotions or tonics on human hair, or a wig or hairpiece; and

(3) Applications, treatments or rubs of the scalp, face, or neck with oils, creams, lotions, cosmetics, antiseptics, powders, or other preparations in connection with the shaving, cutting or trimming of the hair or beard.
(f) "Barber crossover" or "cosmetologist crossover" is a person who is licensed to perform barbering and cosmetology.

(g) "Barber permanent waving" means the following acts done on the human body for compensation and not for the treatment of disease:

1. The bleaching or tinting of hair; and
2. The permanent waving of hair.

(h) "Barber permanent wavist" means a person licensed to perform barbering and barber permanent waving.

(i) "Board" means the West Virginia Board of Barbers and Cosmetologists.

(j) "Certificate" means an instructor certificate to teach in a school under the provisions of this article.

(k) "Certificate holder" means a person certified as an instructor to teach in a school under the provisions of this article.

(l) "Cosmetologist" means a person licensed under the provisions of this article who engages in the practice of cosmetology.

(m) "Cosmetology" means any one or any combination of the following acts when done on the human body for compensation and not for the treatment of disease:

1. Cutting, styling, shaping, arranging, braiding, weaving, dressing, adding extensions, curling, waving, permanent waving, relaxing, straightening, shampooing, cleansing, singeing, bleaching, tinting, coloring, waxing, tweezing, or similarly work on human hair, or a wig or hairpiece, by any means, including hands, mechanical or electrical devices or appliances;
(2) Nail care;

(3) Applying by hand or with a mechanical or electrical device or appliance, any cosmetics, makeups, oils, powders, clays, antiseptics, tonics, lotions, creams or chemical preparations necessary for the practice of aesthetics to another person’s face, neck, shoulders, hands, elbows and feet up to and including the knee;

(4) The rubbing, cleansing, exercising, beautifying or grooming of another person’s face, neck, shoulders, hands, elbows and feet up to and including the knee;

(5) The wrapping of another person’s body in a body wrap;

and

(6) Performing aesthetics.

(n) “General supervision” means:

(1) For schools, a master or certified instructor is on the premises and is quickly and easily available; or

(2) For salons, a professional licensee is on the premises and is quickly and easily available.

(o) “Hair braiding” means any one or any combination of the following acts when done on the human body for compensation and not for the treatment of disease: Braiding, plaiting, twisting, wrapping, threading, weaving, extending or locking of natural human hair by hand or mechanical device.

(p) “Hair Styling” means any one or any combination of the following acts when done on the human body for compensation and not for the treatment of disease:

(1) Cutting, styling, shaping, arranging, braiding, weaving, dressing, adding extensions, curling, waving, permanent waving,
relaxing, straightening, shampooing, cleansing, singeing, 
bleaching, tinting, coloring, waxing, tweezing, threading or 
similarly work on human hair, or a wig or hairpiece, by any 
means, including hands, mechanical or electrical devices or 
appliances;

(2) The rubbing, cleansing, exercising, beautifying or 
grooming of another person’s face, neck, shoulders, hands, 
elbows and feet up to and including the knee.

(q) “Hair Stylist” means a person licensed under the 
provisions of this article who engages in the practice of hair 
styling.

(r) “License” means a professional license, a salon license 
or a school license.

(s) “Licensed school” means a facility which has been 
approved by the West Virginia Council for Community and 
Technical College Education pursuant to section nine, article 
two-b, chapter eighteen-b of this code, to educate persons to be 
licensed or issued certain permits under the provisions of this 
article.

(t) “Licensee” means a person, corporation or firm holding 
a license issued under the provisions of this article.

(u) “Nail care” means any one or any combination of the 
following acts when done on the human body for compensation 
and not for the treatment of disease:

(1) The cleansing, dressing, or polishing of nails of a person;

(2) Performing artificial nail service; and

(3) The cosmetic treatment of the feet up to the knee and the 
hands up to the elbow.
(v) "Nail technician" or "manicurist" means a person licensed under the provisions of this article who engages in the practice of nail care.

(w) "Permit" means a work permit.

(x) "Permitee" means a person holding a work permit.

(y) "Professional license" means a license to practice as an aesthetician, barber, barber crossover, barber permanent wavist, cosmetologist, cosmetologist crossover or nail technician.

(z) "Registration" means a registration issued by the board to a person who rents or leases a booth or chair from a licensed salon owner and operator, or both, or a registration issued by the board to a person who is a student in a school.

(aa) "Registrant" means a person who holds a registration under the provisions of this article.

(bb) "Salon" means a shop or other facility where a person practices under a professional license.

(cc) "Salon license" means a license to own and operate a salon.

(dd) "Student registration" means a registration issued by the board to a student to study at a school licensed under the provisions of this article.

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

(a) The board has all the powers and duties set forth in this article, by rule, in article one of this chapter and elsewhere in law.

(b) The board shall:
(1) Hold meetings, conduct hearings and administer examinations;

(2) Establish requirements for licenses, permits, certificates and registrations;

(3) Establish procedures for submitting, approving and rejecting applications for licenses, permits, certificates and registrations;

(4) Determine the qualifications of any applicant for licenses, permits, certificates and registrations;

(5) Prepare, conduct, administer and grade examinations for professional licenses and certificates;

(6) Determine the passing grade for the examinations;

(7) Maintain records of the examinations the board or a third party administers, including the number of persons taking the examinations and the pass and fail rate;

(8) Set operational standards and requirements for licensed schools;

(9) Hire, discharge, establish the job requirements and fix the compensation of the executive director;

(10) Maintain an office, and hire, discharge, establish the job requirements and fix the compensation of employees, investigators/inspectors and contracted employees necessary to enforce the provisions of this article: Provided, That any investigator/inspector employed by the board on July 1, 2009, shall retain their coverage under the classified service, including job classification, job tenure and salary, until that person retires or is dismissed: Provided, however. That nothing may prohibit the disciplining or dismissal of any investigator/inspector for cause;
(11) Investigate alleged violations of the provisions of this article, legislative rules, orders and final decisions of the board;

(12) Establish the criteria for the training of investigators/inspectors;

(13) Set the requirements for investigations and inspections;

(14) Conduct disciplinary hearings of persons regulated by the board;

(15) Determine disciplinary action and issue orders;

(16) Institute appropriate legal action for the enforcement of the provisions of this article;

(17) Report violations of the provisions of this article, and legislative rules promulgated pursuant to this article, alleged to have been committed by a licensed school to the West Virginia Council for Community and Technical College Education. The board may continue to investigate any alleged violation that it receives by May 1, 2013, and shall conclude any such investigation by July 1, 2013. If the board determines that probable cause exists that a violation occurred, the board immediately shall advise and provide its investigation file to the West Virginia Council for Community and Technical College Education;

(18) Maintain an accurate registry of names and addresses of all persons regulated by the board;

(19) Keep accurate and complete records of its proceedings, and certify the same as may be necessary and appropriate;

(20) Establish the continuing education requirements for professional licensees and certificate holders;

(21) Issue, renew, combine, deny, suspend, revoke or reinstate licenses, permits, certificates and registrations;
(22) Establish a fee schedule;

(23) Propose rules in accordance with the provisions of article three, chapter twenty-nine-a of this code to implement the provisions of this article; and

(24) Take all other actions necessary and proper to effectuate the purposes of this article.

(c) The board may:

(1) Establish joint licenses;

(2) Contract with third parties to administer the examinations required under the provisions of this article;

(3) Sue and be sued in its official name as an agency of this state;

(4) Confer with the Attorney General or his or her assistant in connection with legal matters and questions.

§30-27-8. Professional license requirements.

(a) An applicant for a professional license to practice as a aesthetician, barber, barber crossover, barber permanent wavist, cosmetologist, hair stylist, cosmetologist crossover or nail technician shall present satisfactory evidence that he or she:

(1) Is at least eighteen years of age;

(2) Is of good moral character;

(3) Has a high school diploma, a GED, or has passed the "ability to benefit test" approved by the United States Department of Education;

(4) Has graduated from a licensed school which has been approved by the West Virginia Council for Community and
Technical College Education or has completed education requirements in another state and meets the licensure provisions of the board;

(5) Has passed an examination that tests the applicant’s knowledge of subjects specified by the board: Provided, That the board may recognize a certificate or similar license in lieu of the examination or part of the examination that the board requires;

(6) Has paid the applicable fee;

(7) Presents a certificate of health from a licensed physician;

(8) Is a citizen of the United States or is eligible for employment in the United States; and

(9) Has fulfilled any other requirement specified by the board.

(b) A license to practice issued by the board prior to July 1, 2009, shall for all purposes be considered a professional license issued under this article: Provided, That a person holding a license issued prior to July 1, 2009, must renew the license pursuant to the provisions of this article.


(a) The board may issue a work permit to practice to an applicant who meets the following conditions:

(1) Has graduated from a licensed school approved by the West Virginia Council for Community and Technical College Education or has completed education requirements in another state and meets the licensure provisions of the board;

(2) Is waiting to take the examination;

(3) Has employment in the field in which he or she applied to take the examination and is working under the general supervision of a professional licensee;
11 (4) Has paid the work permit fee;

12 (5) Has presented a certificate of health issued by a licensed physician;

14 (6) Is a citizen of the United States or is eligible for employment in the United States; and

16 (7) Meets all the other requirements specified by the board.

17 (b) A work permit expires at the end of the month after issuance following the next examination in the specific field. A work permit may be renewed once.

20 (c) While in effect, a work permittee is subject to the restrictions and requirements imposed by this article.

§30-27-12. Student registration.

1 (a) Prior to commencing studies in a licensed school, a student shall acquire a student registration issued by the board.

3 (b) An applicant for a student registration shall present satisfactory evidence that he or she meets the following conditions:

6 (1) Is enrolled as a student in a licensed school;

7 (2) Is of good moral character;

8 (3) Has paid the required fee;

9 (4) Has presented a certificate of health issued by a licensed physician; and

11 (5) Is a citizen of the United States or is eligible for employment in the United States.
(c) The student registration is good during the prescribed period of study for the student.

(d) The student may perform acts constituting barbering, barber permanent waving, cosmetology, aesthetics or nail care in a school under the general supervision of a master or certified instructor.

ARTICLE 37. MASSAGE THERAPISTS.

§30-37-7. Requirements for licensure; renewal of licenses; reinstatement; penalties.

(a) The board shall propose rules for legislative approval in accordance with article three, chapter twenty-nine-a of this code, establishing a procedure for licensing of massage therapists.

License requirements shall include the following:

(1) Completion of a program of massage education at a school approved by the West Virginia Council for Community and Technical College Education pursuant to section nine, article two-b, chapter eighteen-b of this code or by a state agency in another state, the District of Columbia or a United States territory which approves educational programs and which meets qualifications for the National Certification Exam administered through the National Certification Board for Therapeutic Massage and Bodywork. This school shall require a diploma from an accredited high school, or the equivalent, and require completion of at least five hundred hours of supervised academic instruction;

(2) Successful completion of the National Certification for Therapeutic Massage and Bodywork (NCTMB) examination, or other board approved examination; and

(3) Payment of a reasonable fee every two years required by the board which shall compensate and be retained by the board for the costs of administration.
(b) A license to practice massage therapy issued by the board prior to July 1, 2006, shall for all purposes be considered a license issued under this section: Provided, That a person holding a license to practice massage therapy issued prior to July 1, 2006, must renew the license pursuant to the provisions of this article: Provided, however, That a person whose license was issued by the board prior to July 1, 2006, and whose license subsequently lapses may, in the discretion of the board, be subject to the licensing requirements of this section.

(c) In addition to provisions for licensure, the rules shall include:

(1) Requirements for completion of continuing education hours conforming to NCTMB guidelines; and

(2) Requirements for issuance of a reciprocal license to licensees of states with requirements which may include the successful completion of the NCTMB examination or other board approved examination.

(d) Subject to the provisions of subsection (b) of this section, the board may deny an application for renewal for any reason which would justify the denial of an application for initial licensure.

(e) Any person practicing massage therapy during the time his or her license has lapsed is in violation of this article and is subject to the penalties provided in this article.

(f) A massage therapist who is licensed by the board shall be issued a certificate and a license number. The current, valid license certificate shall be publicly displayed and available for inspection by the board and the public at a massage therapist’s work site.
CHAPTER 154


[Passed April 13, 2013: in effect from passage.]
[Approved by the Governor on May 3, 2013.]

AN ACT to amend and reenact §30-32-1, §30-32-2, §30-32-3, §30-32-4, §30-32-5, §30-32-6, §30-32-7, §30-32-8, §30-32-9, §30-32-10, §30-32-11, §30-32-12, §30-32-13, §30-32-14, §30-32-15, §30-32-16, §30-32-17, §30-32-18, §30-32-19, §30-32-20 and §30-32-21 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto two new sections, designated §30-32-22 and §30-32-23, all relating to the Board of Examiners of Speech-Language Pathology and Audiology; setting forth unlawful acts; providing exemptions; specifying applicability of other law; providing definitions; continuing the Board of Examiners for Speech-Language Pathology and Audiology; specifying qualifications of board members; providing terms and conditions of board members' service; providing for election of board officers; providing for compensation and expense reimbursement of board members; setting forth powers and duties of the board; providing rule-making authority; continuing the board of Examiners for Speech-Language Pathology and Audiology Fund; providing qualifications for practicing speech-language pathology or audiology; providing for provisional licenses to practice while attaining required postgraduate professional experience; providing for waiver of requirements for persons who hold a license from another state with substantially equivalent standards; providing for practice pending disposition of application; providing scopes of practice for speech-language pathology and audiology; requiring
speech-language pathology assistants and audiology assistants to register with the board; providing registration and supervision requirements for speech-language pathology assistants and audiology assistants; authorizing telepractice; providing conditions and requirements for telepractice; providing for renewal of licenses and registrations; providing for renewal of lapsed licenses and registrations; providing for the suspension, revocation and refusal to renew licenses and registrations; providing for the reinstatement of revoked licenses and registrations; authorizing actions to enjoin violations; providing for the investigation of complaints; setting forth complaint procedures and hearing procedures; establishing grounds for disciplinary actions; providing for rights of appeal and judicial review; providing that a single act is sufficient to justify disciplinary action; providing for criminal proceedings; providing for criminal penalties; and requiring the Legislative Auditor to present a report to the Joint Standing Committee on Government Organization on the requirements for Speech-Language Pathologists, Audiologists and Assistants to practice in public schools.

Be it enacted by the Legislature of West Virginia:


ARTICLE 32. SPEECH-LANGUAGE PATHOLOGISTS AND AUDIOLOGISTS.

§30-32-1. Unlawful acts; criminal penalties.

1 (a) It is unlawful for any person to practice or offer to practice speech-language pathology or audiology in this state, or
3 advertise or use any title or description tending to convey the impression that the person is a speech-language pathologist or audiologist unless the person has been licensed under the provisions of this article, and the license has not expired, been suspended or revoked.

(b) As of July 1, 2014, it is unlawful for any person to practice or represent that he or she is qualified to practice as a speech-language pathology assistant or an audiology assistant unless the person has registered with the West Virginia Board of Examiners for Speech-Language Pathology and Audiology under the provisions of this article, and the registration has not expired, been suspended or revoked.

(c) It is unlawful for any business entity, except through a licensee, to render any service or engage in any activity which if rendered or engaged in by an individual, would constitute the practices licensed under the provisions of this article.

(d) Any person violating any provision of subsections (a), (b) or (c) of this article is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $500 nor more than $1,000 or confined in jail not more than six months, or both.

§30-32-2. Exemptions.

Nothing in this article prevents or restricts:

1 (1) Any person licensed or registered under any other law of this state from practicing the profession and performing services for which he or she is licensed or registered;

(2) A licensed physician or surgeon while engaging in the profession for which he or she is licensed;

(3) A trained individual providing hearing testing or balance system assessment under the direct supervision of a licensed physician or surgeon;
(4) A person credentialed by this state as a teacher of the
dead;

(5) The activities and services of persons pursuing a course
of study leading to a degree in speech-language pathology or
audiology at a college or university, if:

(A) These activities and services constitute a part of a
planned course of study at that institution;

(B) They are designated by a title such as intern, trainee,
student or other title clearly indicating the status appropriate to
their level of education; and

(C) They work under the supervision of a person licensed by
this state to practice speech-language pathology or audiology;

(6) The activities of persons who are nonresidents of this
state from engaging in the practice of speech-language pathology
or audiology if the activities of the persons do not exceed five
days in any calendar year and they:

(A) Meet the qualifications of this article;

(B) Register with the board in accordance with procedures
specified by the board; and

(C) Abide by the standards of professional conduct;

(7) The practice of a licensed hearing aid dealer engaged
solely in the practice of dealing in or fitting of hearing aids; or

(8) The activity of an occupational hearing conservationist
engaged in hearing testing as part of a hearing conservation
program in compliance with regulations of the Occupational
Safety and Health Administration.

The practices licensed under the provisions of this article and the West Virginia Board of Examiners for Speech-Language Pathology and Audiology are subject to the provisions of article one of this chapter, the provisions of this article and any rules promulgated hereunder.

§30-32-4. Definitions.

The following terms have the following meanings:

(1) “Applicant” means a person applying for a license required by this article.

(2) “Assistant” means a registered speech-language pathology assistant or a registered audiology assistant.

(3) “Audiologist” means a person who engages in the practice of audiology and is licensed pursuant to the provisions of this article.

(4) “Audiology” means the application of principles, methods, and procedures related to hearing and the disorders of hearing and to related language and speech disorders.

(5) “Audiology assistant” means a person registered with the board who practices under the supervision of an licensed audiologist.

(6) “Audiology disorders” means any and all conditions, whether of organic or nonorganic origin, peripheral or central, that impede the normal process of human communication including, but not limited to, disorders of auditory sensitivity, acuity, function or processing.

(7) “Board” means the West Virginia Board of Speech-Language Pathology and Audiology.
(8) "Business entity" means any firm, partnership, association, company, corporation, limited partnership, limited liability company or other entity.

(9) "Direct supervision" means the actual physical presence of a supervising licensed speech-language pathologist or supervising licensed audiologist in the room where treatment is provided by an assistant.

(10) "General supervision" means initial direction and periodic inspection of the activities of an assistant by the supervising licensed speech-language pathologist or supervising licensed audiologist, who is physically present in the building where treatment is provided and is quickly and easily available.

(11) "Initial supervision training" means training required of supervising licensed speech-language pathologists and supervising licensed audiologists before providing supervision of assistants.

(12) "Instruction" means:

(A) Providing speech-language pathology or audiology services in infant/toddler, preschool, elementary or secondary school programs; or

(B) Teaching students in institutions of higher education.

(13) "License" means a license issued pursuant to the provisions of this article.

(14) "Licensee" means a person who is licensed pursuant to the provisions of this article.

(15) "Provisional license" means a license issued pursuant to the provisions of this article.

(16) "Registrant" means an assistant who is registered pursuant to the provisions of this article.
(17) "Registration" means a registration issued pursuant to the provisions of this article.

(18) "Speech-language pathologist" means any person who engages in the practice of speech-language pathology and who is licensed pursuant to the provisions of this article.

(19) "Speech-language pathology" means the application of principles, methods and procedures related to the development, disorders and effectiveness of human communication and related functions.

(20) "Speech-language pathology assistant" means a person registered with the board who practices under the supervision of a licensed speech-language pathologist.

(21) "Speech-language pathology disorders" means conditions, whether of organic or nonorganic origin, that impede the normal process of human communication including, but not limited to, disorders and related disorders of speech, articulation, fluency, voice, verbal and written language, Auditory comprehension, cognition/communication, and oral, pharyngeal and/or laryngeal sensorimotor competencies.

(22) "Telepractice" means the application of telecommunication technology to deliver speech-language pathology or audiology services through real time interaction from one site to another for assessment, intervention or consultation in a manner sufficient to ensure patient confidentiality.

§30-32-5. Board of Examiners for Speech-Language Pathology and Audiology.

(a) The West Virginia Board of Examiners for Speech-Language Pathology and Audiology is continued. The members of the board in office on July 1, 2013 may, unless
sooner removed, continue to serve until their respective terms expire or until their successors have been appointed and qualified.

(b) The board consists of the following members appointed by the Governor by and with the advice and consent of the Senate:

(1) Two persons who are licensed speech-language pathologists;
(2) Two persons who are licensed audiologists; and
(3) One citizen member who is not licensed or registered under this article.

(c) The terms are for three years. No member may serve for more than two consecutive terms.

(d) Each licensed member of the board, at the time of his or her appointment, must have held a license in this state for at least three years.

(e) Each member of the board must be a resident of this state during the appointment term.

(f) No board member may serve as an officer of the West Virginia Speech Language and Hearing Association concurrently with his or her service on the board.

(g) A vacancy on the board shall be filled by appointment by the Governor for the unexpired term of the member whose office is vacant.

(h) The Governor may remove any member from the board for neglect of duty, incompetency or official misconduct.

(i) A licensed member of the board immediately and automatically forfeits membership to the board if his or her license or registration to practice is suspended or revoked.
(j) A member of the board immediately and automatically forfeits membership to the board if he or she is convicted of a felony under the laws of any jurisdiction or becomes a nonresident of this state.

(k) The board shall elect annually one of its members as chairperson and one of its members as secretary-treasurer who shall serve at the will and pleasure of the board.

(l) Each member of the board is entitled to receive compensation and expense reimbursement in accordance with article one of this chapter.

(m) A majority of the members of the board constitutes a quorum.

(n) The board shall hold at least one annual meeting. Other meetings shall be held at the call of the chairperson or upon the written request of four members, at the time and place as designated in the call or request.

(o) Prior to commencing his or her duties as a member of the board, each member shall take and subscribe to the oath required by section five, article four of the Constitution of this state.

(p) Board members are immune from civil liability for the performance of their official duties so long as they act in good faith.

§30-32-6. Powers and duties of the board.

(a) The board has all the powers and duties set forth in this article, by legislative rule, in article one of this chapter and elsewhere in law.

(b) The board shall:

(1) Hold meetings and conduct hearings:
(2) Establish requirements for licenses and registrations;
(3) Establish procedures for submitting, approving and rejecting applications for licenses and registrations;
(4) Determine the qualifications of any applicant for a license or registration;
(5) Communicate disciplinary actions to relevant state and federal authorities, the American Speech-Language-Hearing Association, the West Virginia Speech-Language and Hearing Association and other applicable authorities when public safety is at risk;
(6) Maintain an office and hire, discharge, establish the job requirements and fix the compensation of employees and contracted employees necessary to enforce the provisions of this article;
(7) Investigate alleged violations of the provisions of this article, legislative rules, orders and final decisions of the board;
(8) Conduct disciplinary hearings of persons regulated by the board;
(9) Determine disciplinary action and issue orders;
(10) Institute appropriate legal action for the enforcement of the provisions of this article;
(11) Maintain an accurate registry of names and addresses of all persons regulated by the board;
(12) Keep accurate and complete records of its proceedings, and certify the same as may be necessary and appropriate;
(13) Issue, renew, combine, deny, suspend, revoke or reinstate licenses and registrations pursuant to the provisions of this article;
(14) Establish a fee schedule;

(15) Take all actions necessary and proper to effectuate the purposes of this article; and

(16) Propose rules in accordance with the provisions of article three, chapter twenty-nine-a of this code to implement the provisions of this article.

(c) The board may:

(1) Approve and contract with third parties to administer the examinations required under the provisions of this article;

(2) Sue and be sued in its official name as an agency of this state;

(3) Confer with the Attorney General or his or her assistants in connection with legal matters and questions; and

(4) Perform random audits of continuing education, supervision records and documentation of licensure and registration requirements to determine compliance with this article.


(a) The board shall propose rules for legislative approval, in accordance with the provisions of article three, chapter twenty-nine-a of this code, to implement the provisions of this article, including:

(1) Standards and requirements for licenses and registrations;

(2) Requirements, qualifications and designation of third parties to establish educational requirements and to prepare and/or administer examinations and reexaminations;
(3) Procedures for the issuance and renewal of a license, registration and provisional license;

(4) A fee schedule;

(5) Continuing education and competency requirements for licensees and registrants;

(6) Establishment of competency standards;

(7) The procedures for denying, suspending, revoking, reinstating or limiting the practice of a licensee or registrant;

(8) Requirements for reinstatement of revoked licenses and registrations;

(9) Guidelines for telepractice;

(10) Rules to define the role of the speech-language pathology assistant or audiology assistant, including, but not limited to:

(A) The supervision requirements of licensees;

(B) The ratio of assistants to licensees;

(C) The scope of duties and restrictions of responsibilities of assistants;

(D) The frequency, duration and documentation of supervision required under the provisions of this article; and

(E) The quantity and content of pre-service and in-service instruction.

(11) Professional conduct and ethical standards of practice; and
(12) Any other rules necessary to effectuate the provisions of this article.

(b) The board may promulgate emergency rules in accordance with section fifteen, article three, chapter twenty-nine-a of this code to establish requirements and procedures for telepractice in accordance with the provisions of this article, including the scope of duties and restrictions of assistants in telepractice.

(c) All rules in effect on January 1, 2013 shall remain in effect until they are amended or repealed, and references to provisions of former enactments of this article are interpreted to mean provisions of this article.

§30-32-8. Funds.

(a) All fees and other moneys, except administrative fines, received by the board shall be deposited in a separate special revenue fund in the State Treasury designated the "Board of Examiners for Speech-Language Pathology and Audiology Fund", which is continued. The fund is used by the board for the administration of this article. Except as may be provided in article one of this chapter, the board retains the amount in the special revenue account from year to year. No compensation or expense incurred under this article is a charge against the General Revenue Fund.

(b) Any amount received as fines, imposed pursuant to this article, shall be deposited into the General Revenue Fund of the State Treasury.


(a) To be eligible for licensure by the board as a speech-language pathologist, the applicant shall:
(1) Make application to the board, upon a form prescribed by the board;

(2) Pay to the board an application fee as established by the board;

(3) Possess at least a master’s degree or equivalent in speech-language pathology from an educational institution approved by the board which consists of coursework approved by the board and delineated in legislative rule;

(4) Complete supervised clinical practicum experiences from an educational institution or its cooperating programs, the content of which shall be approved by the board and delineated in the rules;

(5) Complete a postgraduate professional experience as approved by the board and described in legislative rule;

(6) Pass the national examination in speech-language pathology; and

(7) Pass a jurisprudence examination developed by the board.

(b) Subject to the renewal requirements set forth in section seventeen of this article, a license issued by the board under prior enactments of this article shall for all purposes be considered a license issued under this article.

§30-32-10. Qualifications for licensure as an audiologist.

(a) To be eligible for licensure by the board as an audiologist, the applicant shall:

(1) Make application to the board, upon a form prescribed by the board;
(2) Pay to the board an application fee as established by the board;

(3) Possess at least a master's degree or equivalent in audiology from an educational institution approved by the board which consists of coursework approved by the board and delineated in legislative rule;

(4) Complete supervised clinical practicum experiences from an educational institution or its cooperating programs, the content of which shall be approved by the board and delineated in the rules;

(5) Complete a postgraduate professional experience as approved by the board and described in legislative rule;

(6) Pass the national examination in audiology; and

(7) Pass a jurisprudence examination developed by the board.

(b) Subject to the renewal requirements set forth in section seventeen of this article, a license issued by the board under prior enactments of this article shall for all purposes be considered a license issued under this article.

§30-32-11. Provisional licenses.

(a) The board may issue a provisional license to an applicant who is in the process of obtaining postgraduate professional experience and who:

(1) Meets the academic, practicum, and examination requirements of this article;

(2) Submits an application to the board, upon a form prescribed by the board, including a plan for the content of the postgraduate professional experience; and
(3) Pays the fee.

(b) A provisional licensee may practice speech-language pathology or audiology under the general supervision of a licensed speech pathologist or audiologist only in the professional field for which the provisional license was issued.

(c) The provisional license shall be valid for a term of one year and may be renewed.

§30-32-12. Waiver of requirements; practice pending disposition of application.

(a) The board shall waive the national examination requirements in speech-language pathology and/or audiology for an applicant who either:

1. Presents proof of current licensure in a state that has standards that are substantially equivalent to those of this state; or

2. Holds a certificate of clinical competence in speech-language pathology or audiology from the American Speech-Language-Hearing Association in the professional field for which they seek licensure.

(b) An applicant who holds current licensure from another state with substantially equivalent standards or who holds the certificate of clinical competence from the American Speech-Language-Hearing Association may practice speech-language pathology or audiology in this state, pending the board's disposition of the application, if the applicant:

1. Is practicing in the professional field in which the licensure or certificate of clinical competence was granted; and

2. Has filed an application with the board and paid the appropriate application fee.
The scope of practice for speech-language pathology includes:

1. Prevention, screening, consultation, assessment and diagnosis, treatment, intervention, management, counseling and follow-up services for disorders of speech (i.e., articulation, fluency, resonance and voice), language (i.e., phonology, morphology, syntax, preliteracy and language-based skills), swallowing or other upper aerodigestive functions;

2. Cognitive aspects of communication (i.e., attention, memory, problem solving);

3. Establishing augmentative and alternative communication techniques and strategies, including developing, selecting and prescribing of systems and devices (e.g., speech generating devices) and providing training in their use;

4. Providing services to individuals with hearing loss and their families (e.g., Auditory training, speech reading, speech and language intervention secondary to hearing loss;

5. Screening hearing of individuals who can participate in conventional puretone air conduction methods and screening middle ear pathology through screening tympanometry for the purpose of referral for further evaluation: Provided, That judgments and descriptive statements about the results of the screenings are limited to pass/fail determinations;

6. Using instrumentation (e.g., videofluoroscopy) to observe, collect data and measure parameters of communication and swallowing as directed by a licensed physician; and

7. Selecting, fitting and establishing effective use of prosthetic/adaptive devices for communication, swallowing or other upper aerodigestive functions.

(a) The scope of practice for audiology includes:

1. Facilitating the conservation of Auditory system function, developing and implementing environmental and occupational hearing conservation programs;

2. Screening, identifying, assessing and interpreting, preventing and rehabilitating peripheral and central Auditory system disorders;

3. Providing and interpreting behavioral and electrophysiological measurements of Auditory and vestibular functions;

4. Selecting, fitting, programming and dispensing of amplification, assistive listening and alerting devices and programming and other systems (e.g., implantative devices) and providing training in their use;

5. Providing audioligic and aural rehabilitation and related counseling services to individuals with hearing impairments and their families;

6. Providing vestibular rehabilitation;

7. Cerumen removal; and

8. Screening of speech-language and other factors affecting communication disorders: Provided. That judgments and descriptive statements about the results of the screenings are limited to pass/fail determinations.

(b) A person licensed under this article as an audiologist is not required to obtain a license under the provisions of article twenty-six of this chapter.
§30-32-15. Speech-language pathology and audiology assistants; supervision requirements.

1. Commencing July 1, 2014, speech-language pathology assistants and audiology assistants shall register with the board and shall:

2. (1) Possess a minimum of an associate’s degree from an institution or technical training program with a program of study designed to prepare the student to be a speech language pathology or audiology assistant;

3. (2) Work only under the supervision of a licensee licensed in the professional field in which the assistant is working; and

4. (3) Meet all requirements set by the board.

5. (b) Licensees who supervise assistants shall:

6. (1) Report to the board the name and field of practice of each assistant working under the licensee’s supervision;

7. (2) Complete initial supervision training prior to accepting an assistant for supervision and upgrade supervision training as required by the board;

8. (3) Document preservice training and credentials of the assistant;

9. (4) Provide direct supervision of the first three hours of treatment by the assistant for each patient or client, followed by a minimum of one direct observation for each subsequent two week period and document the direct observation;

10. (5) Provide general supervision and be responsible for the extent, kind and quality of service provided by the assistant and for all services provided by the assistant;
(6) Ensure that persons receiving services from an assistant receive prior written notification that services are to be provided, in whole or in part, by an assistant; and

(7) Meet all other requirements set by the board.

§30-32-16. Telepractice services.

(a) Licensed speech-language pathologists and audiologists may provide services in this state by telepractice.

(b) Speech-language pathologists and audiologists providing services by telepractice shall deliver services consistent with the quality of services delivered in person, and shall:

(1) Acquire written informed consent from the student, patient or client before the services are provided;

(2) Maintain the confidentiality of the student, patient or client as required by law;

(3) Provide documentation of the delivery of services;

(4) Train assistants before allowing them to assist in the delivery of service by telepractice, and document the training and delivery of service by the assistants; and

(5) Meet any other requirements set by the board.

§30-32-17. Renewal of license or registration; renewal of lapsed license or registration; suspension, revocation and refusal to renew; reinstatement of revoked license or registration.

(a) Licenses, except provisional licenses, and registrations may be renewed biennially, upon documentation of required continuing education and payment of a renewal fee.
(b) A license or registration which has lapsed may be renewed within one year of its expiration date in the manner set by the board.

(c) A license or registration which has lapsed for more than one year but fewer than five years may be reinstated, upon documentation of continuing education credits earned during the lapsed period equal to the credits required for renewal and payment of a reinstatement fee.

(d) A license or registration which has lapsed for more than five years may not be reinstated. A new license or registration may be issued to an applicant who complies with the requirements relating to the issuance of an original license or registration in effect at the time of the application.

(e) The board may suspend, revoke or refuse to renew a license or registration for any reason which would justify the denial of an original application for licensure or registration.

(f) The board may consider the reinstatement of a license or registration which has been revoked upon a showing that the applicant can resume practicing with reasonable skill and safety.

§30-32-18. Actions to enjoin violations.

(a) If the board obtains information that any person has engaged in, is engaging in or is about to engage in any act which constitutes or will constitute a violation of the provisions of this article, the rules promulgated pursuant to this article, or a final order or decision of the board, it may issue a notice to the person to cease and desist in engaging in the act and/or apply to the circuit court in the county of the alleged violation for an order enjoining the act.

(b) The circuit courts of this state may issue a temporary injunction pending a decision on the merits, and may issue a permanent injunction based upon its findings in the case.
§30-32-19. Complaints; investigations; due process procedure; grounds for disciplinary action.

(a) The board may upon its own motion based upon credible information, and shall, upon the written complaint of any person, cause an investigation to be made to determine whether grounds exist for disciplinary action under this article or the legislative rules of the board.

(b) Upon initiation or receipt of the complaint, the board shall provide a copy of the complaint to the licensee or registrant.

(c) After reviewing any information obtained through an investigation, the board shall determine if probable cause exists that the licensee or registrant has violated any provision of this article.

(d) Upon a finding that probable cause exists that the licensee or registrant has violated any provision of this article or rules promulgated pursuant to this article, the board may enter into a consent decree or hold a hearing for the suspension or revocation of the license or registration or the imposition of sanctions against the licensee or registrant.

(e) Any member of the board may issue subpoenas and subpoenas duces tecum to obtain testimony and documents to aid in the investigation of allegations against any person regulated by the article.

(f) Any member of the board may sign a consent decree or other legal document on behalf of the board.
The board may, after notice and opportunity for hearing, deny or refuse to renew, suspend or revoke the license or registration of, impose probationary conditions upon or take disciplinary action against, any licensee or registrant for any of the following reasons once a violation has been proven by a preponderance of the evidence:

1. Obtaining a license or registration by fraud, misrepresentation or concealment of material facts;
2. Being convicted of a felony or misdemeanor crime of moral turpitude;
3. Being guilty of unprofessional conduct as defined by legislative rule of the board;
4. Violating provisions of this article, rule or a lawful order of the board;
5. Providing substandard care due to a deliberate or negligent act or failure to act regardless of whether actual injury to a patient or client is established;
6. As an assistant, exceeding the authority to perform components of service selected and delegated by the supervising speech-language pathologist or audiologist regardless of whether actual injury to a patient is established;
7. Knowingly delegating responsibilities to an individual who does not have the knowledge, skills or abilities to perform those responsibilities;
8. As a licensee, failing to provide appropriate supervision to a speech-language pathology assistant or audiology assistant in accordance with this article and legislative rules of the board;
9. Practicing when competent services to recipients may not be provided due to physical or mental impairment;
(10) Having had a speech-language pathologist or audiologist license or assistant registration revoked or suspended, other disciplinary action taken, or an application for licensure or registration refused, revoked or suspended by the proper authorities of another jurisdiction;

(11) Engaging in sexual misconduct which includes:

(A) Initiating or soliciting sexual relationships, whether consensual or nonconsensual, while a professional relationship exists between the licensee or registrant and a patient or client; or

(B) Making sexual advances, requesting sexual favors or engaging in physical contact of a sexual nature with a patient or client;

(12) Aiding or abetting a person who is not licensed or registered in this state and who directly or indirectly performs activities requiring a license or registration;

(13) Abandoning or neglecting a patient or client in need of immediate professional care without making reasonable arrangements for the continuation of care; or

(14) Engaging in any act which has endangered or is likely to endanger the health, welfare or safety of the public.

(h) Disciplinary action may include:

(1) Reprimand;

(2) Probation;

(3) Administrative fine, not to exceed $1,000 per day per violation;

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

(5) Practicing under supervision or other restriction;
§30-32-20. Procedures for bearing; right of appeal.

(a) Notice and hearing requirements are governed by the provisions of article one of this chapter.

(b) The board may conduct the hearing or elect to have an administrative law judge conduct the hearing.

(c) If the hearing is conducted by an administrative law judge, the administrative law judge shall prepare a proposed written order at the conclusion of a hearing containing findings of fact and conclusions of law. The proposed order may contain proposed disciplinary actions if the board so directs. The board may accept, reject or modify the decision of the administrative law judge.

(d) Any member of the board has the authority to administer oaths, examine any person under oath and issue subpoenas and subpoenas duces tecum.

(e) If, after a hearing, the board determines the licensee or registrant has violated any provision of this article or the board’s rules, a formal written decision shall be prepared which contains findings of fact, conclusions of law and a specific description of the disciplinary actions imposed.


Any licensee or registrant adversely affected by a decision of the board entered after a hearing may obtain judicial review
of the decision in accordance with section four, article five, 
chapter twenty-nine-a of this code, and may appeal any ruling 
resulting from judicial review in accordance with article six, 
chapter twenty-nine-a of this code.


In any action brought or in any proceeding initiated under 
this article, evidence of the commission of a single act prohibited 
by this article is sufficient to justify a penalty, injunction, 
restraining order or conviction without evidence of a general 
course of conduct.

§30-32-23. Required update of review of Legislative Auditor.

On or before December 1, 2014, the Legislative Auditor 
shall update the Sunrise Report of January 2013 on the 
requirements for speech-language pathologists, audiologists and 
assistants to practice in public schools, and present the report to 
the Joint Standing Committee on Government Organization, with 
recommendations.

CHAPTER 155

(Com. Sub. for H. B. 2730 - By Delegates Morgan, 
Stephens, Azinger, Diserio, Ferns, Jones, Paxton, 
Perry, D. Poling, Romine and Swartzmiller)

[Passed April 13, 2013; in effect ninety days from passage.] 
[Approved by the Governor on May 2, 2013.]

AN ACT to amend and reenact §30-38-5 of the Code of West Virginia, 
1931, as amended; and to amend said code by adding thereto a new 
section, designated §30-38-19, all relating to requirements to
perform appraisals; providing requirements for licensure or certification by reciprocity; and clarifying the requirements for temporary permits.

Be it enacted by the Legislature of West Virginia:

That §30-38-5 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto a new section, designated §30-38-19, all to read as follows:

ARTICLE 38. THE REAL ESTATE APPRAISER LICENSING AND CERTIFICATION ACT.

§30-38-5. Reciprocal credentialing.

The board shall issue a reciprocal license or certification to an applicant from another state if the applicant holds a valid license or certification from a state whose licensing and certification program:


(2) That has credentialing requirements that meet or exceed those of West Virginia.


(a) The board may issue a temporary permit to perform one specific assignment relating to the appraisal of real estate or real property in this state to an applicant who:

(1) Completes an application;

(2) Pays a nonrefundable application fee;
(3) Provides an irrevocable consent that service of process upon him or her may be made by service of process to the Secretary of State if, in an action against the applicant in a court of this state arising out of the applicant's activities as a real estate appraiser in this state, the plaintiff cannot, in the exercise of due diligence, effect personal service upon the applicant; and

(4) Meets the requirements for a temporary permit as established by the board by legislative rule.

(b) The temporary permit is subject to the terms, conditions and limitations set forth by the board by legislative rule.

CHAPTER 156


[Passed April 12, 2013; in effect ninety days from passage.]
[Approved by the Governor on April 30, 2013.]

AN ACT to amend and reenact §30-38-6, §30-38.7 and §30-38.9 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new article, designated §30-38A-1, §30-38A-2, §30-38A-3, §30-38A-4, §30-38A-5, §30-38A-6, §30-38A-7, §30-38A-8, §30-38A-9, §30-38A-10, §30-38A-11, §30-38A-12, §30-38A-13, §30-38A-14, §30-38A-15, §30-38A-16 and §30-38A-17, all relating to regulating appraisal management companies; requiring appraisal management companies to be registered with the West Virginia Real Estate Appraiser Licensing and Certification Board; adding a member representing appraisal
management companies to the board; updating the duties, powers and rulemaking authority of the board; prohibiting any person or firm from performing or offering to perform appraisal management services without a registration issued by the board; defining certain terms; setting forth requirements for registration, including written applications, verifications and criminal background checks; providing exemptions from registration requirements; requiring surety bonds; setting forth duties of appraisal management companies; authorizing certain fees; requiring appraisal management companies to designate a controlling person; establishing requirements and authorizing complaints for the removal of an appraiser from an appraiser panel; setting forth duties of appraisal management companies; defining what constitutes unprofessional conduct; setting forth prohibited acts; authorizing disciplinary action; providing for hearing and notice procedures; authorizing civil penalties; and authorizing the board to seek injunctive relief.

Be it enacted by the Legislature of West Virginia:

That §30-38-6, §30-38-7 and §30-38-9 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that said code be amended by adding thereto a new article, designated §30-38A-1, §30-38A-2, §30-38A-3, §30-38A-4, §30-38A-5, §30-38A-6, §30-38A-7, §30-38A-8, §30-38A-9, §30-38A-10, §30-38A-11, §30-38A-12, §30-38A-13, §30-38A-14, §30-38A-15, §30-38A-16 and §30-38A-17, all to read as follows:

ARTICLE 38. THE REAL ESTATE APPRAISER LICENSING AND CERTIFICATION ACT.

§30-38-6. Board created; appointments, qualifications, terms, oath, removal of members; quorum; meetings; disqualification from participation; compensation; records; employing staff.
(a) The West Virginia real estate appraiser licensing and certification board, which consists of nine members appointed by the Governor with the advice and consent of the Senate, is continued.

(1) Each member shall be a resident of the state of West Virginia, except the appraisal management company representative is not required to be a resident of West Virginia.

(2) Four members shall be certified real estate appraisers having at least five years' experience in appraisal as a principal line of work immediately preceding their appointment, and shall remain certified real estate appraisers throughout their terms.

(3) Two members shall have at least five years' experience in real estate lending as employees of financial institutions.

(4) Two members may not be engaged in the practice of real estate appraisal, real estate brokerage or sales or have any financial interest in these practices.

(5) One member shall be a representative from an appraisal management company registered under the provisions of article thirty-eight-a of this chapter.

(6) No member of the board may concurrently be a member of the West Virginia real estate commission.

(7) Not more than two appraiser members may be appointed from each congressional district.

(b) Members will be appointed for three-year terms, which are staggered in accordance with the initial appointments under prior enactment of this act.

(1) No member may serve for more than three consecutive terms.
(2) Before entering upon the performance of his or her duties, each member shall subscribe to the oath required by section five, article four of the constitution of this state.

(3) The Governor shall, within sixty days following the occurrence of a vacancy on the board, fill the vacancy by appointing a person who meets the requirements of this section for the unexpired term.

(4) Any member may be removed by the governor in case of incompetency, neglect of duty, gross immorality or malfeasance in office.

(c) The board shall elect a chairman.

(d) A majority of the members of the board constitutes a quorum.

(e) The board shall meet at least once in each calendar quarter on a date fixed by the board.

(1) The board may, upon its own motion, or shall upon the written request of three members of the board, call additional meetings of the board upon at least twenty-four hours’ notice.

(2) No member may participate in a proceeding before the board to which a corporation, partnership or unincorporated association is a party, and of which he or she is or was at any time in the preceding twelve months a director, officer, owner, partner, employee, member or stockholder.

(3) A member may disqualify himself or herself from participation in a proceeding for any other cause the member considers sufficient.

(f) The appointed members will receive compensation and expense reimbursement in accordance with the provisions of section eleven, article one of this chapter.
(g) The board may employ staff as necessary to perform the functions of the board, to be paid out of the board fund created by the provisions of this article. Persons employed by any real estate agent, broker, appraiser or lender, or by any partnership, corporation, association or group engaged in any real estate business, may not be employed by the board.

§30-38-7. General powers and duties.

1 The board shall:

2 (a) Define by rule the type of educational experience, appraisal experience and equivalent experience that will meet the statutory requirements of this article;

3 (b) Establish examination specifications as prescribed herein and provide for appropriate examinations;

4 (c) Establish registration requirements and procedures for appraisal management companies under the provisions of article thirty-eight-a of this chapter;

5 (d) Approve or disapprove applications for certification and licensure;

6 (e) Approve or disapprove applications for registration under the provisions of article thirty-eight-a of this chapter;

7 (f) Define by rule continuing education requirements for the renewal of certifications and licenses;

8 (g) Censure, suspend or revoke licenses and certification as provided in this article;

9 (h) Suspend or revoke registrations under the provisions of article thirty-eight-a of this chapter;

10 (i) Hold meetings, hearings and examinations;
(j) Establish procedures for submitting, approving and disapproving applications;

(k) Maintain an accurate registry of the names, addresses and contact information of all persons certified or issued a license to practice under this article;

(l) Maintain an accurate registry of the names, addresses and contact information of all persons and firms registered under the provisions of article thirty-eight-a of this chapter;

(m) Maintain accurate records on applicants and licensed or certified real estate appraisers;

(n) Maintain accurate records on applicants under the provisions of article thirty-eight-a of this chapter;

(o) Issue to each licensed or certified real estate appraiser a pocket card with the appraiser's name and license or certification number. Pocket cards are the property of the State of West Virginia and, upon suspension or revocation of the license to practice pursuant to this article, will be returned immediately to the board;

(p) Issue registration numbers to registrants under the provisions of article thirty-eight-a of this chapter;

(q) Deposit all fees collected by the board to the credit of the West Virginia appraiser licensing and certification board fund established in the office of the State Treasurer. The board shall disburse moneys from the account to pay the cost of board operation. Disbursements from the account may not exceed the moneys credited to it;

(r) Keep records and make reports as required by article one of this chapter; and
(s) Perform any other functions and duties necessary to carry out the provisions of this article and article thirty-eight-a of this chapter.


(a) The board may propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code, to provide for:

(1) Licensure and certification requirements, including requirements for applications, examinations, reciprocity, temporary permits, apprentice permits and reinstatement;

(2) Registration requirements, including delinquent and expired registrations, for appraisal management companies under the provisions of article thirty-eight-a of this chapter;

(3) Fees for licenses, renewals of licenses and other services provided by the board;

(4) A fee schedule for registrations of appraisal management companies under the provisions of article thirty-eight-a of this chapter;

(5) Surety bond requirements for registrations of appraisal management companies under the provisions of article thirty-eight-a of this chapter;

(6) Requirements and procedures for appraisal management companies to maintain records under the provisions of article thirty-eight-a of this chapter;

(7) Experience, education and continuing education requirements and approval of courses; and

(8) Any other purpose to carry out the requirements of this article and article thirty-eight-a of this chapter.
The rule governing appraiser qualifications must include requirements which meet or exceed the education, experience and examination requirements issued or endorsed by the appraisal qualifications board of the appraisal foundation.

Any rules in effect on the effective date of the reenactment of this section during the regular session of the legislature in 2013 will remain in effect until amended, modified, repealed or replaced, except that references to provisions of former enactments of this act are interpreted to mean provisions of this article.

ARTICLE 38A. APPRAISAL MANAGEMENT COMPANIES REGISTRATION ACT.

§30-38A-1. Unlawful acts.

(a) Commencing July 1, 2014, it is unlawful for any person or firm to perform or offer to perform appraisal management services, or act as an appraisal management company within this state without a registration issued by the West Virginia Real Estate Appraiser Licensing and Certification Board under the provisions of this article.

(b) Commencing July 1, 2014, it is unlawful for any person or firm not registered under the provisions of this article to advertise or use a title or description conveying the impression that the person or firm is registered to perform appraisal management services or registered to act as an appraisal management company within this state.


Appraisal management companies and appraisal management services covered under the provisions of this article are subject to the requirements set forth in this article and the rules promulgated hereunder, and the provisions of article one and article thirty-eight of this chapter.
§30-38A-3. Definitions.

1 As used in this article, the following words and terms have the following meanings, unless the context clearly indicates otherwise:

4 (a) "Applicant" means a person or firm making an application for registration under the provisions of this article.

6 (b) "Appraisal" means an analysis, opinion or conclusion prepared by a real estate appraiser relating to the nature, quality, value or utility of specified interests in, or aspects of, identified real estate or identified real property. An appraisal may be classified by the nature of the assignment as a valuation appraisal, an analysis assignment or a review assignment.

12 (c) "Appraisal management company" means a person or firm that performs or provides appraisal management services, directly or indirectly, through the use of software products or online, or by any means of communication.

16 (d) "Appraisal management services" means the business of managing the process of having an appraisal performed for compensation or pecuniary gain, including but not limited to any of the following actions:

20 (1) Conducting business directly or indirectly by telephone, electronically, mail or in person;

22 (2) Providing related administrative and clerical duties;

23 (3) Recruiting, selecting or retaining appraisers;

24 (4) Verifying qualifications of appraisers;

25 (5) Establishing and administering an appraiser panel;

26 (6) Receiving appraisal orders from clients;
(7) Contracting and negotiating fees with appraisers to perform appraisal services;

(8) Receiving appraisals from the appraiser and submitting completed appraisals to clients;

(9) Tracking and determining the status of orders for appraisals;

(10) Reviewing, verifying and conducting quality control of a completed appraisal;

(11) Collecting fees from the clients; and

(12) Compensating appraisers for appraisal services rendered.

(e) "Appraisal review" means the act of developing and communicating an opinion about the quality of another appraiser's work that was performed as part of an appraiser assignment. The review does not include:

(1) An examination of an appraisal for grammatical, typographical or other similar errors that do not make a substantive valuation change; or

(2) A general examination for compliance including regulatory and/or client requirements as specified in the agreement process that do not communicate an opinion as to the valuation conclusion.

(f) "Appraisal services" means the practice of developing an opinion of the value of real estate in conformity with the minimum USPAP standards.

(g) "Appraiser" means a person licensed or certified, under the provisions of article thirty-eight of this chapter, to perform an appraisal.
(h) "Appraiser panel" means a group of appraisers that perform appraisals for an appraisal management company as independent contractors.

(i) "Automated valuation model (AVM)" means a mathematically based computer software program that produces an estimate of market value based on market analysis of location, market conditions, and real estate characteristics from information that was previously and separately collected.

(j) "Board" means the West Virginia Real Estate Appraiser Licensing and Certification Board established under the provisions of article thirty-eight of this chapter.

(k) "Client" means a person or firm that contracts or enters into an agreement with an appraisal management company for the performance of an appraisal.

(l) "Controlling person" means a person authorized by an appraisal management company to contract or enter into agreements with clients and independent appraisers for the performance of appraisal services and who has the power to manage the appraisal management company.

(m) "Firm" means a corporation, limited liability company, partnership, sole proprietorship or any other business entity.

(n) "Registrant" means a person or firm holding a registration issued by the board under the provisions of this article.

(o) "Registration" means a registration issued by the board under the provisions of this article.

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

(q) "USPAP" means the Uniform Standards of Professional Appraisal Practice.
§30-38A-4. Registration requirements.

(a) A person or firm performing or offering to perform appraisal management services or acting as an appraisal management company within this state shall be registered with the board by July 1, 2014.

(b) A firm applying for a registration may not be owned, directly or indirectly, by any employee or consultant who is:

(1) A person who has had a license or certificate to act as an appraiser refused, denied, canceled or revoked in this state or any other jurisdiction, unless the license or certificate was subsequently granted or reinstated; or

(2) A firm that employs a person who has had a license or certificate to act as an appraiser refused, denied, canceled, revoked or surrendered in this state or any other jurisdiction, unless the license or certificate was subsequently granted or reinstated.

(c) The board may issue a registration to perform appraisal management services or act as an appraisal management company to a person or firm that:

(1) Makes written application to the board as set out in section six of this article;

(2) Submits certifications as set out in section seven of this article;

(3) Submits national and state criminal background checks as set out in section eight of this article;

(4) Posts a surety bond as set out in section nine of this article;

(5) Pays the applicable fees as set out in section ten of this article;
(6) Has a designated controlling person as set out in section eleven of this article; and

(7) Meets any other requirement set by the board.

(d) The registrations issued under the provisions of this article shall be renewed annually on July 1.

(e) Registrations not renewed in a timely manner are delinquent. To reinstate a delinquent registration, the registrant must pay a monthly penalty, as set by the board.

(f) A registration that has been delinquent for more than three months shall be considered expired and a new application for registration is required.

(g) The board shall issue a registration number to each appraisal management company registered in this state.

(h) The board shall keep a list of appraisal management company registered in this state and publish the list on its website.

§30-38A-5. Exemptions.

This article does not apply to:

(a) A financial institution, including a department or unit within an institution that is regulated by an agency of this state or the United States government; or

(b) An appraisal management company that is a subsidiary wholly owned and controlled by a financial institution regulated by a federal financial institution regulatory agency.

§30-38A-6. Written application requirements.

(a) The written application shall be submitted on a form prescribed by the board and shall include:
(1) The name, the street and mailing address and the contact information, including telephone number and e-mail address, of the person or firm seeking registration;

(2) The name, the street and mailing address and the contact information, including telephone number and e-mail address, of each owner of more than ten percent of the firm seeking registration;

(3) The name, the street and mailing address and the contact information, including telephone number and e-mail address, of the controlling person of the firm seeking registration; and

(4) (A) If the applicant is a domestic firm, the designation of an agent for service of process; or

(B) If the applicant is a foreign firm, documentation that the foreign firm is authorized to do business in West Virginia and that an agent for service of process has been designated and the following has been submitted:

(i) A copy of the filing with the Secretary of State’s Office appointing an agent for service of process; and

(ii) A certificate of authority issued by the Secretary of State.

(b) The board shall maintain a list of all applicants for registration that includes the information in the written application.

§30-38A-7. Certification requirements.

(a) The certification for registration shall be in writing, on a form prescribed by the board and signed by the applicant or controlling person. The certification shall include statements that the applicant:
(1) Has a process in place to verify that any person used as an appraiser or added to the appraiser panel of the applicant is a licensed or certified appraiser in good standing in West Virginia;

(2) Has set requirements to verify that appraisers are geographically competent and can perform the appraisals assigned;

(3) Has set procedures for an appraiser, licensed or certified in this state or in any state with a minimum of the same certification level for the property type as the appraiser who performed the appraisal, to review the work of the appraisers performing appraisals for the applicant to verify that the appraisals are being conducted in accordance with the minimum USPAP standards;

(4) Will require appraisals to be conducted independently and free from inappropriate influence and coercion as required by the appraisal independence standards established under Section 129E of the Truth in Lending Act and the rules and regulations issued pursuant to the Act, including the requirement that appraisers be compensated at a customary and reasonable rate when the appraisal management company is providing services for a consumer credit transaction secured by the principal dwelling of a consumer;

(5) Maintains a detailed record of each request for appraisal it receives from a client and the appraiser that performs the appraisal; and

(6) Has submitted any other information required by the board.

(b) The applicant, each owner who is an employee of or consultant for the applicant and any controlling person shall submit a written verification, on a form prescribed by the board, that includes statements that:
(1) The written application and verification for registration contain no false or misleading statements;

(2) The applicant has complied with the requirements of this article;

(3) The applicant, each owner who is an employee of or consultant for the applicant, and the controlling person of the firm seeking registration has not pleaded guilty or nolo contendere to or been convicted of a felony;

(4) Within the past ten years, the applicant, each owner who is an employee of or consultant for the applicant, and the controlling person of the firm seeking registration has not pleaded guilty or nolo contendere to or been convicted of:

   (A) A misdemeanor involving mortgage lending or real estate appraisals; or
   
   (B) An offense involving breach of trust or fraudulent or dishonest dealing;

(5) The applicant, each owner who is an employee of or consultant for the applicant, and the controlling person of the firm seeking registration are of good character and reputation and that none of them has had a license or certificate to act as an appraiser refused, denied, canceled, revoked or surrendered in this state or any other jurisdiction, and the license or certification was not subsequently granted or reinstated;

(6) The applicant, each owner who is an employee of or consultant for the applicant, and the controlling person of the firm seeking registration are not permanently or temporarily enjoined by a court of competent jurisdiction from engaging in or continuing any conduct or practice involving appraisals, appraisal management services or operating an appraisal management company;
66 (7) The applicant, each owner who is an employee of or consultant for the applicant, and the controlling person of the firm seeking registration are not the subject of an order of the board or any other jurisdiction's agency that regulates appraisal management companies that denied, suspended or revoked the applicant's or firm's privilege to operate as an appraisal management company;

73 (8) The applicant, each owner who is an employee of or consultant for the applicant, and the controlling person of the firm seeking registration have not acted as an appraisal management company while not being properly registered by the board; and

78 (9) Set forth any other requirements of the board.

§30-38A-8. Background check requirements.

(a) Upon application, the applicant, each owner who is an employee of or consultant for the applicant, and the controlling person of the firm seeking registration shall submit to a state and national criminal history record check, as set forth in this section.

(1) This requirement is found not to be against public policy.

(2) The criminal history record check shall be based on fingerprints submitted to the West Virginia State Police or its assigned agent for forwarding to the Federal Bureau of Investigation.

(3) The applicant shall meet all requirements necessary to accomplish the state and national criminal history record check, including:

(A) Submitting fingerprints for the purposes set forth in this subsection; and
(B) Authorizing the board, the West Virginia State Police and the Federal Bureau of Investigation to use all records submitted and produced for the purpose of screening the applicant for a license.

(b) The results of the state and national criminal history record check may not be released to or by a private entity except:

(1) To the individual who is the subject of the criminal history record check;

(2) With the written authorization of the individual who is the subject of the criminal history record check; or

(3) Pursuant to a court order.

(c) The criminal history record check and related records are not public records for the purposes of chapter twenty-nine-b of this code.

(d) The applicant shall ensure that the criminal history record check is completed as soon as possible after the date of the original application for registration.

(e) The applicant shall pay the actual costs of the fingerprinting and criminal history record check.

§30-38A-9. Surety bond requirements and claims.

(a) Each applicant shall post and maintain a surety bond with the board. The aggregate liability of the surety bond may not exceed the principal sum of the surety bond.

(b) The surety bond shall:

(1) Be established by the board through rules;

(2) Not exceed $100,000;
(3) Be in the form prescribed by the board;

(4) Be issued by an surety company authorized to do business in West Virginia; and

(5) Accrue to the state for the benefit of any claimant against the registrant to secure the faithful performance of the registrant’s obligations.

(c) The board may bring suit on behalf of the party having a claim against the registrant.

(d) Consumer claims shall be given priority in recovering from the surety bond.

(e) Claimants may make claim under the bond for up to one year after the applicant ceases doing business in West Virginia.

(f) An appropriate deposit of cash or security may be accepted by the board in lieu of the required bond, as determined by the board through legislative rule.

§30-38A-10. Fee requirements.

The fees assessed by the board, as established by legislative rule, shall include the annual fee for appraisal management companies to be included in the national registry maintained by the Appraisal Subcommittee of the Federal Financial Institutions Examination Council.

§30-38A-11. Controlling person requirements.

(a) An appraisal management company shall have a designated controlling person who will ensure compliance with this article and will be the main contact for all communication between the board and the appraisal management company.

(b) The controlling person shall:
(1) Be of good character and reputation;

(2) Submit to national and state criminal background checks as set out in section eight of this article;

(3) Never have had a license or certificate to act as an appraiser refused, denied, canceled, revoked or surrendered in this state or any other jurisdiction and not subsequently granted or reinstated;

(4) Never have been a part of a firm that was permanently or temporarily enjoined by a court of competent jurisdiction from engaging in or continuing any conduct or practice involving appraisals, appraisal management services or operating an appraisal management company; and

(5) Never have been the subject of an order of the board or any other jurisdiction’s appraisal management company regulatory agency that denied or revoked the applicant’s or firm’s privilege to operate as an appraisal management company.

§30-38A-12. Requirements for removal from an appraiser panel.

(a) Except within sixty days from the date an appraiser is first added to the appraiser panel of an appraisal management company, an appraisal management company may only remove an appraiser from an appraiser panel or refuse to assign appraisals to an appraiser after providing the appraiser twenty days prior written notice stating the reasons for the removal or refusal and providing an opportunity for the appraiser to be heard.

(b) An appraiser who is removed from an appraiser panel or refused appraisal assignments for an alleged act or omission that would constitute grounds for disciplinary action under the provisions of section twelve, article thirty-eight of this chapter, a violation of the USPAP or a violation of state law or legislative
rule may file a complaint with the board for a review of the
appraisal management company's decision.

(c) The board's review under this subsection is limited to
determining whether:

(1) The appraisal management company has complied with
subsection (a) of this section; and

(2) The appraiser has engaged in an act or omission that
would constitute grounds for disciplinary action under the
provisions of section twelve, article thirty-eight of this code, or
has committed a violation of the USPAP or a violation of state
law or legislative rule.

d) The board shall hold a hearing on the complaint within
a reasonable time, not exceeding six months after the complaint
was filed unless there are extenuating circumstances that are
noted in the board's minutes.

e) If the board determines after the hearing that an appraisal
management company acted improperly then the board shall
order the appraisal management company to restore the appraiser
to the appraiser panel or assign appraisals to the appraiser.

(f) After the board's order, an appraisal management
company may not:

(1) Reduce the number of appraisals given to the appraiser;

or

(2) Penalize the appraiser in any other manner.


(a) Each appraisal management company shall:

(1) Verify that an appraiser receiving work or being placed
on an appraiser panel is:
4 (A) Professionally and geographically competent;

5 (B) Competent to perform the appraisal service being assigned to the appraiser;

6 (C) Licensed or certified under the provisions of article thirty-eight of this chapter; and

7 (D) In good standing in this state;

8 (2) Designate a controlling person responsible for ensuring compliance with this article, including filing with the board the following:

9 (A) The name of the controlling person;

10 (B) The contact information for the controlling person;

11 (C) A verified acceptance of responsibility from the controlling person; and

12 (D) An updated registration form identifying the current controlling person submitted within ten business days, when there is a change of the controlling person;

13 (3) Maintain complete detailed records of requests for appraisals from clients, including:

14 (A) The type of appraisal requested;

15 (B) The name and license or certification number of the appraiser to whom the appraisal was referred;

16 (C) The fees received from the client; and

17 (D) The fees paid to the appraiser or any third party for services performed;
(4) Ensure that appraisal services are provided in an independent manner, free from inappropriate influence and coercion, as required by appraisal independence standards established under Section 129E of the Truth in Lending Act and the rules and regulations issued pursuant to the Act, including the requirement that fee appraisers be compensated at a customary and reasonable rate when the appraisal management company is providing services for a consumer credit transaction secured by the principal dwelling of a consumer;

(5) Except in cases of breach of contract or substandard performance, pay an independent appraiser for the completion of an appraisal within forty-five days after the appraiser provides the completed appraisal to the appraisal management company, unless otherwise agreed to by the parties;

(6) Disclose its registration number on all engagement documentation with appraisers;

(7) Disclose to its clients the fees paid:

(A) For appraisal management services; and

(B) To the appraiser for the completion of an appraisal assignment;

(8) Inform the board, when it has a reasonable basis to believe, that an appraiser has:

(A) Failed to comply with USPAP and the failure to comply is likely to significantly affect the opinion of value;

(B) Violated applicable laws or rules; or

(C) Engaged in unethical or unprofessional conduct;

(9) Keep all records, including, but not limited to, appraisals ordered by the appraisal management company, for a minimum
of five years after an appraisal is completed or two years after final disposition of a judicial proceeding related to the assignment, whichever period expires later; and

(10) Maintain a registered agent for service of process and provide the board with the same information for the agent that is provided to the Secretary of State.

(b) The board may inspect the records of appraisal management companies at any time without prior notice.

(c) A sole proprietor of an appraisal management company is considered the controlling person.

(d) If information on a disclosure becomes inaccurate for any reason, then a revised or amended disclosure shall be provided within five business days after the change. The revised or amended disclosure shall be clearly marked as revised or amended and contain sufficient information for the client to identify the original disclosure referenced.

(e) The provisions of this section do not exempt a registrant from any other reporting requirements contained in any federal or state law.

§30-38A-14. Unprofessional conduct.

An appraisal management company commits unprofessional conduct if it:

(1) Requires an appraiser to modify an aspect of an appraisal which modification is not related to substandard performance or noncompliance with the terms of a contract or agreement;

(2) Requires an appraiser to prepare an appraisal when the appraiser believes, in his or her own professional judgment and notifies the appraisal management company in a timely manner,
that the appraiser does not have the necessary expertise for the specific geographic area or is otherwise not competent to perform the appraisal;

(3) Requires an appraiser to prepare an appraisal under a certain time frame that the appraiser believes, in his or her own professional judgment and notifies the appraisal management company in a timely manner, that the appraiser does not have the necessary time to meet all the necessary and relevant legal and professional obligations;

(4) Prohibits or inhibits communication between an appraiser and any other person from whom the appraiser, in the appraiser's own professional judgment, believes information would be relevant;

(5) Requests an appraiser to do anything that does not comply with:

(A) The USPAP; or

(B) The requests of the client; or

(6) Makes any portion of the appraiser's fee or the appraisal management company's fee contingent on a favorable outcome, including:

(A) A loan closing; or

(B) An appraisal for a specific dollar amount.


(a) An appraisal management company or any person acting for an appraisal management company as a controlling person, owner, director, officer, agent, employee or independent contractor may not:
(1) Improperly influence or attempt to improperly influence the development, reporting, result or review of an appraisal through:

(A) Intimidation, inducement, coercion, extortion, collusion, bribery, compensation, blackmail, threat of exclusion from future appraisal work or any other means that unduly influences or pressures the appraiser;

(B) Withholding payment to an appraiser or compensating the appraiser at less than the customary and reasonable rate for appraisal services unless for breach of contract; or

(C) Expressly or impliedly promise future business, promotions or increased compensation to an appraiser;

(2) Knowingly employ a person to a position of responsibility who has had a license or certificate to act as an appraiser refused, denied, canceled, revoked or surrendered in this state or any other jurisdiction, and not subsequently granted or reinstated;

(3) Knowingly enter into a contract with a person for the performance of appraisal services who has had a license or certificate to act as an appraiser refused, denied, canceled, revoked or surrendered in this state or any other jurisdiction, and not subsequently granted or reinstated;

(4) Knowingly enter into a contract, agreement or other business relationship for the purpose of obtaining real estate appraisal services with a firm that employs or contracts with a person who has had a license or certificate to act as an appraiser refused, denied, canceled, revoked or surrendered in this state or any other jurisdiction, and not subsequently granted or reinstated;
(5) Knowingly fail to separate and disclose any fees charged to a client by the appraisal management company for an appraisal by an appraiser from fees charged to a client by the appraisal management company for appraisal management services;

(6) Prohibit an appraiser from stating, in a submitted appraisal, the fee paid by the appraisal management company to the appraiser for the appraisal;

(7) Request, allow or require an appraiser to collect any portion of the fee, including the appraisal fee, charged by the appraisal management company to the client;

(8) Require an appraiser to provide the registrant with the appraiser's signature or seal in any form;

(9) Alter, amend or change an appraisal submitted by an appraiser;

(10) Remove an appraiser's signature or seal from an appraisal;

(11) Add information to or remove information from an appraisal with the intent to change the conclusion of the appraisal;

(12) Remove an appraiser from an appraiser panel without twenty days prior written notice to the appraiser and an opportunity for the appraiser to be heard;

(13) Enter into an agreement or contract for the performance of appraisal services with an appraiser who is not in good standing with the board;

(14) Request or require an appraiser to provide an estimated, predetermined or desired valuation in an appraisal;
(15) Request or require an appraiser to provide estimated values or comparable sales at any time prior to the appraiser completing an appraisal;

(16) Condition a request for an appraisal or the payment of an appraisal fee on:

(A) An opinion, conclusion or valuation reached; or

(B) A preliminary estimate or opinion requested from an appraiser;

(17) Provide to an appraiser an anticipated, estimated, encouraged or desired value for an appraisal or a proposed or targeted amount to be loaned or borrowed, except that a copy of the sales contract for the purchase transaction may be provided;

(18) Require an appraiser to indemnify or hold harmless an appraisal management company for any liability, damage, losses or claims arising out of the services provided by the appraisal management company;

(19) Have a direct or indirect interest, financial or otherwise, in the property or transaction involving the appraisal;

(20) Provide to an appraiser or a person related to the appraiser stock or other financial or nonfinancial benefits;

(21) Obtain, use or pay for a second or subsequent appraisal or order an automated valuation model, unless:

(A) There is a reasonable basis to believe that the initial appraisal was flawed and the basis is clearly and appropriately noted in the file;

(B) The second or subsequent appraisal, or automated valuation model is done under a bona fide prefunding or post-funding appraisal review or quality control process;
(C) The second appraisal is required by law; or

(D) The second or subsequent appraisal or automated valuation model is ordered by a client; or

(22) Commit an act or practice that impairs or attempts to impair an appraiser’s independence, objectivity or impartiality.

(b) This section does not prohibit an appraisal management company from requesting that an appraiser:

(1) Provide additional information about the basis for a valuation;

(2) Correct objective factual errors in an appraisal;

(3) Provide further detail, substantiation or explanation for the appraiser’s conclusion; or

(4) Consider additional appropriate property information, including the consideration of additional comparable properties to make or support an appraisal.


The board may deny, revoke or refuse to issue or renew the registration of an appraisal management company or may restrict or limit the activities of an appraisal management company or of a person or firm that owns an interest in or participates in the business of an appraisal management company for the following reasons:

(1) A person or firm acted as an appraisal management company or performed appraisal management services without being properly registered with the board;

(2) A person or firm did not perform the duties set out in this article;
(3) A person or firm engaged in unprofessional conduct as set out in this article;

(4) A person or firm engaged in a prohibited act set out in this article;

(5) The application for registration contained false or misleading information;

(6) A person or firm fraudulently or deceptively obtains or attempts to obtain a registration;

(7) A person or firm fraudulently or deceptively used a registration;

(8) A person or firm violated the provisions of this article, this code, or the board’s rules;

(9) A person or firm was found guilty of a felony or pleaded guilty or nolo contendere to a felony;

(10) Within the past ten years, a person or firm was found guilty of or pleaded guilty or nolo contendere to a misdemeanor involving:

(A) Mortgage lending;

(B) Appraisals;

(C) Breach of trust; or

(D) Fraudulent or dishonest dealing;

(11) A person or firm is permanently or temporarily enjoined by a court of competent jurisdiction from engaging in or continuing any conduct or practice involving appraisal management services or operating an appraisal management company;
(12) A person or firm is the subject of an order of the board or any other jurisdiction's appraisal management company regulatory agency that denied, revoked or restricted a person's or firm's privilege to operate as an appraisal management company;

(13) A person or firm failed to pay the applicable fees; or

(14) For any other finding by the board.

§30-38A-17. Notice and hearing procedures.

(a) The board, on its own motion or upon receipt of a written complaint, may investigate an appraisal management company, a person or firm associated with an appraisal management company, and a person or firm performing appraisal management services.

(b) If the board determines after the investigation there are grounds for disciplinary action, the board may hold a hearing after giving thirty days' prior notice.

(c) The board has the same powers set out in article thirty-eight of this chapter.

(d) After notice and a hearing, the board may:

(1) Deny, revoke or refuse to issue or renew the registration of an appraisal management company or restrict or limit the activities of an appraisal management company or of a person or firm that owns an interest in or participates in the business of an appraisal management company;

(2) Impose a fine not to exceed $25,000 for each violation; or

(3) Take other disciplinary action as established by the board by rule.
21  (e) The board may seek injunctive relief in the Kanawha
22  County Circuit Court to prevent a person or firm from violating
23  the provisions of this article or the rules promulgated hereunder.
24  The circuit court may grant a temporary or permanent injunction.

CHAPTER 157

(Com. Sub. for H. B. 2497 - By Delegates Skaff, Stowers, 
E. Nelson, D. Campbell, Sobonya, White, Ferns, 
Craig, Morgan, Poore and Marcum)

[Passed April 12, 2013; in effect ninety days from passage.]
[Approved by the Governor on April 29, 2013.]

AN ACT to amend and reenact §30-40-11 of the Code of West 
Virginia, 1931, as amended, relating to application for a real estate 
license; requiring applicants for real estate licensure to undergo 
criminal history record checks; declaring the criminal history 
record check requirement is not against public policy; requiring 
applicants to submit fingerprints for the criminal history record 
check; requiring applicants to authorize the use of fingerprints to 
conduct the criminal history record check; prohibiting the release 
of criminal history records except in certain limited circumstances; 
declaring that criminal history records are not subject to the 
Freedom of Information Act; requiring the applicant to pay the 
actual costs of the criminal history record check; requiring the 
commission to promulgate a legislative rule to make the 
procedures and requirements consistent with federal standards 
before implementing the requirement for criminal history record 
checks; and requiring the commission to issue a license without 
requiring a criminal history record check to an attorney in good 
standing.
Be it enacted by the Legislature of West Virginia:

That §30-40-11 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 40. WEST VIRGINIA REAL ESTATE LICENSE ACT.


1 The commission shall only issue an original license to an applicant if he or she:

2 (a) Submits an application, in writing, in a form prescribed by the commission which must contain, but is not limited to:

3 (1) The applicant's social security number;

4 (2) The recommendation of at least two persons who:

5 (A) Are property owners at the time of signing the application;

6 (B) Have been property owners for at least twelve months preceding the signing of the application;

7 (C) Have known the applicant for at least two years;

8 (D) Are not related to the applicant;

9 (E) Are not affiliated with the applicant as an employer, partner or associate or with the broker that will employ the applicant;

10 (F) Believe the applicant bears a good reputation for honesty, trustworthiness and fair dealing; and

11 (G) Believe the applicant is competent to transact the business of a real estate broker, associate broker or salesperson,
as the case may be, in a manner that would protect the interest of
the public.

(3) A clear record indicating all jurisdictions where the
applicant holds or has held any professional license.

(4) A clear record indicating if the applicant has been
convicted of any criminal offense or if there is any criminal
charge pending against the applicant, or a member or officer of
the brokerage business, at the time of application.

(b) Is at least eighteen years of age.

(c) Is a high school graduate or the holder of an equivalency
diploma.

(d) Is trustworthy, of good moral character and competent to
transact the business of a broker, associate broker or salesperson.

(e) Has paid the appropriate fee, if any, which must
accompany all applications for original license or renewal.

(f) Has submitted to a state and national criminal history
record check, as set forth in this subsection: Provided, That an
applicant for a license who is an attorney at law may submit a
letter of good standing from the Clerk of the Supreme Court of
Appeals of West Virginia in lieu of submitting to a state and
national criminal history record check.

(1) This requirement is found not to be against public policy.

(2) The criminal history record check shall be based on
fingerprints submitted to the West Virginia State Police or its
assigned agent for forwarding to the Federal Bureau of
Investigation.

(3) The applicant shall meet all requirements necessary to
accomplish the state and national criminal history record check,
including:
(A) Submitting fingerprints for the purposes set forth in this subsection; and

(B) Authorizing the commission, the West Virginia State Police and the Federal Bureau of Investigation to use all records submitted and produced for the purpose of screening the applicant for a license.

(4) The results of the state and national criminal history record check may not be released to or by a private entity except:

(A) To the individual who is the subject of the criminal history record check;

(B) With the written authorization of the individual who is the subject of the criminal history record check; or

(C) Pursuant to a court order.

(5) The criminal history record check and related records are not public records for the purposes of chapter twenty-nine-b of this code.

(6) The applicant shall pay the actual costs of the fingerprinting and criminal history record check.

(7) Before implementing the provisions of this subsection, the commission shall propose rules for legislative approval in accordance with article three, chapter twenty-nine-a of this code. The rules shall set forth the requirements and procedures for the criminal history check and must be consistent with standards established by the Federal Bureau of Investigation and the National Crime Prevention and Privacy Compact as authorized by 42 U. S. C. A. §14611, et seq.
AN ACT to amend and reenact §29-21-9 and §29-21-20 of the Code of West Virginia, 1931, as amended, all relating to Public Defender Services; authorizing family court judges to appoint counsel in contempt cases when jail commitment is possible; and providing immunity to attorney appointed by family court judges.

Be it enacted by the Legislature of West Virginia:

That §29-21-9 and §29-21-20 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 21. PUBLIC DEFENDER SERVICES.


(a) In each circuit of the state, the circuit court shall establish and maintain regional and local panels of private attorneys-at-law who are available to serve as counsel for eligible clients. An attorney-at-law may become a panel attorney and be enrolled on the regional or local panel, or both, to serve as counsel for eligible clients by informing the court. An agreement to accept cases generally or certain types of cases particularly may not prevent a panel attorney from declining an appointment in a specific case.

(b) In all cases where an attorney-at-law is required to be appointed for an eligible client, the appointment shall be made...
by the circuit judge: Provided, That in family court contempt cases, the family court judge shall appoint an attorney-at-law when required, in the following order of preference:

(1) In circuits where a public defender office is in operation, the judge shall appoint the public defender office unless an appointment is not appropriate due to a conflict of interest or unless the public defender corporation board of directors or the public defender, with the approval of the board, has notified the court that the existing caseload cannot be increased without jeopardizing the ability of defenders to provide effective representation;

(2) If the public defender office is not available for appointment, the court shall appoint one or more panel attorneys from the local panel;

(3) If there is no local panel attorney available, the judge shall appoint one or more panel attorneys from the regional panel;

(4) If there is no regional panel attorney available, the judge may appoint a public defender office from an adjoining circuit if such public defender office agrees to the appointment;

(5) If the adjoining public defender office does not accept the appointment, the judge may appoint a panel attorney from an adjoining circuit; or

(6) If a panel attorney from an adjoining circuit is unavailable, the judge may appoint a panel attorney from any circuit.

(c) In any given case, the appointing judge may alter the order in which attorneys are appointed if the case requires particular knowledge or experience on the part of the attorney to be appointed: Provided, That any time a court, in appointing
§29-21-20. Appointed counsel immune from liability.

1. Any attorney who provides legal representation under the provisions of this article under appointment by a circuit court, family court or by the Supreme Court of Appeals, and whose only compensation therefor is paid under the provisions of this article, shall be immune from liability arising from that representation in the same manner and to the same extent that prosecuting attorneys are immune from liability.
ARTICLE 16. WEST VIRGINIA PUBLIC EMPLOYEES INSURANCE ACT.

§5-16-3. Composition of Public Employees Insurance Agency; appointment, qualification, compensation and duties of director of agency; employees; civil service coverage.

(a) The Public Employees Insurance Agency consists of the director, the Finance Board, the Advisory Board and any employees who may be authorized by law. The director shall be appointed by the Governor, with the advice and consent of the Senate, and serves at the will and pleasure of the Governor. The director shall have at least three years' experience in health or governmental health benefit administration as his or her primary employment duty prior to appointment as director. The director shall receive actual expenses incurred in the performance of official business. The director shall employ any administrative, technical and clerical employees required for the proper administration of the programs provided in this article. The director shall perform the duties that are required of him or her under the provisions of this article and is the Chief Administrative Officer of the Public Employees Insurance Agency. The director may employ a deputy director.

(b) Except for the director, his or her personal secretary, the deputy director and the chief financial officer, all positions in the agency shall be included in the classified service of the civil service system pursuant to article six, chapter twenty-nine of this code.

(c) The director is responsible for the administration and management of the Public Employees Insurance Agency as provided in this article and in connection with his or her responsibility may make all rules necessary to effectuate the provisions of this article. Nothing in section four or five of this
article limits the director’s ability to manage on a day-to-day basis the group insurance plans required or authorized by this article, including, but not limited to, administrative contracting, studies, analyses and audits, eligibility determinations, utilization management provisions and incentives, provider negotiations, provider contracting and payment, designation of covered and noncovered services, offering of additional coverage options or cost containment incentives, pursuit of coordination of benefits and subrogation or any other actions which would serve to implement the plan or plans designed by the Finance Board. The director is to function as a benefits management professional and should avoid political involvement in managing the affairs of the Public Employees Insurance Agency.

(d) The director may, if it is financially advantageous to the state, operate the Medicare retiree health benefit plan offered by the agency based on a plan year that runs concurrent with the calendar year. Financial plans as addressed in section five of this article shall continue to be on a fiscal-year basis.

(e) The director should make every effort to evaluate and administer programs to improve quality, improve health status of members, develop innovative payment methodologies, manage health care delivery costs, evaluate effective benefit designs, evaluate cost sharing and benefit-based programs and adopt effective industry programs that can manage the long-term effectiveness and costs for the programs at the Public Employees Insurance Agency to include, but not be limited to:

(1) Increasing generic fill rates;

(2) Managing specialty pharmacy costs;

(3) Implementing and evaluating medical home models and health care delivery;
(4) Coordinating with providers, private insurance carriers and to the extent possible Medicare to encourage the establishment of cost-effective accountable care organizations;

(5) Exploring and developing advanced payment methodologies for care delivery such as case rates, capitation and other potential risk-sharing models and partial risk-sharing models for accountable care organizations and/or medical homes;

(6) Adopting measures identified by the Centers for Medicare and Medicaid Services to reduce cost and enhance quality;

(7) Evaluating the expenditures to reduce excessive use of emergency room visits, imaging services and other drivers of the agency’s medical rate of inflation;

(8) Recommending cutting-edge benefit designs to the Finance Board to drive behavior and control costs for the plans;

(9) Implementing programs to encourage the use of the most efficient and high-quality providers by employees and retired employees;

(10) Identifying employees and retired employees who have multiple chronic illnesses and initiating programs to coordinate the care of these patients;

(11) Initiating steps by the agency to adjust payment by the agency for the treatment of hospital acquired infections and related events consistent with the payment policies, operational guidelines and implementation timetable established by the Centers of Medicare and Medicaid Services. The agency shall protect employees and retired employees from any adjustment in payment for hospital acquired infections; and
(12) Initiating steps by the agency to reduce the number of employees and retired employees who experience avoidable readmissions to a hospital for the same diagnosis related group illness within thirty days of being discharged by a hospital in this state or another state consistent with the payment policies, operational guidelines and implementation timetable established by the Centers of Medicare and Medicaid Services.

(f) The director shall issue an annual progress report to the Joint Committee on Government and Finance on the implementation of any reforms initiated pursuant to this section and other initiatives developed by the agency.

CHAPTER 160

(Com. Sub. for H. B. 2471 - By Mr. Speaker (Mr. Thompson) and Delegates Boggs, Swartzmiller, Miley, Young, Sponaugle and Barrett)

[Passed April 11, 2013; in effect ninety days from passage.]
[Approved by the Governor on May 3, 2013.]

AN ACT to amend and reenact §15-5-6 and §15-5-19a of the Code of West Virginia, 1931, as amended, all relating to exercise of restricted state and local authority during a declared state of emergency; possession of firearms during a declared state of emergency; prohibiting the restriction or otherwise lawful possession, use, carrying, transfer, transportation, storage or display of a firearm or ammunition during a declared state of emergency; clarifying scope of right to seize or confiscate otherwise lawfully-possessed firearm during a declared state of emergency; providing exceptions thereto; providing a remedy at
law and equity for a violations of this article for the improper seizure of firearms or ammunition during a declared state of emergency; providing a cause of action for the return of the ammunition and firearms seized in violation of these proscriptions; establishing a venue for actions; and providing for the award of costs and attorney fees to a prevailing plaintiff.

Be it enacted by the Legislature of West Virginia:

That §15-5-6 and §15-5-19a of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 5. DIVISION OF HOMELAND SECURITY AND EMERGENCY MANAGEMENT.


The provisions of this section shall be operative only during the existence of a state of emergency. The existence of a state of emergency may be proclaimed by the Governor or by concurrent resolution of the Legislature if the Governor in such proclamation, or the Legislature in such resolution, finds that an attack upon the United States has occurred or is anticipated in the immediate future, or that a natural or man-made disaster of major proportions has actually occurred or is imminent within the state, and that the safety and welfare of the inhabitants of this state require an invocation of the provisions of this section. Any such emergency, whether proclaimed by the Governor or by the Legislature, shall terminate upon the proclamation of the termination thereof by the Governor, or the passage by the Legislature of a concurrent resolution terminating such emergency.

So long as such state of emergency exists, the Governor shall have and may exercise the following additional emergency powers:
(a) To enforce all laws and rules relating to the provision of emergency services and to assume direct operational control of any or all emergency service forces and helpers in the state;

(b) To sell, lend, lease, give, transfer or deliver materials or perform functions relating to emergency services on such terms and conditions as he or she shall prescribe and without regard to the limitations of any existing law and to account to the State Treasurer for any funds received for such property;

(c) To procure materials and facilities for emergency services by purchase, condemnation under the provisions of chapter fifty-four of this code or seizure pending institution of condemnation proceedings within thirty days from the seizing thereof and to construct, lease, transport, store, maintain, renovate or distribute such materials and facilities. Compensation for property so procured shall be made in the manner provided in chapter fifty-four of this code;

(d) To obtain the services of necessary personnel, required during the emergency, and to compensate them for their services from his or her contingent funds or such other funds as may be available to him or her;

(e) To provide and compel the evacuation of all or part of the population from any stricken or threatened area within the state and to take such steps as are necessary for the receipt and care of such evacuees;

(f) To control ingress and egress to and from a disaster area, the movement of persons within the area and the occupancy of premises therein;

(g) To suspend the provisions of any regulatory statute prescribing the procedures for conduct of state business or the orders, rules or regulations of any state agency, if strict
compliance therewith would in any way prevent, hinder or delay 
necessary action in coping with the emergency;

(h) To utilize such available resources of the state and of its 
political subdivisions as are reasonably necessary to cope with 
the emergency;

(i) To suspend or limit the sale, dispensing or transportation 
of alcoholic beverages, explosives and combustibles;

(j) To make provision for the availability and use of 
temporary emergency housing; and

(k) To perform and exercise such other functions, powers 
and duties as are necessary to promote and secure the safety and 
protection of the civilian population.

No powers granted under this section may be interpreted to 
authorize any action that would violate the prohibitions of 
section nineteen-a of this article.

§15-5-19a. Possession of firearms during a declared state of 
emergency.

(a) No person acting on behalf or under the authority of the 
state or a political subdivision of the state may do any of the 
following during any federal or state declared state of 
emergency:

(1) Prohibit or restrict the otherwise lawful possession, use, 
carrying, transfer, transportation, storage or display of a firearm 
or ammunition;

(2) Seize, confiscate, or authorize the seizure or confiscation 
of any otherwise lawfully-possessed firearm or ammunition 
unless:
(A) The person acting on behalf of or under the authority of the state or political subdivision is:

(i) Defending himself or another from an assault; or

(ii) Arresting a person in actual possession of a firearm or ammunition for a violation of law; or

(B) The firearm or ammunition is being seized or confiscated as evidence of a crime; or

(3) Require registration of any firearm or ammunition.

(b) The prohibitions of subsection (a)(1) do not prohibit the state or an authorized state or local authority from ordering and enforcing an evacuation or general closure of businesses in the affected area during a declared state of emergency.

(c) Any individual aggrieved by a violation of this section may seek relief in an action at law or in equity for redress against any person who subjects such individual, or causes such individual to be subjected, to an action prohibited by this section.

(d) In addition to any other remedy at law or in equity, an individual aggrieved by the seizure or confiscation of a firearm or ammunition in violation of this section may bring an action for the return of such firearm or ammunition in the circuit court of the county in which that individual resides or in which such firearm or ammunition is located.

(e) In any action or proceeding to enforce this section, the court shall award a prevailing plaintiff costs and reasonable attorney fees.
CHAPTER 161

(Com. Sub. for S. B. 371 - By Senators Kessler, Mr. President and M. Hall)
[By Request of the Executive]

[Passed April 13, 2013; in effect ninety days from passage.]
[Approved by the Governor on May 2, 2013.]

AN ACT to amend and reenact §25-1-15 of the Code of West Virginia, 1931, as amended; to amend and reenact §28-5-27 of said code; to amend said code by adding thereto two new sections, designated §31-20-5g and §31-20-5h; to amend and reenact §61-7-6 of said code; to amend and reenact §62-11A-1a of said code; to amend and reenact §62-11B-9 of said code; to amend and reenact §62-11C-2, §62-11C-3 and §62-11C-6 of said code; to amend said code by adding thereto a new section, designated §62-11C-10; to amend and reenact §62-12-6, §62-12-7, §62-12-9, §62-12-10, §62-12-13, §62-12-14a, §62-12-15, §62-12-17 and §62-12-19 of said code; to amend said code by adding thereto a new section, designated §62-12-29; to amend and reenact §62-15-2 and §62-15-4 of said code; and to amend said code by adding thereto two new sections, designated §62-15-6a and §62-15-6b, all relating to public safety; requiring the Division of Corrections to perform graduated methods of mental health screens, appraisals and evaluations on persons committed to its custody; eliminating requirement for separate disciplinary rules at each institution; mandating one year of supervised release for violent inmates and deducting one year of their good time; authorizing judges to require up to one hundred eighty days of a nonviolent offender's sentence to be served as post-release mandatory supervision; setting an effective date for supervised release provisions; requiring the Commissioner of Corrections to adopt policies regarding mandatory supervised release; requiring the West Virginia Regional Jail and Correctional
Facility Authority to use a standardized pretrial risk-screening instrument adopted by the Supreme Court of Appeals of West Virginia to screen persons arrested and placed in a regional jail; providing for the confidentiality of risk assessments and their inadmissibility at criminal and civil trials; requiring the Division of Corrections to develop and implement a cognitive behavioral program for inmates in regional jails committed to the custody of the Commissioner of Corrections and requiring the Division of Corrections to pay its cost; exempting parole officers from prohibitions against carrying concealed weapons; moving definition of "day report center" to section relating to conditions of release on probation; providing standards and limitations under which judges and magistrates may impose a period of supervision or participation in day report program; clarifying language regarding confinement and revocation for violations of the conditions of home incarceration; adding representative of the Bureau for Behavioral Health and Health Facilities to the Community Corrections Subcommittee of the Governor's Committee on Crime, Delinquency and Correction; requiring that the Community Corrections Subcommittee review, assess and report on the implementation of evidence-based practices in the criminal justice system; adding member with a background in substance abuse treatment and services to the community criminal justice boards to be appointed by the commission or commissions of the county or counties represented by the board; providing oversight responsibility to Division of Justice and Community Services to implement standardized risk and needs assessment, evaluate effectiveness of other modifications to community corrections programs and provide annual report; requiring probation officers to conduct a standardized risk and needs assessment for individuals placed on probation and to supervise probationer and enforce probation according to assessment and supervision standards adopted by the West Virginia Supreme Court of Appeals; requiring probation officers to perform random drug and alcohol tests of persons under their supervision; authorizing
the Supreme Court of Appeals of West Virginia to adopt a standardized risk and needs assessment for use by probation officers; authorizing the Supreme Court of Appeals of West Virginia to adopt a standardized pretrial screening instrument for use by the Regional Jail Authority; providing standards and limitations under which judges may impose a term of reporting to a day report center as a condition of probation; authorizing day report center programs to provide services based on the results of a person’s standardized risk and needs assessment; providing for graduated sanctions in response to violations of the conditions of release on probation other than absconding, committing certain new criminal conduct or violating special condition of probation; creating exceptions to new criminal conduct provisions; making standardized risk and needs assessments confidential court documents; requiring copies of graduated sanctions confinement orders be supplied to the Commissioner of Corrections; providing that graduated sanctions confinement be paid by the Division of Corrections; providing that judges may depart from graduated sanctions limitations upon specific written findings; revising eligibility requirements for accelerated parole program; providing that parole applications may be considered by the Parole Board without prior submission a home plan; requiring that Division of Corrections’ policies and procedures for developing a rehabilitation treatment plan include the use of substance abuse assessment tools and prioritize treatment resources based on the risk and needs assessment and substance abuse assessment results; providing for rebuttable presumption that parole is appropriate for inmates completing the accelerated parole program and a rehabilitation treatment program; providing standards and limitations for Parole Board; outlining duties of the Division of Corrections to supervise, treat and provide support services for persons released on mandatory supervised release; removing temporal standard for requirement that the Parole Board have access to a copy of an inmate’s physical, mental or psychiatric examination; clarifying the Parole Board’s duty to notify
prosecuting attorneys of an offender’s release on parole; authorizing Division of Corrections to employ directors of housing and employment for released inmates with duties relating to the reduction of parole release delays and finding employment; requiring parole officers to update the standardized risk and needs assessment for each person for whom an assessment has not been conducted for parole and to supervise each person according to the assessment and the commissioner’s supervision standards; authorizing the Commissioner of Corrections to issue a certificate authorizing an eligible parole officer to carry firearms or concealed weapons; providing standards and limitations under which the Division of Corrections may order substance abuse treatment or impose a term of reporting to a day report center or other community corrections program as a condition or modification of parole; authorizing the Commissioner of Corrections to enter into a master agreement with the Division of Justice and Community Services to reimburse counties for use of the community corrections programs; clarifying that parolee participation in community corrections is at program director’s discretion; providing for graduated sanctions in response to violations of the conditions of release on parole other than absconding, certain new criminal conduct or violating a special condition of parole; providing a parolee with the right to a hearing, upon request, regarding whether he or she violated the conditions of his or her release on parole; providing the authority for the Parole Board to depart from graduated sanction; providing that graduated sanctions incarceration for parolees be paid for by Division of Corrections; providing for a Community Supervision Committee to be appointed by the Administrative Director of the Supreme Court of Appeals of West Virginia to coordinate the sharing of information for community supervision and requiring an annual report; revising definitions for Drug Offender Accountability and Treatment Act; requiring all judicial circuits to participate in a drug court or regional drug court program by July 1, 2016; providing standards and limitations under which judges may order treatment
supervision for drug offenders; providing that a judge may order a period of confinement to encourage compliance with treatment supervision to be paid by the Division of Corrections for up to thirty days for each instance; requiring the Division of Justice and Community Services to use appropriated funds to implement substance abuse treatment to serve those under treatment supervision in each judicial circuit; providing that the Division of Justice and Community Services in consultation with the Governor's Advisory Committee on Substance Abuse is responsible for developing standards relating to quality and delivery of substance abuse services; requiring certain education and training; paying for drug abuse assessments and certified drug treatment from appropriated funds; requiring submittal of an annual report and specifying an effective date; outlining duties of treatment supervision service providers; providing effective dates for provisions related to treatment supervision; providing for state payment of drug court participants' incarceration under certain circumstances; defining terms; and making technical changes.

Be it enacted by the Legislature of West Virginia:

That §25-1-15 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §28-5-27 of said code be amended and reenacted; that said code be amended by adding thereto two new sections, designated §31-20-5g and §31-20-5h; that §61-7-6 of said code be amended and reenacted; that §62-11A-1a of said code be amended and reenacted; that §62-11B-9 of said code be amended and reenacted; that §62-11C-2, §62-11C-3 and §62-11C-6 of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §62-11C-10; that §62-12-6, §62-12-7, §62-12-9, §62-12-10, §62-12-13, §62-12-14a, §62-12-15, §62-12-17 and §62-12-19 of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §62-12-29; that §62-15-2 and §62-15-4 of said code be amended and reenacted; and that said code be amended by adding thereto two new sections, designated §62-15-6a and §62-15-6b, all to read as follows:
CHAPTER 25. DIVISION OF CORRECTIONS.

ARTICLE 1. ORGANIZATION, INSTITUTIONS AND CORRECTIONS MANAGEMENT.


(a) The Commissioner of Corrections may establish diagnostic and classification divisions.

(b) Notwithstanding any provision of this code to the contrary, all persons committed to the custody of the Commissioner of the Division of Corrections for presentence diagnosis and classification and all persons sentenced to the custody of the Division of Corrections shall, upon transfer to the Division of Corrections, undergo diagnosis and classification, which shall include: (1) Assessments of a person's criminogenic risk and need factors that are reliable, validated and normed for a specific population and responsive to cultural and gender-specific needs as well as individual learning styles and temperament; (2) application of a mental health preliminary screen; and (3) if the mental health preliminary screen suggests the need for further assessment, a full psychological evaluation.

The Division of Corrections shall perform mental health preliminary screens, appraisals and evaluations according to standards provided by the American Correctional Association.

CHAPTER 28. STATE CORRECTIONAL AND PENAL INSTITUTIONS.

ARTICLE 5. THE PENITENTIARY.

§28-5-27. Deduction from sentence for good conduct; mandatory supervision.

(a) All current and future adult inmates in the custody of the Commissioner of Corrections, except those committed pursuant
to article four, chapter twenty-five of this code, shall be granted commutation from their sentences for good conduct in accordance with this section.

(b) The commutation of sentence, known as "good time", shall be deducted from the maximum term of indeterminate sentences or from the fixed term of determinate sentences.

c) Each inmate committed to the custody of the Commissioner of Corrections and incarcerated in a correctional facility pursuant to that commitment shall be granted one day good time for each day he or she is incarcerated, including any and all days in jail awaiting sentence which are credited by the sentencing court to his or her sentence pursuant to section twenty-four, article eleven, chapter sixty-one of this code or for any other reason relating to the commitment. An inmate may not be granted any good time for time served either on parole or bond or in any other status when he or she is not physically incarcerated.

d) An inmate sentenced to serve a life sentence is not eligible to earn or receive any good time pursuant to this section.

e) An inmate under two or more consecutive sentences shall be allowed good time as if the several sentences, when the maximum terms of the consecutive sentences are added together, were all one sentence.

(f) The Commissioner of Corrections shall promulgate disciplinary rules. The rules shall describe acts that inmates are prohibited from committing, procedures for charging individual inmates for violation of the rules and for determining the guilt or innocence of inmates charged with the violations and the sanctions which may be imposed for the violations. A copy of the rules shall be given to each inmate. For each violation, by a sanctioned inmate, any part or all of the good time which has
been granted to the inmate pursuant to this section may be forfeited and revoked by the warden or superintendent of the institution in which the violation occurred. The warden or superintendent, when appropriate and with approval of the commissioner, may restore any forfeited good time.

(g) Each inmate, upon his or her commitment to and being placed into the custody of the Commissioner of Corrections, or upon his or her return to custody as the result of violation of parole pursuant to section nineteen, article twelve, chapter sixty-two of this code, shall be given a statement setting forth the term or length of his or her sentence or sentences and the time of his or her minimum discharge computed according to this section.

(h) Each inmate shall be given a revision of the statement described in subsection (g) of this section if and when any part or all of the good time has been forfeited and revoked or restored pursuant to subsection (f) of this section, by which the time of his or her earliest discharge is changed.

(i) The Commissioner of Corrections may, with the approval of the Governor, allow extra good time for inmates who perform exceptional work or service.

(j) In order to ensure equitable good time for all current and future inmates in the custody of the Commissioner of Corrections, except as to those persons committed pursuant to article four, chapter twenty-five of this code, all good time shall be computed according to this section and all previous computations of good time under prior statutes or rules are void. All inmates who have previously forfeited good time are hereby restored to good time computed according to this section and all inmates will receive a new discharge date computed according to this section. All inmates that have been awarded overtime good time or extra good time pursuant to sections
twenty-seven-a and twenty-seven-b of this article which were
repealed simultaneously with the amendment to this section
during the regular session of the Legislature in the year 1984
shall receive that good time in addition to the good time
computed according to this section.

(k) There shall be no grants or accumulations of good time
or credit to any current or future inmate serving a sentence in the
custody of the Division of Corrections except in the manner
provided in this section.

(l) Prior to the calculated discharge date of an inmate serving
a sentence for a felony crime of violence against the person, a
felony offense where the victim was a minor child or a felony
offense involving the use of a firearm, one year shall be
deducted from the inmate’s accumulated good time to provide
for one year of mandatory post-release supervision following the
first instance in which the inmate reaches his or her calculated
discharge date. All inmates released pursuant to this subsection
shall be subject to electronic or GPS monitoring for the entire
period of supervision. The provisions of this subsection are
applicable to offenses committed on or after July 1, 2013.

(m) Upon sentencing of an inmate for an offense not
referenced in subsection (l) of this section, the court may order
that one hundred eighty days of the sentence, or some lesser
period, be served through post-release mandatory supervision if
the court determines supervision is appropriate and in the best
interest of justice, rehabilitation and public safety. All inmates
released pursuant to this subsection shall be subject to electronic
or GPS monitoring for the entire period of supervision. The
provisions of this subsection are applicable to offenses
committed on or after July 1, 2013.

(n) The Commissioner of Corrections shall adopt policies
and procedures to implement the mandatory supervision
provided for in subsections (l) and (m) of this section, which
may include terms, conditions and procedures for supervision,
modification and violation applicable to persons on parole.

(o) As used in this section, "felony crime of violence against
the person" means felony offenses set forth in article two,
three-e, eight-b or eight-d, chapter sixty-one of this code, and the
felony offenses of arson and burglary of a residence where an
individual is physically located at the time of the offense as set
forth in article three, chapter sixty-one of this code.

(p) As used in this section, "felony offense where the victim
was a minor child" means any felony crime of violence against
the person and any felony offense set forth in article eight,
eight-a, eight-c or eight-d, chapter sixty-one of this code.

CHAPTER 31. CORPORATIONS.

ARTICLE 20. WEST VIRGINIA REGIONAL JAIL AND
CORRECTIONAL FACILITY
AUTHORITY.

§31-20-5g. Pretrial risk assessment.

(a) Within three calendar days of the arrest and placement of
any person in a regional jail, the authority shall conduct a pretrial
risk assessment using a standardized risk assessment instrument
approved and adopted by the Supreme Court of Appeals of West
Virginia. The results of all standardized risk and needs
assessments are confidential and shall only be provided to the
court, court personnel, the prosecuting attorney, defense counsel
and the person who is the subject of the pretrial risk assessment.
Upon completion of the assessment, the authority shall provide
it to the magistrate and circuit clerks for delivery to the
appropriate circuit judge or magistrate.

(b) The pretrial risk assessment and all oral or written
statements made by an individual during risk assessment shall be
inadmissible evidence at any criminal or civil trial.
§31-20-5h. Programs for inmates committed to prison.

The Division of Corrections may develop and implement a cognitive behavioral program to address the needs of inmates detained in a regional jail, but committed to the custody of the Commissioner of Corrections. The program shall be developed in consultation with the Regional Jail Authority, and may be offered by video teleconference or webinar technology. The costs of the program shall be paid out of funds appropriated to the Division of Corrections. The program shall be covered by the rehabilitation plan policies and procedures adopted by the Division of Corrections under subsection (h), section thirteen, article twelve, chapter sixty-two of this code.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 7. DANGEROUS WEAPONS.

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

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

(1) Any person:

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

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

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

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

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

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

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

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

(8) Any Hatfield-McCoy Regional Recreation Authority Ranger while the ranger is on duty; and

(9) Any parole officer appointed pursuant to section fourteen, article twelve, chapter sixty-two of this code in the performance of their duties.
(b) On and after July 1, 2013, the following judicial officers and prosecutors and staff shall be exempted from paying any application fees or licensure fees required under this article. However, on and after that same date, they shall be required to make application and satisfy all licensure and handgun safety and training requirements set forth in section four of this article before carrying a concealed handgun in this state:

1. Any justice of the Supreme Court of Appeals of West Virginia;
2. Any circuit judge;
3. Any retired justice or retired circuit judge designated senior status by the Supreme Court of Appeals of West Virginia;
4. Any family court judge;
5. Any magistrate;
6. Any prosecuting attorney;
7. Any assistant prosecuting attorney; or
8. Any duly appointed investigator employed by a prosecuting attorney.

CHAPTER 62. CRIMINAL PROCEDURE.

ARTICLE 11A. RELEASE FOR WORK AND OTHER PURPOSES.


(a) Any person who has been convicted in a circuit court or in a magistrate court under any criminal provision of this code of a misdemeanor or felony, which is punishable by imposition of a fine or confinement in a regional jail or a state correctional...
institution, or both fine and confinement, may, in the discretion
of the sentencing judge or magistrate, as an alternative to the
sentence imposed by statute for the crime, be sentenced under
one of the following programs:

(1) The weekend jail program under which a person would
be required to spend weekends or other days normally off from
work in jail;

(2) The work program under which a sentenced person
would be required to spend the first two or more days of his or
her sentence in jail and then, in the discretion of the court, would
be assigned to a county agency to perform labor within the jail,
or in and upon the buildings, grounds, institutions, bridges and
roads, including orphaned roads used by the general public and
public works within the county. Eight hours of labor are to be
credited as one day of the sentence imposed. A person sentenced
under this program may be required to provide his or her own
transportation to and from the work site, lunch and work clothes;
or

(3) The community service program under which a
sentenced person would spend no time in jail, but would be
sentenced to a number of hours or days of community service
work with government entities or charitable or nonprofit entities
approved by the circuit court. Regarding any portion of the
sentence designated as confinement, eight hours of community
service work is to be credited as one day of the sentence
imposed. Regarding any portion of the sentence designated as a
fine, the fine is to be credited at an hourly rate equal to the
prevailing federal minimum wage at the time the sentence was
imposed. In the discretion of the court, the sentence credits may
run concurrently or consecutively. A person sentenced under this
program may be required to provide his or her own
transportation to and from the work site, lunch and work clothes.
(b) In no event may the duration of the alternate sentence exceed the maximum period of incarceration otherwise allowed.

(c) In imposing a sentence under the provisions of this section, the court shall first make the following findings of fact and incorporate them into the court’s sentencing order:

1. The person sentenced was not convicted of an offense for which a mandatory period of confinement is imposed by statute;

2. In circuit court cases, that the person sentenced is not a habitual criminal within the meaning of sections eighteen and nineteen, article eleven, chapter sixty-one of this code;

3. In circuit court cases, that the offense underlying the sentence is not a felony offense for which violence or the threat of violence to the person is an element of the offense;

4. In circuit court cases, that adequate facilities for the administration and supervision of alternative sentencing programs are available through the court’s probation officers or the county sheriff or, in magistrate court cases, that adequate facilities for the administration and supervision of alternative sentencing programs are available through the county sheriff;

5. That an alternative sentence under provisions of this article will best serve the interests of justice.

(d) A person sentenced by the circuit court under the provisions of this article remains under the administrative custody and supervision of the court’s probation officers or the county sheriff. A person sentenced by a magistrate remains under the administrative custody and supervision of the county sheriff.

(e) A person sentenced under the provisions of this section may be required to pay the costs of his or her incarceration,
including meal costs: *Provided,* That the judge or magistrate considers the person’s ability to pay the costs.

(f) A person sentenced under the provisions of this section remains under the jurisdiction of the court. The court may withdraw any alternative sentence at any time by order entered with or without notice and require that the remainder of the sentence be served in the county jail, a regional jail or a state correctional facility: *Provided,* That no alternative sentence directed by the sentencing judge or magistrate or administered under the supervision of the sheriff, his or her deputies, a jailer or a guard may require the convicted person to perform duties which would be considered detrimental to the convicted person’s health as attested to by a physician.

(g) No provision of this section may be construed to limit a circuit judge’s ability to impose a period of supervision or participation in a community corrections program created pursuant to article eleven-c, chapter sixty-two of this code, except that a person sentenced to a day report center must be identified as moderate to high risk of reoffending and moderate to high criminogenic need, as defined by the standardized risk and needs assessment adopted by the Supreme Court of Appeals of West Virginia under subsection (d), section six, article twelve of this chapter, and applied by a probation officer or day report staff: *Provided,* That a judge may impose a period of supervision or participation in a day report center, notwithstanding the results of the standardized risk and needs assessment, upon making specific written findings of fact as to the reason for departing from the requirements of this section.

(h) Magistrates may only impose a period of participation in a day report center with the consent by general administrative order of the supervising judge or chief judge of the judicial circuit in which he or she presides. The day report center staff shall determine which services a person receives based on the results of the standardized risk and needs assessment adopted by
101 the Supreme Court of Appeals of West Virginia under subsection
102 (d), section six, article twelve of this chapter, along with any
103 other conditions of supervision set by the court.

ARTICLE 11B. HOME INCARCERATION ACT.


(a) If, at any time during the period of home incarceration,
there is reasonable cause to believe that a participant in a home
incarceration program has violated the terms and conditions of
the circuit court’s home incarceration order, he or she is subject
to the procedures and penalties set forth in section ten, article
doulee of this chapter.

(b) If, at any time during the period of home incarceration,
there is reasonable cause to believe that a participant sentenced
to home incarceration by the circuit court has violated the terms
and conditions of the court’s order of home incarceration and the
participant’s participation was imposed as an alternative
sentence to another form of incarceration, the participant is
subject to the same procedures involving confinement and
revocation as would a probationer charged with a violation of the
order of home incarceration. Any participant under an order of
home incarceration is subject to the same penalty or penalties,
upon the circuit court’s finding of a violation of the order of
home incarceration, as he or she could have received at the
initial disposition hearing: Provided. That the participant shall
receive credit towards any sentence imposed after a finding of
violation for the time spent in home incarceration.

(c) If, at any time during the period of home incarceration,
there is reasonable cause to believe that a participant sentenced
to home incarceration by a magistrate has violated the terms and
conditions of the magistrate’s order of home incarceration as an
alternative sentence to incarceration in jail, the supervising
authority may arrest the participant upon the obtaining of an
order or warrant and take the offender before a magistrate within
the county of the offense. The magistrate shall then conduct a
prompt and summary hearing on whether the participant’s home
incarceration should be revoked. If it appears to the satisfaction
of the magistrate that any condition of home incarceration has
been violated, the magistrate may revoke the home incarceration
and order that the sentence of incarceration in jail be executed.
Any participant under an order of home incarceration is subject
to the same penalty or penalties, upon the magistrate’s finding of
a violation of the order of home incarceration, as the participant
could have received at the initial disposition hearing: Provided,
That the participant shall receive credit towards any sentence
imposed after a finding of violation for the time spent in home
incarceration.

ARTICLE 11C. THE WEST VIRGINIA COMMUNITY
CORRECTIONS ACT.


(a) A Community Corrections Subcommittee of the
Governor’s Committee on Crime, Delinquency and Correction
is continued and continues to be assigned responsibility for
screening community corrections programs submitted by
community criminal justice boards or from other entities
authorized by the provisions of this article to do so for approval
for funding by the Governor’s committee and for making
recommendations as to the disbursement of funds for approved
community corrections programs. The subcommittee shall be
comprised of fifteen members of the Governor’s committee
including: A representative of the Division of Corrections, a
representative of the Regional Jail and Correctional Facility
Authority, a representative of the Bureau for Behavioral Health
and Health Facilities, a person representing the interests of
victims of crime, an attorney employed by a public defender
corporation, an attorney who practices criminal law, a prosecutor
and a representative of the West Virginia Coalition Against
Domestic Violence. At the discretion of the West Virginia Supreme Court of Appeals, the Administrator of the Supreme Court of Appeals, a probation officer and a circuit judge may serve on the subcommittee as ex officio, nonvoting members.

(b) The subcommittee shall elect a chairperson and a vice chairperson. The subcommittee shall meet quarterly. Special meetings may be held upon the call of the chairperson, vice chairperson or a majority of the members of the subcommittee. A majority of the members of the subcommittee constitutes a quorum.

§62-11C-3. Duties of the Governor’s committee and the community corrections subcommittee.

(a) Upon recommendation of the Community Corrections Subcommittee, the Governor’s committee shall propose for legislative promulgation in accordance with the provisions of article three, chapter twenty-nine-a of this code, emergency and legislative rules to:

1. Establish standards for approval of community corrections programs submitted by community criminal justice boards or other entities authorized by the provisions of this article to do so;

2. Establish minimum standards for community corrections programs to be funded, including requiring annual program evaluations;

3. Make any necessary adjustments to the fees established in section four of this article;

4. Establish reporting requirements for community corrections programs; and

5. Carry out the purpose and intent of this article.
(b) Upon recommendation of the community corrections subcommittee, the Governor’s committee shall:

(1) Maintain records of community corrections programs including the corresponding community criminal justice board or other entity contact information and annual program evaluations, when available;

(2) Seek funding for approved community corrections programs from sources other than the fees collected pursuant to section four of this article; and

(3) Provide funding for approved community corrections programs, as available.

(c) The Governor’s committee shall submit, on or before September 30 of each year, to the Governor, the Speaker of the House of Delegates, the President of the Senate and, upon request, to any individual member of the Legislature a report on its activities during the previous year and an accounting of funds paid into and disbursed from the special revenue account established pursuant to section four of this article.

(d) The subcommittee shall review the implementation of evidence-based practices and conduct regular assessments for quality assurance of all community-based criminal justice services, including day report centers, probation, parole and home confinement. In consultation with the affected agencies, the subcommittee shall establish a process for reviewing performance. The process shall include review of agency performance measures and identification of new measures by the subcommittee, if necessary, for measuring the implementation of evidence-based practices or for quality assurance. After providing an opportunity for the affected agencies to comment, the subcommittee shall submit, on or before September 30 of each year, to the Governor, the Speaker of the House of
49 Delegates, the President of the Senate and, upon request, to any
50 individual member of the Legislature a report on its activities
51 and results from assessments of performance during the previous
52 year.


1 (a) Each county or combination of counties or a county or
2 counties and a Class I or II municipality that seek to establish
3 community-based corrections services shall establish a
4 community criminal justice board: Provided. That if a county
5 has not established a community criminal justice board by July
6 1, 2002, the chief probation officer of that county, with the
7 approval of the chief judge of the circuit, may apply for and
8 receive approval and funding from the Governor’s committee for
9 any programs as authorized by the provisions of section five of
10 this article. Any county which chooses to operate without a
11 community criminal justice board is subject to the regulations
12 and requirements established by the community corrections
13 subcommittee and the Governor’s committee.

14 (b) A community criminal justice board shall consist of no
15 more than fifteen voting members.

16 (c) All members of a community criminal justice board shall
17 be residents of the county or counties represented.

18 (d) A community criminal justice board shall consist of the
19 following members:

20 (1) The sheriff or chief of police or, if the board represents
21 more than one county or municipality, at least one sheriff or
22 chief of police from the counties represented;

23 (2) The prosecutor or, if the board represents more than one
24 county, at least one prosecutor from the counties represented;
(3) If a public defender corporation exists in the county or counties represented, at least one attorney employed by any public defender corporation existing in the counties represented or, if no public defender office exists, one criminal defense attorney from the counties represented;

(4) One member to be appointed by the local board of education or, if the board represents more than one county, at least one member appointed by a board of education of the counties represented;

(5) One member with a background in mental health care and services to be appointed by the commission or commissions of the county or counties represented by the board;

(6) Two members who can represent organizations or programs advocating for the rights of victims of crimes with preference given to organizations or programs advocating for the rights of victims of the crimes of domestic violence or driving under the influence;

(7) One member with a background in substance abuse treatment and services to be appointed by the commission or commissions of the county or counties represented by the board; and

(8) Three at-large members to be appointed by the commission or commissions of the county or counties represented by the board.

(e) At the discretion of the West Virginia Supreme Court of Appeals, any or all of the following people may serve on a community criminal justice board as ex officio, nonvoting members:

(1) A circuit judge from the county or counties represented;

(2) A magistrate from the county or counties represented; or
(3) A probation officer from the county or counties represented.

(f) Community criminal justice boards may:

(1) Provide for the purchase, development and operation of community corrections services;

(2) Coordinate with local probation departments in establishing and modifying programs and services for offenders;

(3) Evaluate and monitor community corrections programs, services and facilities to determine their impact on offenders; and

(4) Develop and apply for approval of community corrections programs by the Governor’s Committee on Crime, Delinquency and Correction.

(g) If a community criminal justice board represents more than one county, the appointed membership of the board, excluding any ex officio members, shall include an equal number of members from each county, unless the county commission of each county agrees in writing otherwise.

(h) If a community criminal justice board represents more than one county, the board shall, in consultation with the county commission of each county represented, designate one county commission as the fiscal agent of the board.

(i) Any political subdivision of this state operating a community corrections program shall, regardless of whether or not the program has been approved by the Governor’s Committee on Crime, Delinquency and Correction, provide to the Governor’s committee required information regarding the program’s operations as required by legislative rule.
§62-11C-10. Standardized risk and needs assessment; annual reviews; day report services.

The Division of Justice and Community Services shall:

1. Require that staff of day reporting centers and other community corrections programs be trained in and use in each case a standardized risk and needs assessment as adopted by the Supreme Court of Appeals of West Virginia. The results of all standardized risk and needs assessments are confidential;

2. Annually conduct a validation study of inter-rater reliability and risk cut-off scores by population to ensure that the standardized risk and needs assessment is sufficiently predictive of the risk of reoffending;

3. Annually review the membership of all community criminal justice boards to ensure appropriate membership;

4. Evaluate the services, sanctions and programs provided by each community corrections program to ensure that they address criminogenic needs and are evidence based;

5. Encourage community criminal justice boards to develop programs in addition to or in lieu of day report centers through grants and more focused use of day report services; and

6. Annually report to the Community Corrections Subcommittee on the results of duties required by this section.

ARTICLE 12. PROBATION AND PAROLE.


(a) Each probation officer shall:

1. Investigate all cases which the court refers to the officer for investigation and shall report in writing on each case;
(2) Conduct a standardized risk and needs assessment, using the instrument adopted by the Supreme Court of Appeals of West Virginia, for any probationer for whom an assessment has not been conducted either prior to placement on probation or by a specialized assessment officer. The results of all standardized risk and needs assessments are confidential;

(3) Supervise the probationer and enforce probation according to assessment and supervision standards adopted by the Supreme Court of Appeals of West Virginia;

(4) Furnish to each person released on probation under the officer’s supervision a written statement of the probationer’s conditions of probation together with a copy of the rules prescribed by the Supreme Court of Appeals of West Virginia;

(5) Stay informed concerning the conduct and condition of each probationer under the officer’s supervision and report on the conduct and condition of each probationer in writing as often as the court requires;

(6) Use all practicable and suitable methods to aid and encourage the probationer to improve his or her conduct and condition;

(7) Perform random drug and alcohol testing on probationers under his or her supervision as directed by the circuit court;

(8) Maintain detailed work records; and

(9) Perform any other duties the court requires.

(b) The probation officer may, with or without an order or warrant, arrest any probationer as provided in section ten of this article, and arrest any person on supervised release when there is reasonable cause to believe that the person on supervised release has violated a condition of release. A person on supervised release who is arrested shall be brought before the court for a prompt and summary hearing.
(c) Notwithstanding any provision of this code to the contrary:

(1) Any probation officer appointed on or after July 1, 2002, may carry handguns in the course of the officer’s official duties after meeting specialized qualifications established by the Governor’s Committee on Crime, Delinquency and Correction. The qualifications shall include the successful completion of handgun training, which is comparable to the handgun training provided to law-enforcement officers by the West Virginia State Police and includes a minimum of four hours’ training in handgun safety.

(2) Probation officers may only carry handguns in the course of their official duties after meeting the specialized qualifications set forth in subdivision (1) of this subsection.

(3) Nothing in this subsection includes probation officers within the meaning of law-enforcement officers as defined in section one, article twenty-nine, chapter thirty of this code.

(d) The Supreme Court of Appeals of West Virginia may adopt a standardized risk and needs assessment with risk cut-off scores for use by probation officers, taking into consideration the assessment instrument adopted by the Division of Corrections under subsection (h), section thirteen of this article and the responsibility of the Division of Justice and Community Services to evaluate the use of the standardized risk and needs assessment. The results of any standardized risk and needs assessment are confidential.

§62-12-7. Pretrial and preliminary investigation; report on prospective probationers.

(a) The Supreme Court of Appeals of West Virginia may adopt a standardized pretrial risk assessment for use by the Regional Jail Authority to assist magistrates and circuit courts in making pretrial decisions under article one-c of this chapter.

5 (b) Unless otherwise directed by the court, the probation
6 officer shall, in the form adopted by the Supreme Court of
7 Appeals of West Virginia, make a careful investigation of, and
8 a written report with recommendations concerning, any
9 prospective probationer. Insofar as practicable, this report shall
10 include information concerning the offender’s court and criminal
11 record, occupation, family background, education, habits and
12 associations, mental and physical condition, the names,
13 relationship, ages and condition of those dependent upon him or
14 her for support and any other facts that may aid the court in
15 determining the propriety and conditions of his or her release on
16 probation. A person convicted of a felony or of any offense
17 described in article eight-b or eight-d, chapter sixty-one of this
18 code against a minor child may not be released on probation
19 until this report has been presented to and considered by the
20 court. The court may request a report concerning any person
21 convicted of a misdemeanor. The presentence report of any
22 person convicted of an offense, described in said
23 articles or
24 section twelve, article eight of said chapter, may include a
25 statement from a therapist, psychologist or physician who is
26 providing treatment to the child. A copy of all reports shall be
27 filed with the Parole Board.


1 (a) Release on probation is conditioned upon the following:

2 (1) That the probationer may not, during the term of his or
3 her probation, violate any criminal law of this or any other state
4 or of the United States;

5 (2) That the probationer may not, during the term of his or
6 her probation, leave the state without the consent of the court
7 which placed him or her on probation;

8 (3) That the probationer complies with the conditions
9 prescribed by the court for his or her supervision by the
10 probation officer;
(4) That in every case in which the probationer has been convicted of an offense defined in section twelve, article eight, chapter sixty-one of this code or article eight-b or eight-d of said chapter, against a child, the probationer may not live in the same residence as any minor child, nor exercise visitation with any minor child and may have no contact with the victim of the offense: Provided, That the probationer may petition the court of the circuit in which he or she was convicted for a modification of this term and condition of his or her probation and the burden rests upon the probationer to demonstrate that a modification is in the best interest of the child;

(5) That the probationer pay a fee, not to exceed $20 per month, to defray costs of supervision: Provided, That the court conducts a hearing prior to imposition of probation and makes a determination on the record that the offender is able to pay the fee without undue hardship. All moneys collected as fees from probationers pursuant to this subdivision shall be deposited with the circuit clerk who shall, on a monthly basis, remit the moneys collected to the State Treasurer for deposit in the State General Revenue Fund; and

(6) That the probationer is required to pay the fee described in section four, article eleven-c of this chapter: Provided, That the court conducts a hearing prior to imposition of probation and makes a determination on the record that the offender is able to pay the fee without undue hardship.

(b) In addition, the court may impose, subject to modification at any time, any other conditions which it may determine advisable, including, but not limited to, any of the following:

(1) That the probationer make restitution or reparation, in whole or in part, immediately or within the period of probation, to any party injured by the crime for which he or she has been convicted: Provided. That the court conducts a hearing prior to
(2) That the probationer pays any fine assessed and the costs of the proceeding in installments directed by the court: Provided, that the court conducts a hearing prior to imposition of probation and makes a determination on the record that the offender is able to pay the costs without undue hardship;

(3) That the probationer makes contributions from his or her earnings, in sums directed by the court, for the support of his or her dependents; and

(4) That the probationer, in the discretion of the court, is required to serve a period of confinement in jail of the county in which he or she was convicted for a period not to exceed one third of the minimum sentence established by law or one third of the least possible period of confinement in an indeterminate sentence, but in no case may the period of confinement exceed six consecutive months. The court may sentence the defendant within the six-month period to intermittent periods of confinement including, but not limited to, weekends or holidays and may grant to the defendant intermittent periods of release in order that he or she may work at his or her employment or for other reasons or purposes as the court may determine appropriate: Provided, That the provisions of article eleven-a of this chapter do not apply to intermittent periods of confinement and release except to the extent directed by the court. If a period of confinement is required as a condition of probation, the court shall make special findings that other conditions of probation are inadequate and that a period of confinement is necessary.

(c) Circuit courts may impose, as a condition of probation, participation in a day report center.

(1) To be eligible, the probationer must be identified as moderate to high risk of reoffending and moderate to high
criminogenic need, as determined by the standardized risk and needs assessment adopted by the Supreme Court of Appeals of West Virginia under subsection (d), section six of this article, and applied by a probation officer or day report staff. In eligible cases, circuit courts may impose a term of up to one year:

Provided, That notwithstanding the results of the standardized risk and needs assessment, a judge may impose, as a term of probation, participation in a day report center program upon making specific written findings of fact as to the reason for departing from the requirements of this subdivision.

(2) The day report center staff shall determine which services a person receives based on the results of the standardized risk and needs assessment and taking into consideration the other conditions of probation set by the court.

(d) For the purposes of this article, “day report center” means a court-operated or court-approved facility where persons ordered to serve a sentence in this type of facility are required to report under the terms and conditions set by the court for purposes which include, but are not limited to, counseling, employment training, alcohol or drug testing or other medical testing.

§62-12-10. Violation of probation.

(a) If at any time during the period of probation there shall be reasonable cause to believe that the probationer has violated any of the conditions of his or her probation, the probation officer may arrest him or her with or without an order or warrant, or the court which placed him or her on probation, or the judge thereof in vacation, may issue an order for his or her arrest, whereupon he or she shall be brought before the court, or the judge thereof in vacation, for a prompt and summary hearing.

(1) If the court or judge finds reasonable cause exists to believe that the probationer:
(A) Absconded supervision;

(B) Engaged in new criminal conduct other than a minor traffic violation or simple possession of a controlled substance; or

(C) Violated a special condition of probation designed either to protect the public or a victim; the court or judge may revoke the suspension of imposition or execution of sentence, impose sentence if none has been imposed and order that sentence be executed.

(2) If the judge finds that reasonable cause exists to believe that the probationer violated any condition of supervision other than the conditions of probation set forth in subdivision (1) of this subsection then, for the first violation, the judge shall impose a period of confinement up to sixty days or, for the second violation, a period of confinement up to one hundred twenty days. For the third violation, the judge may revoke the suspension of imposition or execution of sentence, impose sentence if none has been imposed and order that sentence be executed, with credit for time spent in confinement under this section.

(3) In computing the period for which the offender is to be confined, the time between his or her release on probation and his or her arrest may not be taken to be any part of the term of his or her sentence.

(b) A probationer confined for a first or second violation pursuant to subdivision (2), subsection (a) of this section may be confined in jail, and the costs of confining felony probationers shall be paid out of funds appropriated for the Division of Corrections. Whenever the court orders the incarceration of a probationer pursuant to the provisions of subdivision (2), subsection (a) of this section, a circuit clerk shall provide a copy
of the order of confinement within five days to the
Commissioner of Corrections.

(c) If, despite a violation of the conditions of probation, the
court or judge is of the opinion that the interests of justice do not
require that the probationer serve his or her sentence or a period
of confinement, the judge may, except when the violation was
the commission of a felony, again release him or her on
probation: Provided. That a judge may otherwise depart from the
sentence limitations set forth in subdivision (2), subsection (a)
of this section upon making specific written findings of fact
supporting the basis for the departure.

§62-12-13. Powers and duties of board; eligibility for parole;
procedure for granting parole.

(a) The Parole Board, whenever it is of the opinion that the
best interests of the state and of the inmate will be served, and
subject to the limitations provided in this section, shall release
any inmate on parole for terms and upon conditions provided by
this article.

(b) Any inmate of a state correctional institution is eligible
for parole if he or she:

1. (A) Has served the minimum term of his or her
indeterminate sentence or has served one fourth of his or her
definite term sentence, as the case may be; or

2. (B) He or she:

3. (i) Has applied for and been accepted by the Commissioner
of Corrections into an accelerated parole program;

4. (ii) Does not have a prior criminal conviction for a felony
crime of violence against the person, a felony offense involving
the use of a firearm or a felony offense where the victim was a
minor child.
(iii) Is not serving a sentence for a crime of violence against the person, or more than one felony for a controlled substance offense for which the inmate is serving a consecutive sentence, a felony offense involving the use of a firearm or a felony offense where the victim was a minor child; and

(iv) Has successfully completed a rehabilitation treatment program created with the assistance of a standardized risk and needs assessment.

(C) Notwithstanding any provision of this code to the contrary, any inmate who committed, or attempted to commit, a felony with the use, presentment or brandishing of a firearm, is not eligible for parole prior to serving a minimum of three years of his or her sentence or the maximum sentence imposed by the court, whichever is less: Provided, That any inmate who committed, or attempted to commit, any violation of section twelve, article two, chapter sixty-one of this code, with the use, presentment or brandishing of a firearm, is not eligible for parole prior to serving a minimum of five years of his or her sentence or one third of his or her definite term sentence, whichever is greater. Nothing in this paragraph applies to an accessory before the fact or a principal in the second degree who has been convicted as if he or she were a principal in the first degree if, in the commission of or in the attempted commission of the felony, only the principal in the first degree used, presented or brandished a firearm. An inmate is not ineligible for parole under the provisions of this paragraph because of the commission or attempted commission of a felony with the use, presentment or brandishing of a firearm unless that fact is clearly stated and included in the indictment or presentment by which the person was charged and was either: (i) Found guilty by the court at the time of trial upon a plea of guilty or nolo contendere; (ii) found guilty by the jury, upon submitting to the jury a special interrogatory for such purpose if the matter was tried before a
jury; or (iii) found guilty by the court, if the matter was tried by
the court without a jury.

(D) The amendments to this subsection adopted in the year
1981:

(i) Apply to all applicable offenses occurring on or after
August 1 of that year;

(ii) Apply with respect to the contents of any indictment or
presentment returned on or after August 1 of that year
irrespective of when the offense occurred;

(iii) Apply with respect to the submission of a special
interrogatory to the jury and the finding to be made thereon in
any case submitted to the jury on or after August 1 of that year
or to the requisite findings of the court upon a plea of guilty or
in any case tried without a jury: Provided, That the state gives
notice in writing of its intent to seek such finding by the jury or
court, as the case may be. The notice shall state with particularity
the grounds upon which the finding will be sought as fully as the
grounds are otherwise required to be stated in an indictment,
unless the grounds upon which the finding will be sought are
alleged in the indictment or presentment upon which the matter
is being tried; and

(iv) Does not apply with respect to cases not affected by the
amendments and in those cases the prior provisions of this
section apply and are construed without reference to the
amendments.

(v) Insofar as the amendments relate to mandatory sentences
restricting the eligibility for parole, all matters requiring a
mandatory sentence shall be proved beyond a reasonable doubt
in all cases tried by the jury or the court.
(E) As used in this section, "felony crime of violence against the person" means felony offenses set forth in article two, three-e, eight-b or eight-d, chapter sixty-one of this code; and

(F) As used in this section, "felony offense where the victim was a minor child" means any felony crime of violence against the person and any felony violation set forth in article eight, eight-a, eight-c or eight-d, chapter sixty-one of this code.

(G) For the purpose of this section, the term "firearm" means any instrument which will, or is designed to, or may readily be converted to expel a projectile by the action of an explosive, gunpowder or any other similar means.

(2) Is not in punitive segregation or administrative segregation as a result of disciplinary action;

(3) Has maintained a record of good conduct in prison for a period of at least three months immediately preceding the date of his or her release on parole;

(4) Has prepared and submitted to the Parole Board a written parole release plan setting forth proposed plans for his or her place of residence, employment and, if appropriate, his or her plans regarding education and post-release counseling and treatment: Provided, That an inmate's application for parole may be considered by the board without the prior submission of a home plan, but the inmate shall have a home plan approved by the board prior to his or her release on parole. The Commissioner of Corrections or his or her designee shall review and investigate the plan and provide recommendations to the board as to the suitability of the plan: Provided, That in cases in which there is a mandatory thirty-day notification period required prior to the release of the inmate, pursuant to section twenty-three of this article, the board may conduct an initial interview and deny parole without requiring the development of a plan. In the event the board believes parole should be granted,
it may defer a final decision pending completion of an investigation and receipt of recommendations. Upon receipt of the plan together with the investigation and recommendation, the board, through a panel, shall make a final decision regarding the granting or denial of parole; and

(5) Has satisfied the board that if released on parole he or she will not constitute a danger to the community.

(c) Except in the case of an inmate serving a life sentence, a person who has been previously twice convicted of a felony may not be released on parole until he or she has served the minimum term provided by law for the crime for which he or she was convicted. An inmate sentenced for life may not be paroled until he or she has served ten years, and an inmate sentenced for life who has been previously twice convicted of a felony may not be paroled until he or she has served fifteen years: Provided, That an inmate convicted of first degree murder for an offense committed on or after June 10, 1994, is not eligible for parole until he or she has served fifteen years.

(d) In the case of an inmate sentenced to any state correctional institution, the Parole Board, as soon as that inmate becomes eligible, shall consider the advisability of his or her release on parole.

(e) If, upon consideration, parole is denied, the board shall promptly notify the inmate of the denial. The board shall, at the time of denial, notify the inmate of the month and year he or she may apply for reconsideration and review. The board shall at least once a year reconsider and review the case of every inmate who was denied parole and who is still eligible: Provided, That the board may reconsider and review parole eligibility any time within three years following the denial of parole of an inmate serving a life sentence with the possibility of parole.
(f) Any inmate serving a sentence on a felony conviction who becomes eligible for parole consideration prior to being transferred to a state correctional institution may make written application for parole. The terms and conditions for parole consideration established by this article apply to that inmate.

(g) The board shall, with the approval of the Governor, adopt rules governing the procedure in the granting of parole. No provision of this article and none of the rules adopted under this article are intended or may be construed to contravene, limit or otherwise interfere with or affect the authority of the Governor to grant pardons and reprieves, commute sentences, remit fines or otherwise exercise his or her constitutional powers of executive clemency.

(h) (1) The Division of Corrections shall promulgate policies and procedures for developing a rehabilitation treatment plan created with the assistance of a standardized risk and needs assessment. The policies and procedures shall provide for, at a minimum, screening and selecting inmates for rehabilitation treatment and development, using standardized risk and needs assessment and substance abuse assessment tools, and prioritizing the use of residential substance abuse treatment resources based on the results of the standardized risk and needs assessment and a substance abuse assessment. The results of all standardized risk and needs assessments and substance abuse assessments are confidential.

(2) An inmate shall not be paroled under paragraph (B), subdivision (1), subsection (b) of this section solely due to having successfully completed a rehabilitation treatment plan, but completion of all the requirements of a rehabilitation treatment plan along with compliance with the requirements of subsection (b) of this section creates a rebuttable presumption that parole is appropriate. The presumption created by this subdivision may be rebutted by a Parole Board finding that,
according to the standardized risk and needs assessment, at the
time parole release is sought the inmate still constitutes a
reasonable risk to the safety or property of other persons if
released. Nothing in subsection (b) of this section or in this
subsection may be construed to create a right to parole.

(i) Notwithstanding the provisions of subsection (b) of this
section, the Parole Board may grant or deny parole to an inmate
against whom a detainer is lodged by a jurisdiction other than
West Virginia for service of a sentence of incarceration, upon a
written request for parole from the inmate. A denial of parole
under this subsection precludes consideration for parole for a
period of one year or until the provisions of subsection (b) of this
section are applicable.

(j) If an inmate is otherwise eligible for parole pursuant to
subsection (b) of this section and has completed the
rehabilitation treatment program required under subsection (h)
of this section, the Parole Board may not require the inmate to
participate in an additional program, but may determine that the
inmate must complete an assigned task or tasks prior to actual
release on parole. The board may grant parole contingently,
effective upon successful completion of the assigned task or
tasks, without the need for a further hearing.

(k) (1) The Division of Corrections shall supervise all
probationers and parolees whose supervision may have been
undertaken by this state by reason of any interstate compact
entered into pursuant to the Uniform Act for Out-of-State
Parolee Supervision.

(2) The Division of Corrections shall provide supervision,
treatment/recovery and support services for all persons released
to mandatory supervision under section twenty-seven, article
five, chapter twenty-eight of this code.
When considering an inmate of a state correctional center for release on parole, the Parole Board panel considering the parole shall have before it an authentic copy of or report on the inmate's current criminal record as provided through the West Virginia State Police, the United States Department of Justice or any other reliable criminal information sources and written reports of the warden or superintendent of the state correctional institution to which the inmate is sentenced:

(A) On the inmate's conduct record while in custody, including a detailed statement showing any and all infractions of disciplinary rules by the inmate and the nature and extent of discipline administered for the infractions;

(B) On improvement or other changes noted in the inmate's mental and moral condition while in custody, including a statement expressive of the inmate's current attitude toward society in general, toward the judge who sentenced him or her, toward the prosecuting attorney who prosecuted him or her, toward the policeman or other officer who arrested the inmate and toward the crime for which he or she is under sentence and his or her previous criminal record;

(C) On the inmate's industrial record while in custody which shall include: The nature of his or her work, occupation or education, the average number of hours per day he or she has been employed or in class while in custody and a recommendation as to the nature and kinds of employment which he or she is best fitted to perform and in which the inmate is most likely to succeed when he or she leaves the state correctional institution; and

(D) On any physical, mental, psychological or psychiatric examinations of the inmate.
237 (2) The Parole Board panel considering the parole may
238 waive the requirement of any report when not available or not
239 applicable as to any inmate considered for parole but, in every
240 case, shall enter in its record its reason for the waiver: Provided,
241 That in the case of an inmate who is incarcerated because the
242 inmate has been found guilty of, or has pleaded guilty to, a
243 felony under the provisions of section twelve, article eight,
244 chapter sixty-one of this code or under the provisions of article
245 eight-b or eight-c of said chapter, the Parole Board panel may
246 not waive the report required by this subsection. The report shall
247 include a study and diagnosis of the inmate, including an
248 on-going treatment plan requiring active participation in sexual
249 abuse counseling at an approved mental health facility or
250 through some other approved program: Provided, however, That
251 nothing disclosed by the inmate during the study or diagnosis
252 may be made available to any law-enforcement agency, or other
253 party without that inmate’s consent, or admissible in any court
254 of this state, unless the information disclosed indicates the
255 intention or plans of the parolee to do harm to any person,
256 animal, institution or to property. Progress reports of outpatient
257 treatment are to be made at least every six months to the parole
258 officer supervising the parolee. In addition, in such cases, the
259 Parole Board shall inform the prosecuting attorney of the county
260 in which the person was convicted of the parole hearing and
261 shall request that the prosecuting attorney inform the Parole
262 Board of the circumstances surrounding a conviction or plea of
263 guilty, plea bargaining and other background information that
264 might be useful in its deliberations.

265 (tn) Before releasing any inmate on parole, the Parole
266 Board shall arrange for the inmate to appear in person before a
267 Parole Board panel and the panel may examine and interrogate
268 him or her on any matters pertaining to his or her parole,
269 including reports before the Parole Board made pursuant to the
270 provisions of this section: Provided, That an inmate may appear
271 by video teleconference if the members of the Parole Board
panel conducting the examination are able to contemporaneously see the inmate and hear all of his or her remarks and if the inmate is able to contemporaneously see each of the members of the panel conducting the examination and hear all of the members' remarks. The panel shall reach its own written conclusions as to the desirability of releasing the inmate on parole and the majority of the panel considering the release must concur in the decision. The warden or superintendent shall furnish all necessary assistance and cooperate to the fullest extent with the Parole Board. All information, records and reports received by the Parole Board shall be kept on permanent file.

(n) The Parole Board and its designated agents are at all times to have access to inmates imprisoned in any state correctional institution or in any jail in this state and may obtain any information or aid necessary to the performance of its duties from other departments and agencies of the state or from any political subdivision of the state.

(o) The Parole board shall, if requested by the Governor, investigate and consider all applications for pardon, reprieve or commutation and shall make recommendation on the applications to the Governor.

(p) (1) Prior to making a recommendation for pardon, reprieve or commutation, the board shall notify the sentencing judge and prosecuting attorney at least ten days before the recommendation.

(2) Notwithstanding any other provision of law to the contrary, if the board grants a person parole, the board shall provide written notice to the prosecuting attorney and circuit judge of the county in which the inmate was prosecuted, that parole has been granted. The notice shall be sent by certified mail, return receipt requested, and include the anticipated date of
release and the person's anticipated future residence. A written statement of reasons for releasing the person, prepared pursuant to subsection (b) of this section, shall be provided upon request.

(q) A parolee shall participate as a condition of parole in the litter control program of the county to which he or she is released to the extent directed by the Parole Board, unless the board specifically finds that this alternative service would be inappropriate.

§62-12-14a. Director of employment; director of housing; released inmates; duties.

1 The Commissioner of Corrections may employ or contract for a director of employment and a director of housing for released inmates. The director of employment shall work with federal, state, county and local government and private entities to negotiate agreements which facilitate employment opportunities for released inmates. The director of housing shall work with federal, state, county and local government and private entities to negotiate agreements which facilitate housing opportunities for released inmates. The director of employment shall investigate job opportunities and give every possible assistance in helping released inmates find employment. The director of housing shall work in conjunction with the parole division and the Parole Board to reduce release delays due to lack of a home plan, develop community housing resources and provide short-term loans to released inmates for costs related to reentry into the community.


1 (a) Each state parole officer shall:

2 (1) Investigate all cases referred to him or her for investigation by the Commissioner of Corrections and report in writing on the investigation;
(2) Update the standardized risk and needs assessment adopted by the Division of Corrections under subsection (h), section thirteen of this article for each parolee for whom an assessment has not been conducted for parole by a specialized assessment officer;

(3) Supervise each parolee according to the assessment and supervision standards determined by the Commissioner of Corrections;

(4) Furnish to each parolee under his or her supervision a written statement of the conditions of his or her parole together with a copy of the rules prescribed by the Commissioner of Corrections for the supervision of parolees;

(5) Keep informed concerning the conduct and condition of each parolee under his or her supervision and report on the conduct and condition of each parolee in writing as often as required by the Commissioner of Corrections;

(6) Use all practicable and suitable methods to aid and encourage a parolee and to bring about improvement in his or her conduct and condition;

(7) Keep detailed records of his or her work;

(8) Keep accurate and complete accounts of and give receipts for all money collected from parolees under his or her supervision and pay over the money to persons designated by a circuit court or the Commissioner of Corrections;

(9) Give bond with good security, to be approved by the Commissioner of Corrections, in a penalty of not less than $1,000 nor more than $3,000, as determined by the Commissioner of Corrections; and
(10) Perform any other duties required by the Commissioner of Corrections.

(b) Each state parole officer may, with or without an order or warrant, arrest or order confinement of any parolee. He or she has all the powers of a notary public, with authority to act anywhere within the state.

(c) The Commissioner of Corrections may issue a certificate authorizing any state parole officer who has successfully completed the Division of Corrections' training program for firearms certification, which is the equivalent of that required of deputy sheriffs, to carry firearms or concealed weapons. Any parole officer authorized by the Commissioner of Corrections may, without a state license, carry firearms and concealed weapons. Each state parole officer, authorized by the Commissioner of Corrections, shall carry with him or her a certificate authorizing him or her to carry a firearm or concealed weapon bearing the official signature of the Commissioner of Corrections.

§62-12-17. Conditions of release on probation and parole.

(a) Release and supervision on parole of any person, including the supervision by the Division of Corrections of any person paroled by any other state or by the federal government, shall be upon the following conditions:

(1) That the parolee may not, during the period of his or her parole, violate any criminal law of this or any other state or of the United States;

(2) That the parolee may not, during the period of his or her parole, leave the state without the consent of the Division of Corrections;
(3) That the parolee complies with the rules prescribed by the Division of Corrections for his or her supervision by the parole officer;

(4) That in every case in which the parolee for a conviction is seeking parole from an offense against a child, defined in section twelve, article eight, chapter sixty-one of this code, or article eight-b or eight-d of said chapter, or similar convictions from other jurisdictions where the parolee is returning or attempting to return to this state pursuant to the provisions of article six, chapter twenty-eight of this code, the parolee may not live in the same residence as any minor child nor exercise visitation with any minor child nor may he or she have any contact with the victim of the offense; and

(5) That the parolee, and all federal or foreign state probationers and parolees whose supervision may have been undertaken by this state, pay a fee, based on his or her ability to pay, not to exceed $40 per month to defray the costs of supervision.

(b) The Commissioner of Corrections shall keep a record of all actions taken and account for moneys received. All moneys shall be deposited in a special account in the State Treasury to be known as the Parolee's Supervision Fee Fund. Expenditures from the fund shall be for the purposes of providing the parole supervision required by the provisions of this code and are not authorized from collections, but are to be made only in accordance with appropriation by the Legislature and in accordance with the provisions of article three, chapter twelve of this code and upon the fulfillment of the provisions set forth in article two, chapter five-a of this code. Amounts collected which are found, from time to time, to exceed the funds needed for purposes set forth in this article may be transferred to other accounts or funds and redesignated for other purposes by appropriation of the Legislature.
(c) The Division of Corrections shall consider the following factors in determining whether a parolee or probationer is financially able to pay the fee:

1. Current income prospects for the parolee or probationer, taking into account seasonal variations in income;

2. Liquid assets of the parolee or probationer, assets of the parolee or probationer that may provide collateral to obtain funds and assets of the parolee or probationer that may be liquidated to provide funds to pay the fee;

3. Fixed debts and obligations of the parolee or probationer, including federal, state and local taxes and medical expenses;

4. Child care, transportation and other reasonably necessary expenses of the parolee or probationer related to employment;

5. The reasonably foreseeable consequences for the parolee or probationer if a waiver of, or reduction in, the fee is denied.

(d) In addition, the Division of Corrections may impose, subject to modification at any time, any other conditions which the division considers advisable.

(e) The Division of Corrections may order substance abuse treatment as a condition or as a modification of parole, only if the standardized risk and needs assessment indicates the offender has a high risk for reoffending and a need for substance abuse treatment.

(f) The Division of Corrections may impose, as an initial condition of parole, a term of reporting to a day report center or other community corrections program only if the standardized risk and needs assessment indicates a moderate to high risk of reoffending and moderate to high criminogenic need.
parolee required to report to a day report center or other community corrections program is subject to all the rules and regulations of the center or program and may be removed at the discretion of the center’s or program’s director. The Commissioner of Corrections shall enter into a master agreement with the Division of Justice and Community Services to provide reimbursement to counties for the use of community corrections programs by eligible parolees. Any placement by the Division of Corrections of a parolee in a day report center or other community corrections program may only be done with the center or program director’s consent and the parolee is subject to all of the rules and regulations of the center or program and may be removed by the director.


(a) If at any time during the period of parole there is reasonable cause to believe that the parolee has violated any of the conditions of his or her release on parole, the parole officer may arrest him or her with or without an order or warrant, or the Commissioner of Corrections may issue a written order or warrant for his or her arrest. The written order or warrant is sufficient for his or her arrest by any officer charged with the duty of executing an ordinary criminal process. The commissioner’s written order or warrant delivered to the sheriff against the parolee shall be a command to keep custody of the parolee for the jurisdiction of the Division of Corrections. During the period of custody, the parolee may be admitted to bail by the court before which the parolee was sentenced. If the parolee is not released on a bond, the costs of confining the paroled prisoner shall be paid out of the funds appropriated for the Division of Corrections.

(1) If reasonable cause is found to exist that a parolee has violated a term or terms of his or her release on parole that does not constitute:
(A) Absconding supervision;

(B) New criminal conduct other than a minor traffic violation or simple possession of a controlled substance; or

(C) Violation of a special condition of parole designed either to protect the public or a victim; the parole officer may, after consultation with and written approval by the director of parole services, for the first violation, require the parolee to serve a period of confinement up to sixty days or, for the second violation, a period of confinement up to one hundred twenty days. Provided, That the Division of Corrections shall notify the Parole Board when a parolee is serving such a term of confinement and the Parole Board may deny further confinement. A parolee serving a term of confinement in the first or second instance may be confined in jail or any other facility designated by the commissioner, but shall be committed to the custody of the Commissioner of Corrections, and the costs of confining the parolee shall be paid out of funds appropriated for the Division of Corrections. Provided, however, That upon written request, the parolee shall be afforded the right to a hearing within forty-five days before the Parole Board regarding whether he or she violated the conditions of his or her release on parole.

(2) When a parolee is in custody for a violation of the conditions of his or her parole, he or she shall be given a prompt and summary hearing before a Parole Board panel upon his or her written request, at which the parolee and his or her counsel shall be given an opportunity to attend.

(A) If at the hearing it is determined that reasonable cause exists to believe that the parolee has:

(i) Absconded supervision;
(ii) Committed new criminal conduct other than a minor traffic violation or simple possession of a controlled substance; or

(iii) Violated a special condition of parole design to protect either the public or a victim; the panel may revoke his or her parole and may require him or her to serve in a state correctional institution the remainder or any portion of his or her maximum sentence for which, at the time of his or her release, he or she was subject to imprisonment.

(B) If the Parole Board panel finds that reasonable cause exists to believe that the parolee has violated a condition of release or supervision other than the conditions of parole set forth in subparagraph (A), subdivision (2) of this subsection, the panel shall require the parolee to serve, for the first violation, a period of confinement up to sixty days or, for the second violation, a period of confinement up to one hundred twenty days unless the Parole Board makes specific written findings of fact that a departure from the specific limitations of this paragraph is warranted: Provided, That if the violation of the conditions of parole or rules for his or her supervision is not a felony as set out in section eighteen of this article, the panel may, if in its judgment the best interests of justice do not require a period of confinement, reinstate him or her on parole. The Division of Corrections shall effect release from custody upon approval of a home plan.

(b) Notwithstanding any provision of this code to the contrary, when reasonable cause has been found to believe that a parolee has violated the conditions of his or her parole but the violation does not constitute felonious conduct, the commissioner may, with the written consent of the parolee, allow the parolee to remain on parole with additional conditions or restrictions. The additional conditions or restrictions may
include, but are not limited to, participation in any program described in subsection (d), section five, article eleven-c of this chapter. If the parolee complies with the conditions of parole the commissioner may not revoke his or her parole for the conduct which constituted the violation. If the parolee fails to comply with the conditions or restrictions and all other conditions of release, that failure is an additional violation of parole and the commissioner may proceed against the parolee under the provisions of this section for the original violation as well as any subsequent violations.

(c) When a parolee has violated the conditions of his or her release on parole by confession to, or being convicted of, any of the crimes set forth in section eighteen of this article, he or she shall be returned to the custody of the Division of Corrections to serve the remainder of his or her maximum sentence, during which remaining part of his or her sentence he or she is ineligible for further parole.

(d) Whenever a person’s parole has been revoked, the commissioner shall, upon receipt of the panel’s written order of revocation, convey and transport the paroled prisoner to a state correctional institution. A parolee whose parole has been revoked shall remain in custody until delivery to a corrections officer sent and duly authorized by the commissioner for the removal of the parolee to a state correctional institution. The cost of confining the parolee shall be paid out of the funds appropriated for the Division of Corrections.

(e) When a parolee is convicted of, or confesses to, any one of the crimes enumerated in section eighteen of this article, it is the duty of the Parole Board to cause him or her to be returned to this state for a summary hearing as provided by this article. Whenever a parolee has absconded supervision, the commissioner shall issue a warrant for his or her apprehension and return to this state for the hearing provided in this article:
Provided, That the panel considering revocation may, if it determines the best interests of justice do not require revocation, cause the parolee to be reinstated to parole.

(f) A warrant filed by the commissioner shall stay the running of his or her sentence until the parolee is returned to the custody of the Division of Corrections and is physically in West Virginia.

(g) Whenever a parolee who has absconded supervision or has been transferred out of this state for supervision pursuant to section one, article six, chapter twenty-eight of this code is returned to West Virginia due to a violation of parole and costs are incurred by the Division of Corrections, the commissioner may assess reasonable costs from the parolee’s inmate funds or the parolee as reimbursement to the Division of Corrections for the costs of returning him or her to West Virginia.

(h) Conviction of a felony for conduct occurring during the period of parole is proof of violation of the conditions of parole and the hearing procedures required by the provisions of this section are inapplicable.

(i) The Commissioner of Corrections may issue subpoenas for persons and records necessary to prove a violation of the terms and conditions of a parolee’s parole either at a preliminary hearing or at a final hearing before a Parole Board panel. The subpoenas shall be served in the same manner provided in the Supreme Court of Appeals of West Virginia Rules of Criminal Procedure. The subpoenas may be enforced by the commissioner through application or petition of the commissioner to the circuit court for contempt or other relief.

§62-12-29. Shared information for community supervision.

(a) The Administrative Director of the Supreme Court of Appeals of West Virginia is requested to assemble a community
supervision committee, to include representatives of the judiciary, probation, parole, day report centers, magistrates, sheriffs, corrections and other members at the discretion of the director. The administrative director shall appoint a chair from among the members and attend the meeting ex officio.

(b) The committee shall:

1. Design and deploy a method for probation officers, parole officers, day report centers and others providing community supervision to electronically share offender information and assessments;

2. Coordinate information reporting and access across agencies continuing supervision;

3. Collect and share information about assessed and collected restitution among agencies continuing supervision;

4. Collect sentencing-level data to enable the study of sentencing practices across the state; and

5. Coordinate with the Community Corrections Subcommittee of the Governor’s Committee on Crime, Delinquency and Correction in the discharge of these duties.

(c) The committee shall annually submit a report on its activities during the previous year, on or before September 30, to the Governor, the Speaker of the House of Delegates, the President of the Senate and, upon request, to any individual member of the Legislature.

ARTICLE 15. DRUG OFFENDER ACCOUNTABILITY AND TREATMENT ACT.


For the purposes of this article:
(1) "Assessment" means a diagnostic evaluation to determine whether and to what extent a person is a drug offender under this article and would benefit from its provisions. The assessment shall be conducted in accordance with the standardized risk and needs assessment and risk cut-off scores adopted by the West Virginia Supreme Court of Appeals. The results of all standardized risk and needs assessments and risk cut-off scores are confidential.

(2) "Continuum of care" means a seamless and coordinated course of substance abuse education and treatment designed to meet the needs of drug offenders as they move through the criminal justice system and beyond, maximizing self-sufficiency.

(3) "Controlled substance" means a drug or other substance for which a medical prescription or other legal authorization is required for purchase or possession.

(4) "Drug" means a controlled substance, an illegal drug or other harmful substance.

(5) "Drug court" means a judicial intervention process that incorporates the Ten Key Components and may include preadjudication or post-adjudication participation.

(6) "Drug court team" shall consist of the following members who are assigned to the drug court:

(A) The drug court judge, which may include a magistrate, mental hygiene commissioner or other hearing officer;

(B) The prosecutor;

(C) The public defender or a member of the criminal defense bar;

(D) A representative from the day report center or community corrections program, if operating in the jurisdiction;
(E) A law-enforcement officer;

(F) The drug court coordinator;

(G) A representative from a circuit court probation office or the division of parole supervision or both;

(H) One or more substance abuse treatment providers; and

(I) Any other persons selected by the drug court team.

(7) “Drug offender” means an adult person charged with a drug-related offense or an offense in which substance abuse is determined from the evidence to have been a factor in the commission of the offense.

(8) “Dual diagnosis” means a substance abuse and cooccurring mental health disorder.

(9) “Local advisory committee” may consist of the following members or their designees:

(A) A drug court circuit judge, who shall serve as chair;

(B) Drug court magistrates;

(C) The prosecutor;

(D) A public defender;

(E) The drug court coordinator;

(F) A member of the criminal defense bar;

(G) The circuit clerk;

(H) A day report center director;

(I) A circuit court probation officer, parole officer or both;
(J) Law enforcement;

(K) One or more substance abuse treatment providers;

(L) A corrections representative; and

(M) Any such other person or persons the chair considers appropriate.

(10) "Illegal drug" means a drug whose manufacture, sale, use or possession is forbidden by law.

(11) "Memorandum of understanding" means a written document setting forth an agreed upon procedure.

(12) "Offender" means an adult charged with a criminal offense punishable by incarceration.

(13) "Other harmful substance" means a misused substance otherwise legal to possess, including alcohol.

(14) "Preadjudication order" means a court order requiring a drug offender to participate in drug court before charges are filed or before conviction.

(15) "Post adjudication" means a court order requiring a drug offender to participate in drug court after having entered a plea of guilty or nolo contendre or having been found guilty.

(16) "Recidivism" means any subsequent arrest for a serious offense (carrying a sentence of at least one year) resulting in the filing of a charge.

(17) "Relapse" means a return to substance use after a period of abstinence.

(18) "Split sentencing" means a sentence which includes a period of incarceration followed by a period of supervision.
(19) "Staffing" means the meeting before a drug offender's appearance in drug court in which the drug court team discusses a coordinated response to the drug offender's behavior.

(20) "Substance" means drugs or alcohol.

(21) "Substance abuse" means the illegal or improper consumption of a substance.

(22) "Substance abuse treatment" means a program designed to provide prevention, education, and therapy directed toward ending substance abuse and preventing a return to substance usage, through a continuum of care, including: Treatment of cooccurring substance abuse and mental health issues; outpatient care; intensive outpatient care; residential care; peer support; relapse prevention; and cognitive behavioral programming, based on research about effective treatment/recovery models for the offender population.

(23) "Ten Key Components" means the following benchmarks intended to describe the very best practices, designs, and operations of drug courts. These benchmarks are meant to serve as a practical, yet flexible framework for developing effective drug courts in vastly different jurisdictions and to provide a structure for conducting research and evaluation for program accountability:

(A) Drug courts integrate alcohol and other drug treatment services with justice system case processing;

(B) Using a nonadversarial approach, prosecution and defense counsel promote public safety while protecting participants' due process rights;

(C) Eligible participants are identified early and promptly placed in the drug court program;
Drug courts provide access to a continuum of alcohol, drug, and other related treatment and rehabilitation services;

Abstinence is monitored by frequent alcohol and other drug testing;

A coordinated strategy governs drug court responses to participants’ compliance;

Ongoing judicial interaction with each drug court participant is essential;

Monitoring and evaluation measure the achievement of program goals and gauge effectiveness;

Continuing interdisciplinary education promotes effective drug court planning, implementation and operations; and

Forging partnerships among drug courts, public agencies and community-based organizations generates local support and enhances drug court effectiveness.

“Treatment supervision” means a program under which an eligible felony drug offender, pursuant to section six-a of this article, is ordered to undergo treatment for substance abuse by a circuit court judge as a condition of drug court, a condition of probation or as a modification of probation.


(a) Each judicial circuit or two or more adjoining judicial circuits may establish a drug court or regional drug court program under which drug offenders will be processed to address appropriately, the identified substance abuse problem as a condition of pretrial release, probation, incarceration, parole or other release from a correctional facility: Provided, That all judicial circuits must be participating in a drug court or regional
drug court program in accordance with the provisions of this article by July 1, 2016.

(b) The structure, method, and operation of each drug court program may differ and should be based upon the specific needs of and resources available to the judicial circuit or circuits where the drug court program is located.

(c) A drug court program may be predjudication or post-adjudication for an adult offender.

(d) Participation in drug court, with the consent of the prosecution and the court, shall be pursuant to a written agreement.

(e) A drug court may grant reasonable incentives under the written agreement if it finds that the drug offender:

1. Is performing satisfactorily in drug court;
2. Isbenefitting from education, treatment and rehabilitation;
3. Has not engaged in criminal conduct; or
4. Has not violated the terms and conditions of the agreement.

(f) A drug court may impose reasonable sanctions on the drug offender, including incarceration for the underlying offense or expulsion from the program, pursuant to the written agreement, if it finds that the drug offender:

1. Is not performing satisfactorily in drug court;
2. Is not benefitting from education, treatment or rehabilitation;

(a) A felony drug offender is eligible for treatment supervision only if the offender would otherwise be sentenced to
prison, and the standardized risk and needs assessment indicates
the offender has a high risk for reoffending and a need for
substance abuse treatment: Provided, That an inmate who is, or
has been, convicted for a felony crime of violence against the
person, a felony offense where the victim was a minor child or
a felony offense involving the use of a firearm, as defined in
subsections (o) and (p), section twenty-seven, article five,
chapter twenty-eight of this code, shall not be eligible for
treatment supervision.

(b) As a condition of drug court, a condition of probation or
as a modification of probation, a circuit court judge may impose
treatment supervision on an eligible drug offender convicted of
a felony: Provided, That a judge may impose treatment
supervision on an eligible drug offender convicted of a felony,
notwithstanding the results of the risk assessment, upon making
specific written findings of fact as to the reason for the
departure.

(c) Whenever a circuit court judge determines that a
treatment supervision participant has violated the conditions of
his or her treatment supervision involving the participant’s use
of alcohol or a controlled substance, the judge may order a
period of incarceration to encourage compliance with program
requirements.

(1) Upon written finding by the circuit court judge that the
participant would otherwise be sentenced to the custody of the
Commissioner of Corrections for service of the underlying
sentence, the cost of the incarceration order under this
subsection, not to exceed a period of thirty days in any one
instance, shall be paid by the Division of Corrections.

(2) Whenever a circuit court judge orders the incarceration
of a treatment supervision participant pursuant to this subsection,
a copy of the order of confinement shall be provided by the clerk
of the circuit court within five days to the Commissioner of Corrections.

(d) The Division of Justice and Community Services shall in consultation with the Governor's Advisory Council on Substance Abuse, created by Executive Order No. 5-11, use appropriated funds to develop proposed substance abuse treatment plans to serve those offenders under treatment supervision in each judicial circuit and on parole supervision.

(e) The Division of Justice and Community Services, in consultation with the Governor's Advisory Committee on Substance Abuse, shall develop:

(1) Qualifications for provider certification to deliver a continuum of care to offenders;

(2) Fee reimbursement procedures; and

(3) Other matters related to the quality and delivery of services.

(f) The Division of Justice and Community Services shall require education and training for providers which shall include, but not be limited to, cognitive behavioral training. The duties of providers who provide services under this section may include:

- Notifying the probation department and the court of any offender failing to meet the conditions of probation or referrals to treatment; appearing at revocation hearings when required; and providing assistance with data reporting and treatment program quality evaluation.

(g) The cost for all drug abuse assessments and certified drug treatment under this section and subsection (e), section seventeen, article twelve of this chapter shall be paid by the Division of Justice and Community Services from funds appropriated for that purpose. The Division of Justice and
Community Services shall contract for payment for the services provided to eligible offenders.

(h) The Division of Justice and Community Services, in consultation with the Governor's Advisory Council on Substance Abuse, shall submit an annual report on or before September 30 to the Governor, the Speaker of the House of Delegates, the President of the Senate and, upon request, to any individual member of the Legislature containing:

1. The dollar amount and purpose of funds provided for the fiscal year;

2. The number of people on treatment supervision who received services and whether their participation was the result of a direct sentence or in lieu of revocation;

3. The number of people on treatment supervision who, pursuant to a judge's specific written findings of fact, received services despite the risk assessment indicating less than high risk for reoffending and a need for substance abuse treatment;

4. The type of services provided;

5. The rate of revocations and successful completions for people who received services;

6. The number of people under supervision receiving treatment under this section who were rearrested and confined within two years of being placed under supervision;

7. The dollar amount needed to provide services in the upcoming year to meet demand and the projected impact of reductions in program funding on cost and public safety measures; and

8. Other appropriate measures used to measure the availability of treatment and the effectiveness of services.

(a) Whenever a judge of a drug court determines that a participant who has pled to a felony offense has committed a violation of his or her conditions of participation which would, in the judge’s opinion, warrant a period of incarceration to encourage compliance with program requirements, the cost of the incarceration, not to exceed a period of thirty days in any one instance, shall be paid by the Division of Corrections. The judge must make a written finding that the participant would otherwise be sentenced to the custody of the Commissioner of Corrections for service of the underlying sentence.

(b) Whenever a drug court judge incarcerates a participant pursuant to subsection (a) of this section, the clerk of the circuit court shall provide a copy of the order of confinement within five days to the Commissioner of Corrections.

AN ACT to amend and reenact §24-2-4f of the Code of West Virginia, 1931, as amended, relating generally to consumer rate relief bonds;
providing that the rate adjustment mechanism is the exception to the state’s pledge not to reduce, alter or impair consumer rate relief charges until all amounts to be paid to an assignee or financing party are paid or performed in full.

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

That §24.2-4f of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 2. POWERS AND DUTIES OF PUBLIC SERVICE COMMISSION.**

§24-2-4f. Consumer rate relief bonds.

(a) *Legislative findings.* — The Legislature hereby finds and declares as follows:

(1) That some electric utilities in the state have experienced expanded net energy costs of a magnitude problematic to recover from their customers through the commission’s traditional cost recovery mechanisms, which have resulted in unusually large under-recoveries;

(2) That the financing costs of carrying such under-recovery balances and projected costs can be considerable;

(3) That the use of traditional utility financing mechanisms to finance or refinance the recovery of such under-recovery balances and projected costs may result in considerable additional costs to be reflected in the approved rates of electric utility customers;

(4) That customers of electric utilities in the state have an interest in the electric utilities financing the costs of such under-recovery balances and projected costs at a lower cost than would be afforded by traditional utility financing mechanisms;
(5) That alternative financing mechanisms exist which can result in lower costs and mitigate rate impacts to customers and the use of these mechanisms can prove highly beneficial to such customers; and

(6) That in order to use such alternative financing mechanisms, the commission must be empowered to adopt a financing order that advances these goals. The Legislature, therefore, determines that it is in the interest of the state and its citizens to encourage and facilitate the use of alternative financing mechanisms that will enable electric utilities to finance or refinance expanded net energy costs at the lowest reasonably practical cost under certain conditions and to empower the commission to review and approve alternative financing mechanisms when it determines that such approval is in the public interest, as set forth in this section.

(b) Definitions. — As used in this section:

(1) "Adjustment mechanism" means a formula-based mechanism for making adjustments to consumer rate relief charges to correct for over-collection or under-collection of such charges or otherwise to ensure the timely and complete payment and recovery of such charges and financing costs. The adjustment mechanism shall accommodate: (i) Standard adjustments to consumer rate relief charges that are limited to relatively stable conditions of operations; and (ii) nonstandard adjustments to consumer rate relief charges that are necessary to reflect significant changes from historical conditions of operations, such as the loss of significant electrical load. The adjustment mechanism is not to be used as a means to authorize the issuance of consumer rate relief bonds in a principal amount greater, or the payment or recovery of expanded net energy costs in an amount greater, than that which was authorized in the financing order which established the adjustment mechanism.
(2) "Ancillary agreement" means a bond insurance policy letter of credit, reserve account, surety bond, swap arrangement, hedging arrangement, liquidity or credit support arrangement or other similar agreement or arrangement entered into in connection with the issuance of consumer rate relief bonds that is designed to promote the credit quality and marketability of the bonds or to mitigate the risk of an increase in interest rates.

(3) "Assignee" means a person, corporation, limited liability company, trust, partnership or other entity to which an interest in consumer rate relief property is assigned, sold or transferred, other than as security. The term also includes any entity to which an assignee assigns, sells or transfers, other than as security, the assignee's interest in or right to consumer rate relief property.

(4) "Bond" includes debentures, notes, certificates of participation, certificates of beneficial interest, certificates of ownership or other evidences of indebtedness or ownership that are issued by an electric utility or an assignee under a final financing order, the proceeds of which are used directly or indirectly to recover, finance, or refinance expanded net energy costs and that are secured by or payable from revenues from consumer rate relief charges.

(5) "Bondholder" means any holder or owner of a consumer rate relief bond.

(6) "Commission" means the Public Service Commission of West Virginia, as it may be constituted from time to time, and any successor agency exercising functions similar in purpose thereto.

(7) "Consumer rate relief charges" means the amounts which are authorized by the commission in a financing order to be collected from a qualifying utility's customers in order to pay and secure the debt service payments of consumer rate relief bonds and associated financing costs.
"Consumer rate relief costs" means those costs, including financing costs, which are to be defrayed through consumer rate relief charges.

"Consumer rate relief property" means the property, rights, and interests of a qualifying utility or an assignee under a final financing order, including the right to impose, charge, and collect the consumer rate relief charges that shall be used to pay and secure the payment of consumer rate relief bonds and financing costs, and including the right to obtain adjustments to those charges, and any revenues, receipts, collections, rights to payment, payments, moneys, claims, or other proceeds arising from the rights and interests created under the final financing order.

"Expanded net energy costs" means historical and, if deemed appropriate by the commission, projected costs, inclusive of carrying charges on under-recovery balances authorized by the commission, including costs incurred prior to the effective date of this statute, adjudicated pursuant to the commission’s expanded net energy cost proceedings, which have been authorized for recovery by an order of the commission, whether or not subject to judicial appeal.

"Financing costs" means any of the following:

(A) Principal, interest and redemption premiums that are payable on consumer rate relief bonds;

(B) A payment required under an ancillary agreement;

(C) An amount required to fund or replenish a reserve account or another account established under an indenture, ancillary agreement or other financing document relating to consumer rate relief bonds or the payment of any return on the capital contribution approved by the commission to be made by a qualifying utility to an assignee;
(D) Costs of retiring or refunding an existing debt and equity securities of a qualifying utility in connection with the issuance of consumer rate relief bonds but only to the extent the securities were issued for the purpose of financing expanded net energy costs;

(E) Costs incurred by a qualifying utility to obtain modifications of or amendments to an indenture, financing agreement, security agreement, or similar agreement or instrument relating to an existing secured or unsecured obligation of the utility in connection with the issuance of consumer rate relief bonds;

(F) Costs incurred by a qualifying utility to obtain a consent, release, waiver, or approval from a holder of an obligation described in subparagraph (E) of this subdivision that are necessary to be incurred for the utility to issue or cause the issuance of consumer rate relief bonds;

(G) Taxes, franchise fees or license fees imposed on consumer rate relief charges;

(H) Costs related to issuing or servicing consumer rate relief bonds or related to obtaining a financing order, including servicing fees and expenses, trustee fees and expenses, legal fees and expenses, administrative fees, placement fees, underwriting fees, capitalized interest and equity, rating-agency fees and other related costs authorized by the commission in a financing order; and

(I) Costs that are incurred by the commission for a financial adviser with respect to consumer rate relief bonds.

(12) “Financing order” means an order issued by the commission under subsection (e) of this section that authorizes a qualifying utility to issue consumer rate relief bonds and recover consumer rate relief charges. A financing order may set
forth conditions or contingencies on the effectiveness of the relief authorized therein and may grant relief that is different from that which was requested in the application.

(13) "Final financing order" means a financing order that has become final and has taken effect as provided in subdivision (10) of subsection (e) of this section.

(14) "Financing party" means either of the following:

(A) A trustee, collateral agent or other person acting for the benefit of any bondholder; or

(B) A party to an ancillary agreement, the rights and obligations of which relate to or depend upon the existence of consumer rate relief property, the enforcement and priority of a security interest in consumer rate relief property, the timely collection and payment of consumer rate relief charges or a combination of these factors.

(15) "Financing statement" has the same meaning as in section one-hundred-two, article nine, chapter forty-six of this code.

(16) "Investment grade" means, with respect to the unsecured debt obligations of a utility at any given time of determination, a rating that is within the top four investment rating categories as published by at least one nationally recognized statistical rating organization as recognized by the United States Securities and Exchange Commission.

(17) "Nonbypassable" means that the payment of consumer rate relief charges may not be avoided by any West Virginia retail customer of a qualifying utility or its successors and must be paid by any such customer that receives electric delivery service from such utility or its successors for as long as the consumer rate relief bonds are outstanding.
(18) "Nonutility affiliate" means, with respect to any utility, a person that: (i) Is an affiliate of the utility as defined in 42 U.S.C. §16451(1); and (ii) is not a public utility that provides retail utility service to customers in the state within the meaning of section two, article one of this chapter.

(19) "Parent" means, with respect to a utility, a registered holding company or other person that holds a majority ownership or membership interest in the utility.

(20) "Qualifying utility" means a public utility engaged in the sale of electric service to retail customers in West Virginia which has applied for and received from the commission a final financing order under this section, including an affiliated electric public utility which has applied jointly for and received such an order.

(21) "Registered holding company" means, with respect to a utility, a person that is: (i) A registered holding company as defined in 42 U.S.C. §16451(8); and (ii) an affiliate of the utility as defined in 42 U.S.C. §16451(1).

(22) "Regulatory sanctions" means, under the circumstances presented, a regulatory or rate-making sanction or penalty that the commission is authorized to impose pursuant to this chapter or any proceeding for the enforcement of any provision of this chapter or any order of the commission that the commission is authorized to pursue or conduct pursuant to this chapter, including without limitation: (i) The initiation of any proceeding in which the utility is required to show cause why it should not be required to comply with the terms and conditions of a financing order or the requirements of this section; (ii) the imposition of penalties pursuant to article four of this chapter; and (iii) a proceeding by mandamus, injunction or other appropriate proceeding as provided in section two of this article.
"Successor" means, with respect to an entity, another entity that succeeds by operation of law to the rights and obligations of the first legal entity pursuant to any bankruptcy, reorganization, restructuring, or other insolvency proceeding, any merger, acquisition, or consolidation, or any sale or transfer of assets, regardless of whether any of these occur as a result of a restructuring of the electric power industry or otherwise.

(c) Application for financing order.

(1) If an electric utility or affiliate obtains from the commission an authorization or waiver required by any other provision of this chapter or by commission order with respect to the underlying expanded net energy costs proposed to be financed through the mechanism of consumer rate relief bonds, an electric utility, or two or more affiliated electric utilities engaged in the delivery of electric service to customers in this state, may apply to the commission for a financing order that authorizes the following:

(A) The issuance of consumer rate relief bonds, in one or more series, to recover only those expanded net energy costs that could result in an under-recovery;

(B) The imposition, charging, and collection of consumer rate relief charges, in accordance with the adjustment mechanism approved by the commission under subparagraph (E), subdivision (6), subsection (e) of this section to recover sufficient amounts to pay and secure the debt service payments of consumer rate relief bonds and associated financing costs; and

(C) The creation of consumer rate relief property under the financing order.

(2) The commission may only consider applications made pursuant to this subsection for the recovery of underlying
expanded net energy costs that would be reflected in schedules of rates filed in calendar year 2012.

(d) Information required in application for financing order.

The application shall include all of the following:

1. A description and quantification of the uncollected expanded net energy costs that the electric utility seeks to recover through the issuance of consumer rate relief bonds;

2. An estimate of the date each series of consumer rate relief bonds is expected to be issued;

3. The expected term during which the consumer rate relief costs for each series of consumer rate relief bonds are expected to be recovered;

4. An estimate of the financing costs associated with the issuance of each series of consumer rate relief bonds;

5. An estimate of the amount of consumer rate relief charges necessary to recover the consumer rate relief costs set forth in the application and the calculation for that estimate, which calculation shall take into account the estimated date or dates of issuance and the estimated principal amount of each series of consumer rate relief bonds;

6. A proposed methodology for allocating consumer rate relief charges between and within tariff schedules and to special contract customers;

7. A description of a proposed adjustment mechanism, reflecting the allocation methodology in subdivision (6) of this subsection;

8. A description of the benefits to the qualifying utility’s customers that are expected to result from the issuance of the
consumer rate relief bonds, including a demonstration that the
bonds and their financing costs are just and reasonable and are
reasonably expected to achieve the lowest reasonably attainable
cost in order to produce cost savings to customers and to
mitigate rate impacts on customers, as compared to traditional
financing mechanisms or traditional cost-recovery methods
available to the electric utility; and

(9) Other information required by commission rules.

(e) Issuance of financing order.

(1) Except as otherwise provided in this section, proceedings
on an application submitted by an electric utility under
subsection (c) of this section are governed by the commission's
standard procedural rules. Any party that participated in a
proceeding in which the subject expanded net energy costs were
authorized or approved automatically has standing to participate
in the financing order proceedings and the commission shall
determine the standing or lack of standing of any other petitioner
for party status.

(2) Within thirty days after the filing of an application under
subsection (c) of this section, the commission shall issue a
scheduling order for the proceeding.

(3) At the conclusion of proceedings on an application
submitted by an electric utility under subsection (c) of this
section, the commission shall issue either a financing order,
granting the application, in whole or with modifications, or an
order denying the application.

(4) The commission may issue a financing order under this
subsection if the commission finds that the issuance of the
consumer rate relief bonds and the consumer rate relief charges
authorized by the order are just and reasonable and are
reasonably expected to achieve the lowest reasonably attainable
cost in order to produce cost savings to customers and to mitigate rate impacts on customers, as compared to traditional financing mechanisms or traditional cost-recovery methods available to the electric utility.

(5) The commission shall include all of the following in a financing order issued under this subsection:

(A) A determination of the maximum amount and a description of the expanded net energy costs that may be recovered through consumer rate relief bonds issued under the financing order;

(B) A description of consumer rate relief property, the creation of which is authorized by the financing order;

(C) A description of the financing costs that may be recovered through consumer rate relief charges and the period over which those costs may be recovered;

(D) A description of the methodology and calculation for allocating consumer rate relief charges between and within tariff schedules and to special contract customers;

(E) A description and approval of the adjustment mechanism for use in the imposition, charging, and collection of the consumer rate relief charges, including: (i) The allocation referred to in paragraph (D) of this subdivision and (ii) any specific requirements for adjusting and reconciling consumer rate relief charges for standard adjustments that are limited to relatively stable conditions of operations and nonstandard adjustments that are necessary to reflect significant changes from historical conditions of operations, such as the loss of substantial electrical load, so long as each and every application of the adjustment mechanism is designed to assure the full and timely payment of consumer rate relief bonds and associated financing costs;
(F) The maximum term of the consumer rate relief bonds;

(G) A finding that the issuance of the consumer rate relief bonds, including financing costs, is just and reasonable and are reasonably expected to achieve the lowest reasonably attainable cost in order to produce cost savings to customers and to mitigate rate impacts on customers, as compared to traditional financing mechanisms or traditional cost-recovery methods available to the electric utility; and

(H) Any other provision the commission considers appropriate to ensure the full and timely imposition, charging, collection and adjustment, pursuant to an approved adjustment mechanism, of the consumer rate relief charges.

(6) To the extent the commission deems appropriate and compatible with the issuance advice letter procedure under subdivision (9) of this subsection, the commission, in a financing order, shall afford the electric utility flexibility in establishing the terms and conditions for the consumer rate relief bonds to accommodate changes in market conditions, including repayment schedules, interest rates, financing costs, collateral requirements, required debt service and other reserves, and the ability of the qualifying utility, at its option, to effect a series of issuances of consumer rate relief bonds and correlated assignments, sales, pledges, or other transfers of consumer rate relief property. Any changes made under this subdivision to terms and conditions for the consumer rate relief bonds shall be in conformance with the financing order.

(7) A financing order shall provide that the creation of consumer rate relief property shall be simultaneous with the sale of that property to an assignee as provided in the application and the pledge of the property to secure consumer rate relief bonds.

(8) The commission, in a financing order, shall require that, after the final terms of each issuance of consumer rate relief
bonds have been established, and prior to the issuance of those bonds, the qualifying utility shall determine the resulting initial consumer rate relief charges in accordance with the adjustment mechanism described in the financing order. These consumer rate relief charges shall be final and effective upon the issuance of the consumer rate relief bonds, without further commission action.

(9) Because the actual structure and pricing of the consumer rate relief bonds will not be known at the time the financing order is issued, in the case of every securitization approved by the commission, the qualifying utility which intends to cause the issuance of such bonds will provide to the commission and the commission’s financial adviser, if any, prior to the issuance of the bonds, an issuance advice letter following the determination of the final terms of the bonds. The issuance advice letter shall indicate the final structure of the consumer rate relief bonds and provide the best available estimate of total ongoing costs. The issuance advice letter should report the initial consumer rate relief charges and other information specific to the consumer rate relief bonds to be issued, as the financing order may require. The qualifying utility may proceed with the issuance of the consumer rate relief bonds unless, prior to noon on the fourth business day after the commission receives the issuance advice letter, the commission issues a disapproval letter directing that the bonds as proposed shall not be issued and the basis for that disapproval. The financing order may provide such additional provisions relating to the issuance advice letter process as the commission deems appropriate.

(10) An order of the commission issued pursuant to this subsection is a final order of the commission. Any party aggrieved by the issuance of any such order may petition for suspension and review thereof by the Supreme Court of Appeals pursuant to section one, article five of this chapter. In the case of a petition for suspension and review, the Supreme Court of
Appeals shall proceed to hear and determine the action as expeditiously as practicable and give the action precedence over other matters not accorded similar precedence by law.

(11) The financing order shall also provide for a procedure requiring the qualifying utility to adjust its rates or provide credits in a manner that would return to customers any overpayments resulting from the securitization for the expanded net energy costs in excess of actual prudently incurred costs as subsequently determined by the commission. The adjustment mechanism may not affect or impair the consumer rate relief property or the right to impose, collect, or adjust the consumer rate relief charges under this section.

(12) The commission may require, as a condition to the effectiveness of the financing order but in every circumstance subject to the limitations set forth in subdivision (3), subsection (g) of this section, that the qualifying utility give appropriate assurances to the commission that the qualifying utility and its parent will abide by the following conditions during any period in which any consumer rate relief bonds issued pursuant to the financing order are outstanding, in addition to any other obligation either may have under this code or federal law. Without first obtaining the prior consent and approval of the commission, the qualifying utility will not:

(A) Lend money, directly or indirectly, to a registered holding company or a nonutility affiliate; or

(B) Guarantee the obligations of a registered holding company or a nonutility affiliate.

(13) A financing order may require the qualifying utility to file with the commission a periodic report showing the receipt and disbursement of proceeds of consumer rate relief bonds and consumer rate relief charges. A financing order may authorize
the staff of the commission to review and audit the books and
records of the qualifying utility relating to the receipt and
disbursement of such proceeds. The provisions of this
subdivision do not limit the authority of the commission under
this chapter to investigate the practices of the qualifying utility
or to audit the books and records of the qualifying utility.

(14) In the case of two or more affiliated utilities that have
jointly applied for a financing order as provided in subdivision
(1), subsection (c) of this section, a financing order may
authorize each affiliated utility to impose consumer rate relief
charges on its customers and to cause to be issued consumer rate
relief bonds and to receive and use the proceeds which it
receives with respect thereto as provided in subdivision (1),
subsection (j) of this section.

(15) The commission, in its discretion, may engage the
services of a financial adviser for the purpose of assisting the
commission in its consideration of an application for a financing
order and a subsequent issuance of consumer rate relief bonds
pursuant to a financing order.

(f) Allowed disposition of consumer rate relief property.

(1) The consumer rate relief property created in a final
financing order may be transferred, sold, conveyed or assigned
to any affiliate of the qualifying utility created for the limited
purpose of acquiring, owning or administering that property,
issuing consumer rate relief bonds under the final financing
order or a combination of these purposes.

(2) All or any portion of the consumer rate relief property
may be pledged to secure the payment of consumer rate relief
bonds, amounts payable to financing parties and bondholders,
amounts payable under any ancillary agreement and other
financing costs.
A transfer, sale, conveyance, assignment, grant of a security interest in or pledge of consumer rate relief property by a qualifying utility to an affiliate of the utility, to the extent previously authorized in a financing order, does not require the prior consent and approval of the commission under section twelve of this article.

(4) The consumer rate relief property constitutes an existing, present property right, notwithstanding any requirement that the imposition, charging, and collection of consumer rate relief charges depend on the qualifying utility continuing to deliver retail electric service or continuing to perform its servicing functions relating to the billing and collection of consumer rate relief charges or on the level of future energy consumption. That property exists regardless of whether the consumer rate relief charges have been billed, have accrued or have been collected and notwithstanding any requirement that the value or amount of the property is dependent on the future provision of service to customers by the qualifying utility.

(5) All such consumer rate relief property continues to exist until the consumer rate relief bonds issued under the final financing order are paid in full and all financing costs relating to the bonds have been paid in full.

(g) Final financing order to remain in effect.

(1) A final financing order remains in effect until the consumer rate relief bonds issued under the final financing order and all financing costs related to the bonds have been paid in full.

(2) A final financing order remains in effect and unabated, notwithstanding the bankruptcy, reorganization or insolvency of the qualifying utility, or any affiliate of the qualifying utility, or the commencement of any judicial or nonjudicial proceeding on the final financing order.
(3) A final financing order is irrevocable and the commission may not reduce, impair, postpone or terminate the consumer rate relief charges authorized in the final financing order or impair the property or the collection or recovery of consumer rate relief costs.

(h) Subsequent commission proceeding.

Upon petition, or upon its own motion, the commission may commence a proceeding and issue a subsequent financing order that provides for retiring and refunding consumer rate relief bonds issued under the final financing order if the commission finds that the subsequent financing order satisfies all of the requirements of subsection (e) of this section. Effective on retirement of the refunded consumer rate relief bonds and the issuance of new consumer rate relief bonds, the commission shall adjust the related consumer rate relief charges accordingly.

(i) Limits on commission authority.

(1) The commission, in exercising its powers and carrying out its duties regarding regulation and ratemaking, may not do any of the following:

(A) Consider consumer rate relief bonds issued under a final financing order to be the debt of the qualifying utility;

(B) Consider the consumer rate relief charges imposed, charged or collected under a final financing order to be revenue of the qualifying utility; or

(C) Consider the consumer rate relief costs or financing costs authorized under a final financing order to be costs of the qualifying utility.

(2) The commission may not order or otherwise require, directly or indirectly, an electric utility to use consumer rate
relief bonds to finance the recovery of expanded net energy costs.

(3) The commission may not refuse to allow the recovery of expanded net energy costs solely because an electric utility has elected or may elect to finance those costs through a financing mechanism other than the issuance of consumer rate relief bonds.

(4) If a qualifying utility elects not to finance such costs through the issuance of consumer rate relief bonds as authorized in a final financing order, those costs shall be recovered as authorized by the commission previously or in subsequent proceedings.

(j) Duties of qualifying utility.

(1) A qualifying utility shall cause the proceeds which it receives with respect to consumer rate relief bonds issued pursuant to a financing order to be used for the recovery of the expanded net energy costs which occasioned the issuance of the bonds, including the retirement of debt and/or equity of the qualifying utility which was incurred to finance or refinance such costs and for no other purpose.

(2) A qualifying utility shall annually provide a plain-English explanation of the consumer rate relief charges approved in the financing order, as modified by subsequent issuances of consumer rate relief bonds authorized under the financing order, if any, and by application of the adjustment mechanism as provided in subsection (k) of this section. These explanations may be made by bill inserts, website information or other appropriate means as required, or approved if proposed by the qualifying utility, by the commission.

(3) Collected consumer rate relief charges shall be applied solely to the repayment of consumer rate relief bonds and other financing costs.
(4) The failure of a qualifying utility to apply the proceeds which it receives with respect to an issuance of consumer rate relief bonds in a reasonable, prudent and appropriate manner or otherwise comply with any provision of this section does not invalidate, impair or affect any financing order, consumer rate relief property, consumer rate relief charges or consumer rate relief bonds. Subject to the limitations set forth in subsection (g) of this section, nothing in this subdivision prevents or precludes the commission from imposing regulatory sanctions against a qualifying utility for failure to comply with the terms and conditions of a financing order or the requirements of this section.

(k) Application of adjustment mechanism; filing of schedules with commission.

(1) A qualifying utility shall file with the commission, and the commission shall approve, with or without such modification as is allowed under this subsection, at least annually, or more frequently as provided in the final financing order, a schedule applying the approved adjustment mechanism to the consumer rate relief charges authorized under the final financing order, based on estimates of demand and consumption for each tariff schedule and special contract customer and other mathematical factors. The qualifying utility shall submit with the schedule a request for approval to make the adjustments to the consumer rate relief charges in accordance with the schedule.

(2) On the same day a qualifying utility files with the commission its calculation of the adjustment, it shall cause notice of the filing to be given, in the form specified in the financing order, as a Class I legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code in a newspaper of general circulation published each weekday in Kanawha County. This publication is only required if the calculation of the adjustment filed by the utility with the
commission would result in an increase in the amount of the consumer rate relief charges.

(3) The commission’s review of a request for a standard adjustment is limited to a determination of whether there is a mathematical error in the application of the adjustment mechanism to the consumer rate relief charges. No hearing is required for such an adjustment. Each standard adjustment to the consumer rate relief charges, in an amount as calculated by the qualifying utility but incorporating any correction for a mathematical error as determined by the commission, automatically becomes effective fifteen days following the date on which the qualifying utility files with the commission its calculation of the standard adjustment.

(4) If the commission authorizes a nonstandard adjustment procedure in the financing order, and the qualifying utility files for such an adjustment, the commission shall allow interested parties thirty days from the date the qualifying utility filed the calculation of a nonstandard adjustment to make comments. The commission’s review of the total amount required for a nonstandard adjustment shall be limited to the mathematical accuracy of the total adjustment needed to assure the full and timely payment of all debt service costs and related financing costs of the consumer rate relief bonds. The commission may also determine the proper allocation of those costs within and between classes of customers and to special contract customers, the proper design of the consumer rate relief charges and the appropriate application of those charges under the methodology set forth in the formula-based adjustment mechanism approved in the financing order. If the commission determines that a hearing is necessary, the commission shall hold a hearing on the comments within forty days of the date the qualifying utility filed the calculation of the nonstandard adjustment. The nonstandard adjustment, as modified by the commission, if necessary, shall be approved by the commission within sixty
days and the commission may shorten the filing and hearing
periods above in the financing order to ensure this result. Any
procedure for a nonstandard adjustment must be consistent with
assuring the full and timely payment of debt service of the
consumer rate relief bonds and associated financing costs.

(5) No adjustment approved or deemed approved under this
section affects the irrevocability of the final financing order as
specified in subdivision (3) of subsection (g) of this section.

(1) Nonbypassability of consumer rate relief charges.

(1) As long as consumer rate relief bonds issued under a
final financing order are outstanding, the consumer rate relief
charges authorized under the final financing order are
nonbypassable and apply to all existing or future West Virginia
retail customers of a qualifying utility or its successors and must
be paid by any customer that receives electric delivery service
from the utility or its successors.

(2) The consumer rate relief charges shall be collected by the
qualifying utility or the qualifying utility's successors or
assignees, or a collection agent, in full through a charge that is
separate and apart from the qualifying utility's base rates.

(m) Utility default.

(1) If a qualifying utility defaults on a required payment of
consumer rate relief charges collected, a court, upon application
by an interested party, or the commission, upon application to
the commission or upon its own motion, and without limiting
any other remedies available to the applying party, shall order
the sequestration and payment of the consumer rate relief
charges collected for the benefit of bondholders, assignees and
financing parties. The order remains in full force and effect
notwithstanding a bankruptcy, reorganization or other insolvency
proceedings with respect to the qualifying utility or any affiliate thereof.

(2) Customers of a qualifying utility shall be held harmless by the qualifying utility for its failure to remit any required payment of consumer rate relief charges collected but such failure does not affect the consumer rate relief property or the rights to impose, collect and adjust the consumer rate relief charges under this section.

(3) Consumer rate relief property under a final financing order and the interests of an assignee, bondholder or financing party in that property under a financing agreement are not subject to set off, counterclaim, surcharge or defense by the qualifying utility or other person, including as a result of the qualifying utility's failure to provide past, present, or future services, or in connection with the bankruptcy, reorganization, or other insolvency proceeding of the qualifying utility, any affiliate, or any other entity.

(n) Successors to qualifying utility.

A successor to a qualifying utility is bound by the requirements of this section. The successor shall perform and satisfy all obligations of the electric utility under the final financing order in the same manner and to the same extent as the qualifying utility including the obligation to collect and pay consumer rate relief charges to the person(s) entitled to receive them. The successor has the same rights as the qualifying utility under the final financing order in the same manner and to the same extent as the qualifying utility.

(o) Security interest in consumer rate relief property.

(1) Except as provided in subdivisions (3) through (5) of this subsection, the creation, perfection and enforcement of a security interest in consumer rate relief property under a final financing
order to secure the repayment of the principal of and interest on consumer rate relief bonds, amounts payable under any ancillary agreement and other financing costs are governed by this section and not article nine of chapter forty-six of this code.

(2) The description of the consumer rate relief property in a transfer or security agreement and a financing statement is sufficient only if the description refers to this section and the final financing order creating the property. This section applies to all purported transfers of, and all purported grants of, liens on or security interests in that property, regardless of whether the related transfer or security agreement was entered into or the related financing statement was filed, before or after the effective date of this section.

(3) A security interest in consumer rate relief property under a final financing order is created, valid and binding at the latest of the date that the security agreement is executed and delivered or the date that value is received for the consumer rate relief bonds.

(4) The security interest attaches without any physical delivery of collateral or other act and upon the filing of the financing statement with the Office of the Secretary of State. The lien of the security interest is valid, binding and perfected against all parties having claims of any kind in tort, contract or otherwise against the person granting the security interest, regardless of whether the parties have notice of the lien. Also upon this filing, a transfer of an interest in the consumer rate relief property is perfected against all parties having claims of any kind, including any judicial lien, or other lien creditors or any claims of the seller or creditors of the seller, other than creditors holding a prior security interest, ownership interest or assignment in the property previously perfected in accordance with this subsection.
(5) The Secretary of State shall maintain any financing statement filed under this subsection in the same manner that the secretary maintains financing statements filed by utilities under article nine of chapter forty-six of this code. The filing of a financing statement under this subsection is governed by the provisions regarding the filing of financing statements in article nine of chapter forty-six of this code. However, a person filing a financing statement under this subsection is not required to file any continuation statements to preserve the perfected status of its security interest.

(6) A security interest in consumer rate relief property under a final financing order is a continuously perfected security interest and has priority over any other lien, created by operation of law or otherwise, that may subsequently attach to that property or those rights or interests unless the holder of any such lien has agreed in writing otherwise.

(7) The priority of a security interest in consumer rate relief property is not affected by the commingling of collected consumer rate relief charges with other amounts. Any pledged or secured party has a perfected security interest in the amount of all consumer rate relief charges collected that are deposited in a cash or deposit account of the qualifying utility in which such collected charges have been commingled with other funds. Any other security interest that may apply to those funds shall be terminated when the funds are transferred to a segregated account for an assignee or a financing party.

(8) No application of the adjustment mechanism as described in subsection (k) of this section affects the validity, perfection or priority of a security interest in or the transfer of consumer rate relief property under the final financing order.

(p) Transfer, sale, etc. of consumer rate relief property.
(1) A sale, assignment or transfer of consumer rate relief property under a final financing order is an absolute transfer and true sale of, and not a pledge of or secured transaction relating to, the seller's right, title and interest in, to and under the property, if the documents governing the transaction expressly state that the transaction is a sale or other absolute transfer. A transfer of an interest in that property may be created only when all of the following have occurred:

(A) The financing order has become final and taken effect;

(B) The documents evidencing the transfer of the property have been executed and delivered to the assignee; and

(C) Value has been received for the property.

(2) The characterization of the sale, assignment or transfer as an absolute transfer and true sale and the corresponding characterization of the property interest of the purchaser shall be effective and perfected against all third parties and is not affected or impaired by, among other things, the occurrence of any of the following:

(A) Commingling of collected consumer rate relief charges with other amounts;

(B) The retention by the seller of any of the following:

(i) A partial or residual interest, including an equity interest, in the consumer rate relief property, whether direct or indirect, or whether subordinate or otherwise;

(ii) The right to recover costs associated with taxes, franchise fees or license fees imposed on the collection of consumer rate relief charges;

(iii) Any recourse that the purchaser or any assignee may have against the seller;
(iv) Any indemnification rights, obligations or repurchase rights made or provided by the seller;

(v) The obligation of the seller to collect consumer rate relief charges on behalf of an assignee;

(vi) The treatment of the sale, assignment or transfer for tax, financial reporting or other purposes; or

(vii) Any application of the adjustment mechanism under the final financing order.

(q) Taxation of consumer rate relief charges; consumer rate relief bonds not debt of governmental entities or a pledge of taxing powers.

(1) The imposition, billing, collection and receipt of consumer rate relief charges under this section are exempt from state income, sales, franchise, gross receipts, business and occupation and other taxes or similar charges: Provided, That neither this exemption nor any other provision of this subsection shall preclude any municipality from taxing consumer rate relief charges under the authority granted to municipalities pursuant to sections five and five-a of article thirteen in chapter eight of this code.

(2) Consumer rate relief bonds issued under a final financing order do not constitute a debt or a pledge of the faith and credit or taxing power of this state or of any county, municipality or any other political subdivision of this state. Bondholders have no right to have taxes levied by this state or the taxing authority of any county, municipality or any other political subdivision of this state for the payment of the principal of or interest on the bonds. The issuance of consumer rate relief bonds does not, directly, indirectly or contingently, obligate this state or a county, municipality or political subdivision of this state to levy
a tax or make an appropriation for payment of the principal of or
interest on the bonds.

(r) **Consumer rate relief bonds as legal investments.** Any of
the following may legally invest any sinking funds, moneys or
other funds belonging to them or under their control in consumer
rate relief bonds:

(1) The state, the West Virginia Investment Management
Board, the West Virginia Housing Development Fund, municipal
corporations, political subdivisions, public bodies and public
officers except for members of the Public Service Commission;

(2) Banks and bankers, savings and loan associations, credit
unions, trust companies, building and loan associations, savings
banks and institutions, deposit guarantee associations,
investment companies, insurance companies and associations
and other persons carrying on a banking or insurance business,
including domestic for life and domestic not for life insurance
companies; and

(3) Personal representatives, guardians, trustees and other
fiduciaries.

(s) **Pledge of state.**

(1) The state pledges to and agrees with the bondholders,
assignees and financing parties under a final financing order that
the state will not take or permit any action that impairs the value
of consumer rate relief property under the final financing order
or revises the consumer rate relief costs for which recovery is
authorized under the final financing order or, except as allowed
under subsection (k) of this section, reduce, alter or impair
consumer rate relief charges that are imposed, charged, collected
or remitted for the benefit of the bondholders, assignees and
financing parties, until any principal, interest and redemption
premium in respect of consumer rate relief bonds, all financing
costs and all amounts to be paid to an assignee or financing party
under an ancillary agreement are paid or performed in full.

(2) A person who issues consumer rate relief bonds is permitted to include the pledge specified in subdivision (1) of this subsection in the consumer rate relief bonds, ancillary agreements and documentation related to the issuance and marketing of the consumer rate relief bonds.

(t) West Virginia law governs; this section controls.

(1) The law governing the validity, enforceability, attachment, perfection, priority and exercise of remedies with respect to the transfer of consumer rate relief property under a final financing order, the creation of a security interest in any such property, consumer rate relief charges or final financing order are the laws of this state as set forth in this section.

(2) This section controls in the event of a conflict between its provisions and any other law regarding the attachment, assignment, or perfection, the effect of perfection or priority of any security interest in or transfer of consumer rate relief property under a final financing order.

(u) Severability.

If any provision of this section or the application thereof to any person, circumstance or transaction is held by a court of competent jurisdiction to be unconstitutional or invalid, the unconstitutionality or invalidity does not affect the constitutionality or validity of any other provision of this section or its application or validity to any person, circumstance or transaction, including, without limitation, the irrevocability of a financing order issued pursuant to this section, the validity of the issuance of consumer rate relief bonds, the imposition of consumer rate relief charges, the transfer or assignment of consumer rate relief property or the collection and recovery of
consumer rate relief charges. To these ends, the Legislature hereby declares that the provisions of this section are intended to be severable and that the Legislature would have enacted this section even if any provision of this section held to be unconstitutional or invalid had not been included in this section.

(v) Non-utility status.

An assignee or financing party is not an electric public utility or person providing electric service by virtue of engaging in the transactions with respect to consumer rate relief bonds.

CHAPTER 163

(S. B. 82 - By Senators Snyder, Blair and Unger)

[Passed April 13, 2013; in effect July 1, 2013.]
[Approved by the Governor on May 3, 2013.]

AN ACT to amend and reenact §16-13A-3 and §16-13A-4 of the Code of West Virginia, 1931, as amended, all relating to public service district board membership; requiring a public service board to have at least one rate-paying residential customer of the public service district on the board; increasing the salary of public service district board members; clarifying when salary and expenses payments may be made; and adding sewer service to the salary schedule for public service districts which contract with others to provide service.

Be it enacted by the Legislature of West Virginia:

That §16-13A-3 and §16-13A-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:
ARTICLE 13A. PUBLIC SERVICE DISTRICTS.

§16-13A-3. District to be a public corporation and political subdivision; powers thereof; public service boards.

From and after the date of the adoption of the order creating any public service district, it is a public corporation and political subdivision of the state, but without any power to levy or collect ad valorem taxes. Each district may acquire, own and hold property, both real and personal, in its corporate name, and may sue, may be sued, may adopt an official seal and may enter into contracts necessary or incidental to its purposes, including contracts with any city, incorporated town or other municipal corporation located within or without its boundaries for furnishing wholesale supply of water for the distribution system of the city, town or other municipal corporation, or for furnishing storm water services for the city, town or other municipal corporation, and contract for the operation, maintenance, servicing, repair and extension of any properties owned by it or for the operation and improvement or extension by the district of all or any part of the existing municipally owned public service properties of any city, incorporated town or other municipal corporation included within the district:

Provided, That no contract shall extend beyond a maximum of forty years, but provisions may be included therein for a renewal or successive renewals thereof and shall conform to and comply with the rights of the holders of any outstanding bonds issued by the municipalities for the public service properties.

The powers of each public service district shall be vested in and exercised by a public service board consisting of not less than three members who shall be persons residing within the district, who possess certain educational, business or work experience which will be conducive to operating a public service district. In the event the public service district is providing any utility service and billing rates and charges to its customers, at
least one board member shall be a rate-paying residential customer of the public service district: Provided, That if an existing public service board does not have a member who is a rate-paying residential customer of the public service district on July 1, 2013, the next following appointment to the board shall be a rate-paying residential customer of that public service district. For purposes of this section, “rate-paying residential customer” means a person who:

(1) In the case of a water or sewer public service district, is physically connected to and actively receiving residential public service district utility services; or

(2) In the case of a storm water public service district, has storm water conveyed away from the residential property by a utility owned system; and

(3) Has an active account in good standing and is the occupier of the residential property which is on the public service district utility service account.

Each board member shall, within six months of taking office, successfully complete the training program to be established and administered by the Public Service Commission in conjunction with the Department of Environmental Protection and the Bureau for Public Health. Board members shall not be or become pecuniarily interested, directly or indirectly, in the proceeds of any contract or service, or in furnishing any supplies or materials to the district nor shall a former board member be hired by the district in any capacity within a minimum of twelve months after board member’s term has expired or such board member has resigned from the district board. The members shall be appointed in the following manner:

Each city, incorporated town or other municipal corporation having a population of more than three thousand but less than
eighteen thousand is entitled to appoint one member of the board, and each city, incorporated town or other municipal corporation having a population in excess of eighteen thousand shall be entitled to appoint one additional member of the board for each additional eighteen thousand population. The members of the board representing such cities, incorporated towns or other municipal corporations shall be residents thereof and shall be appointed by a resolution of the governing bodies thereof and upon the filing of a certified copy or copies of the resolution or resolutions in the office of the clerk of the county commission which entered the order creating the district, the persons so appointed become members of the board without any further act or proceedings. If the number of members of the board so appointed by the governing bodies of cities, incorporated towns or other municipal corporations included in the district equals or exceeds three, then no further members shall be appointed to the board and the members so appointed are the board of the district except in cases of merger or consolidation where the number of board members may equal five.

If no city, incorporated town or other municipal corporation having a population of more than three thousand is included within the district, then the county commission which entered the order creating the district shall appoint three members of the board, who are persons residing within the district and residing within the State of West Virginia, which three members become members of the board of the district without any further act or proceedings except in cases of merger or consolidation where the number of board members may equal five.

If the number of members of the board appointed by the governing bodies of cities, incorporated towns or other municipal corporations included within the district is less than three, then the county commission which entered the order creating the district shall appoint such additional member or members of the board, who are persons residing within the
district, as is necessary to make the number of members of the board equal three except in cases of merger or consolidation where the number of board members may equal five, and the member or members appointed by the governing bodies of the cities, incorporated towns or other municipal corporations included within the district and the additional member or members appointed by the county commission as aforesaid, are the board of the district. A person may serve as a member of the board in one or more public service districts.

The population of any city, incorporated town or other municipal corporation, for the purpose of determining the number of members of the board, if any, to be appointed by the governing body or bodies thereof, is the population stated for such city, incorporated town or other municipal corporation in the last official federal census.

Notwithstanding any provision of this code to the contrary, whenever a district is consolidated or merged pursuant to section two of this article, the terms of office of the existing board members shall end on the effective date of the merger or consolidation. The county commission shall appoint a new board according to rules promulgated by the Public Service Commission. Whenever districts are consolidated or merged no provision of this code prohibits the expansion of membership on the new board to five.

The respective terms of office of the members of the first board shall be fixed by the county commission and shall be as equally divided as may be, that is approximately one third of the members for a term of two years, a like number for a term of four years, the term of the remaining member or members for six years, from the first day of the month during which the appointments are made. The first members of the board appointed as aforesaid shall meet at the office of the clerk of the county commission which entered the order creating the district
as soon as practicable after the appointments and shall qualify by taking an oath of office: Provided, That any member or members of the board may be removed from their respective office as provided in section three-a of this article.

Any vacancy shall be filled for the unexpired term within thirty days; otherwise successor members of the board shall be appointed for terms of six years and the terms of office shall continue until successors have been appointed and qualified. All successor members shall be appointed in the same manner as the member succeeded was appointed. The district shall provide to the Public Service Commission, within thirty days of the appointment, the following information: The new board member's name, home address, home and office phone numbers, date of appointment, length of term, who the new member replaces and if the new appointee has previously served on the board. The Public Service Commission shall notify each new board member of the legal obligation to attend training as prescribed in this section.

The board shall organize within thirty days following the first appointments and annually thereafter at its first meeting after January 1 of each year by selecting one of its members to serve as chair and by appointing a secretary and a treasurer who need not be members of the board. The secretary shall keep a record of all proceedings of the board which shall be available for inspection as other public records. Duplicate records shall be filed with the county commission and shall include the minutes of all board meetings. The treasurer is lawful custodian of all funds of the public service district and shall pay same out on orders authorized or approved by the board. The secretary and treasurer shall perform other duties appertaining to the affairs of the district and shall receive salaries as shall be prescribed by the board. The treasurer shall furnish bond in an amount to be fixed by the board for the use and benefit of the district.
The members of the board, and the chair, secretary and treasurer thereof, shall make available to the county commission, at all times, all of its books and records pertaining to the district's operation, finances and affairs, for inspection and audit. The board shall meet at least monthly.

§16-13A-4. Board chairman; members' compensation; procedure; district name.

(a) The chairman shall preside at all meetings of the board and may vote as any other member of the board. If the chairman is absent from any meeting, the remaining members may select a temporary chairman and if the member selected as chairman resigns as such or ceases for any reason to be a member of the board, the board shall select one of its members as chairman to serve until the next annual organization meeting.

(b) Salaries of the board members are:

(1) For districts with fewer than six hundred customers, up to $100 per attendance at regular monthly meetings and $75 per attendance at additional special meetings, total salary not to exceed $2,000 per annum;

(2) For districts with six hundred customers or more but fewer than two thousand customers, up to $125 per attendance at regular monthly meetings and $100 per attendance at additional special meetings, total salary not to exceed $3,250 per annum;

(3) For districts with two thousand customers or more, but fewer than four thousand customers, up to $150 per attendance at regular monthly meetings and $100 per attendance at additional special meetings, total salary not to exceed $4,500 per annum; and
(4) For districts with four thousand or more customers, up to $200 per attendance at regular monthly meetings and $150 per attendance at additional special meetings, total salary not to exceed $6,400 per annum.

The public service district shall certify the number of customers served to the Public Service Commission on July 1 of each fiscal year.

(c) Public service districts selling water to other water utilities for resale or public service districts which provide sewer treatment for other sewer utilities may adopt the following salaries for its board members:

(1) For districts with annual revenues of less than $50,000, up to $100 per attendance at regular monthly meetings and $75 per attendance at additional special meetings, total salary not to exceed $2,000 per annum;

(2) For districts with annual revenues of $50,000 or more, but less than $250,000, up to $125 per attendance at regular monthly meetings and $100 per attendance at special meetings, total salary not to exceed $3,250 per annum;

(3) For districts with annual revenues of $250,000 or more, but less than $500,000, up to $150 per attendance at regular monthly meetings and $100 per attendance at additional special meetings, total salary not to exceed $4,500 per annum; and

(4) For districts with annual revenues of $500,000 or more, up to $200 per attendance at regular monthly meetings and $150 per attendance at additional special meetings, total salary not to exceed $6,400 per annum.

The public service district shall certify the number of customers served and its annual revenue to the Public Service Commission on July 1 of each fiscal year.
(d) Board members may be reimbursed for all reasonable and necessary expenses actually incurred in the performance of their duties as provided by the rules of the board. Notwithstanding any other provision of this code to the contrary, board members are not eligible for salary payment or reimbursement for expenses incurred prior to the public service district initiating service to its first customer. Salary and reimbursement for expenses may be incurred only at meetings occurring after the public service district initiated service to customers.

(e) The board shall by resolution determine its own rules of procedure, fix the time and place of its meetings and the manner in which special meetings may be called. Public notice of meetings shall be given in accordance with section three, article nine-a, chapter six of this code. Emergency meetings may be called as provided by that section. A majority of the members constituting the board also constitute a quorum to do business.

(f) The members of the board are not personally liable or responsible for any obligations of the district or the board, but are answerable only for willful misconduct in the performance of their duties. The county commission which created a district or county commissions if more than one created the district may, upon written request of the district, adopt an order changing the official name of a public service district: Provided, That the name change will not be effective until approved by the Public Service Commission of West Virginia and the owners of any bonds and notes issued by the district, if any, shall have consented, in writing, to the name change. If a district includes territory located in more than one county, the county commission or county commissions changing the name of the district shall provide any county commission into which the district also extends with a certified copy of the order changing the name of the district. The official name of any district created under the provisions of this article may contain the name or
names of any city, incorporated town or other municipal corporation included therein or the name of any county or counties in which it is located.

CHAPTER 164

(S. B. 491 - By Senators M. Hall, Beach, Carmichael, Kessler (Mr. President), McCabe and Walters)

[Passed April 11, 2013; in effect ninety days from passage.]
[Approved by the Governor on April 30, 2013.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §17A-6D-16, relating to daily passenger rental car business; and allowing rental vehicle contracts to include a vehicle licensing cost recovery fee.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §17A-6D-16, to read as follows:

ARTICLE 6D. DAILY PASSENGER RENTAL CAR BUSINESS.

§17A-6D-16. Vehicle license cost recovery fee charged by daily passenger rental car company.

1 (a) As used in this section:

2 (1) "Vehicle license costs" means the costs incurred by a daily passenger rental car company for licensing, titling, registration, property tax, plating and inspecting rental motor vehicles: and
(2) "Vehicle license cost recovery fee" means a charge on a vehicle rental transaction originating within this state that may be separately stated on the rental agreement to recover vehicle license costs.

(b) Method for vehicle cost recovery. –

(1) If a daily passenger car rental company includes a vehicle license cost recovery fee as a separately stated charge in a rental transaction, the amount of the fee shall represent the company’s good-faith estimate of the daily passenger rental car daily charge to recover its actual total annual vehicle license costs.

(2) If the total amount of the vehicle license cost recovery fees collected by a daily passenger rental car company under this section in any calendar year exceeds the company’s actual vehicle license costs, the daily passenger car rental company shall:

(A) Retain the excess amount; and

(B) Adjust the vehicle cost recovery fee for the following calendar year by a corresponding amount.

(c) Nothing in this section prevents a daily passenger car rental company from including, or making adjustments during the calendar year to, separately stated surcharges, fees or charges in the rental agreement, which may include, but are not limited to, vehicle license cost recovery fees, airport access fees, airport concession fees, consolidated facility charges and all applicable taxes.
AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §7-25-1, §7-25-2, §7-25-3, §7-25-4, §7-25-5, §7-25-6, §7-25-7, §7-25-8, §7-25-9, §7-25-10, §7-25-11, §7-25-12, §7-25-13, §7-25-14, §7-25-15, §7-25-16, §7-25-17, §7-25-18, §7-25-19, §7-25-20, §7-25-21, §7-25-22, §7-25-23, §7-25-24, §7-25-25 and §7-25-26; and to amend and reenact §30-29-1 of said code, all relating to the creation of resort area districts; providing short title for article; providing legislative findings for resort area districts; defining terms; authorizing county commissions to create resort area districts; providing for petition process for creation or expansion of resort area districts; providing notice requirements for creation or expansion of resort area districts; providing that resort area districts are public corporations; setting forth powers of resort area districts; authorizing resort area districts to undertake capital projects; authorizing resort area districts to levy assessments upon real property; authorizing resort area districts to borrow money and incur indebtedness; authorizing resort area districts to issue assessment bonds and resort service fee bonds; authorizing resort area districts to impose penalties for unpaid assessments; authorizing resort area districts to levy resort service fee on purchases of certain goods and services; authorizing resort area districts to provide public services; authorizing resort area districts to provide for public safety and appoint resort area rangers; providing for official name of resort area districts; providing for creation of resort area boards; setting forth powers
and certain procedures for resort area boards; providing for election of resort area board members; providing election procedures for resort area boards; requiring certain resort area board members to give bond; providing notice requirements for resort area boards election; providing procedures and notice requirements for resort service fee implementation and administration; providing procedures for implementing and providing services within resort area districts; requiring adoption of budget annually; providing resort area district board ability to condition budgeted expenditures, projects and undertakings on the receipt and availability of additional funds provided by resort operator or other sources; providing procedures for implementation of assessments; providing notice requirements for assessments; providing procedures for construction of capital projects; providing procedures for revision of assessments; exempting public property from assessments; providing terms for assessment bonds and resort service fee bonds; exempting assessment bonds and resort service fee bonds from state taxation; providing that indebtedness of resort area district to be paid solely from resort service fee and assessments; providing procedure for payment of assessments to sheriff; authorizing sheriff to collect delinquent assessments; providing for lien against property subject to assessment and notice thereof; providing for appointment of resort area rangers; authorizing resort area rangers to exercise authority of law-enforcement officers; requiring annual audit of resort area districts; requiring notice of change of ownership of properties within district; reasonable notice by district in absence of receiving notice of change in ownership; providing for liberal construction of article; providing that resort area rangers are considered law-enforcement officers; and making resort area rangers subject to same training and requirements as other law-enforcement officers.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §7-25-1, §7-25-2, §7-25-3,
§7-25-1, §7-25-2, §7-25-3, §7-25-4, §7-25-5, §7-25-6, §7-25-7, §7-25-8, §7-25-9, §7-25-10,
§7-25-11, §7-25-12, §7-25-13, §7-25-14, §7-25-15, §7-25-16,
§7-25-17, §7-25-18, §7-25-19, §7-25-20, §7-25-21, §7-25-22,
§7-25-23, §7-25-24, §7-25-25 and §7-25-26; and that §30-29-1 of said
code be amended and reenacted, all to read as follows:

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 25. RESORT AREA DISTRICTS.

§7-25-1. Short Title.

1 This article shall be known and cited as the "Resort Area
2 District Act".

§7-25-2. Findings.

1 The Legislature finds that:

2 (a) West Virginia's resorts and other recreational areas have
3 an important role in the economy of the local areas surrounding
4 their locations.

5 (b) West Virginia's resorts and other recreational areas are
6 often located in unincorporated areas and, as a consequence,
7 such areas have less funding available to provide infrastructure
8 and essential services within such areas.

9 (c) West Virginia's resorts and other recreational areas
10 derive the major portion of their economic well-being from
11 businesses catering to the recreational and personal needs of
12 persons traveling to or through the area.

13 (d) Better infrastructure and provision of essential services
14 to West Virginia's resorts and other recreational areas are likely
15 to increase visits to such areas, which will result in greater
16 economic development and job creation in such areas.
(e) The state and the public will benefit from granting West Virginia's resorts and recreational areas the ability to have a governing body to provide for the infrastructure and essential services within common areas; which common areas are separate from the profit-making operations of the resorts or recreational areas.

(f) This article is necessary for the public health, safety and welfare and economic development of West Virginia's resorts and other recreational areas.

§7-25-3. Definitions.

For purposes of this article:

(a) "Assessment" means the fee, including interest, paid by an owner of real property located within a resort area district to pay for the cost of a project or projects constructed upon or benefitting or protecting such property and administrative expenses thereto, which fee is in addition to all taxes and other fees levied on the property.

(b) "Assessment bonds" means special obligation bonds or notes issued by a resort area district which are payable from the proceeds of assessments.

(c) "Board" means a resort area board created pursuant to this article.

(d) "Code" means the Code of West Virginia, 1931, as amended by the Legislature.

(e) "Cost" means the cost of any or all of the following:

(1) Providing services within a resort area district;

(2) Construction, reconstruction, renovation and acquisition of all lands, structures, real or personal property, rights,
19 rights-of-way, franchises, easements and interests acquired or to be acquired by a resort area district;

20 (3) All machinery and equipment, including machinery and equipment needed to provide, expand or enhance services to a resort area district;

21 (4) Financing charges and interest prior to and during construction and, if deemed advisable by a resort area district, for a limited period after completion of construction;

22 (5) Interest and reserves for principal and interest, including costs of bond insurance and any other type of financial guarantee;

23 (6) Costs of issuance in connection with the issuance of assessment bonds or resort service fee bonds;

24 (7) The design of extensions, enlargements, additions and improvements to the facilities of a resort area district;

25 (8) Architectural, engineering, financial and legal services;

26 (9) Plans, specifications, studies, surveys and estimates of costs and revenues;

27 (10) Administrative expenses necessary or incident to any project or service; and

28 (11) Other expenses as may be necessary or incident to the provision of services or the construction, acquisition and financing of a project.

29 (f) “Governing body” means the county commission of a county.

30 (g) “Governmental agency” means the state government or any agency, department, division or unit thereof; counties;
46 municipalities; any watershed enhancement districts, soil
47 conservation districts, sanitary districts, public service districts,
48 drainage districts, school districts, urban renewal authorities or
49 regional governmental authorities established pursuant to this
50 code.

51 (h) “Landowner” or “owner of real property” means the
52 person or persons holding an interest in the record fee title to one
53 or more parcels of real property, including residential, improved
54 real property and unimproved, developable real property, or of
55 units within a multiunit property, including condominiums and
townhouses, within a resort area district or a proposed resort area
district: Provided. That the holder or holders of a deed of trust
shall not be considered a landowner or owner of real property.

59 (i) “Parcel” shall mean:

60 (1) A lot or parcel of real property as set forth on a plat
61 covering such real property, or, in the event no plat exists, as set
62 forth on the tax maps of a county; or

63 (2) A unit within a multiunit property.

64 (j) “Person” means an individual, firm, partnership,
corporation, limited liability company, voluntary association or
66 any other type of entity.

67 (k) “Project” means the design, construction, reconstruction,
establishment, acquisition, improvement, renovation, extension,
enlargement, equipping, maintenance, repair (including
replacements) and start-up operation of public buildings,
culverts, streets, bridges (including approaches, causeways,
viaducts, underpasses and connecting roadways), motor vehicle
parking facilities (including parking lots, buildings, ramps,
curb-line parking, meters and other facilities deemed necessary,
appropriate, useful, convenient or incidental to the regulation,
control and parking of motor vehicles), public transportation,
public recreation centers, public recreation parks, bicycle paths
and trails, hiking paths and trails, landscaping, swimming pools,
tennis courts, golf courses, skating rinks, equine facilities, motor
vehicle competition and recreational facilities, flood protection
or relief projects, or the grading, regrading, paving, repaving,
surfacing, resurfacing, curbing, recurfing, widening, lighting or
otherwise improving any street, avenue, road, highway, alley or
way, or the building or renewing of sidewalks and flood
protection; and the term shall mean and include any project as a
whole, and all integral parts thereof, including all necessary,
appropriate, useful, convenient or incidental appurtenances and
equipment in connection with any one or more of the above:
Provided, That a project shall not include a facility or service
that benefits only the resort operator, or which the resort operator
charges a fee or obtains revenue, or that constitutes part of any
facility or service provided by the resort operator, such as a ski
lift or ski slope,

Provided, That a project shall not include a facility or service
that benefits only the resort operator, or which the resort operator
charges a fee or obtains revenue, or that constitutes part of any
facility or service provided by the resort operator, such as a ski
lift or ski slope,

Provided, That a project shall not include a facility or service
that benefits only the resort operator, or which the resort operator
charges a fee or obtains revenue, or that constitutes part of any
facility or service provided by the resort operator, such as a ski
lift or ski slope,

Provided, That a project shall not include a facility or service
that benefits only the resort operator, or which the resort operator
charges a fee or obtains revenue, or that constitutes part of any
facility or service provided by the resort operator, such as a ski
lift or ski slope,
(3) Derives the major portion of its economic well-being from businesses catering to the recreational and personal needs of persons traveling to or through the area;

(4) Is a destination location containing each of the following:

(i) Residential, improved real property;

(ii) One or more resort operators;

(iii) Commercial business properties such as retail stores, restaurants and hotels or other lodging accommodations; and

(iv) Unimproved real property which remains developable;

(5) Does not include real property primarily used for manufacturing, milling, converting, producing, processing or fabricating materials, generating electricity or the extraction or processing of minerals.

(o) "Resort area district" or "district" means a resort area district created pursuant to this article.

(p) "Resort operator" means any person owning and operating the primary outdoor recreational facilities in a resort area and offering outdoor recreational services such as skiing, golf or boating to the general public.

(q) "Resort service fee" means the fee imposed on the purchase price of goods and services sold within a resort area district by any of the following establishments:

(1) Hotels, motels, campgrounds, lodges and other lodging or camping facilities;

(2) Restaurants, fast-food stores, and other food service establishments selling prepared foods;
(3) Taverns, bars, nightclubs, lounges and other public establishments that serve beer, wine, liquor or other alcoholic beverages by the drink;

(4) Retail establishments;

(5) Entertainment facilities, including, but not limited to, theaters, amphitheaters, halls and stadiums; and

(6) Recreational facilities and activities, including, but not limited to, ski resorts, golf courses, water sports, rafting, canoeing, kayaking, rock climbing and zip lines.

(7) "Resort service fee bonds" means special obligation bonds or notes issued by a resort area district which are payable from the proceeds of resort service fees.

(8) "Service" includes, but is not limited to, snow removal; operation and maintenance of public transportation; maintenance, upgrade and beautification of public common areas; maintenance and repair of roads and sidewalks; providing for the collection and disposal of garbage and other refuse matter; recycling; operation, upgrade and maintenance of any projects or improvements; and any other public service authorized by this article, including fire protection and public safety. For purposes of this article, a common area shall not include any facility that benefits only the resort operator, or for which the resort operator charges a fee or obtains revenue, or which constitutes part of any facility or service provided by the resort operator, such as a ski lift or ski slope.

(9) "Sheriff" means the sheriff of the county in which a resort area district is located.

§7-25-4. Power and authority of county commissions to create and establish resort area districts.

(a) Every county is hereby empowered and authorized, in addition to any other rights, powers and authority conferred upon
it elsewhere in this code, to create, modify, reject or expand resort area districts within that county in the manner hereinafter set forth and to assist in the provision of services and development, construction, acquisition, extension or improvement of a project or projects located within a resort area district.

(b) Unless agreed to by each affected municipality, the power and authority hereby conferred on a county shall not extend into territory within the boundaries of any municipality: Provided, That notwithstanding any provision in this code to the contrary, the power and authority hereby conferred on counties may extend within the territory of a public service district created under section two, article thirteen-a, chapter sixteen of this code.

§7-25-5. Petition for creation or expansion of resort area district; petition requirements.

(a) The owners of at least sixty-one percent of the real property, determined by acreage, located within the boundaries of the resort area described in the petition, by metes and bounds or otherwise in a manner sufficient to describe the area, may petition a governing body to create or expand a resort area district.

(b) The petition for the creation or expansion of a resort area district shall include, where applicable, the following:

(1) The proposed name and proposed boundaries of such district and a list of the names and addresses of all owners of real property within the proposed district;

(2) A description of proposed projects and services to be provided within the district;

(3) A map showing the proposed resort area to be included in the resort area district;
(4) A list of estimated project and service costs;

(5) A feasibility or consultant study concerning the formation of the proposed district and the funds to be generated by the implementation of a resort service fee and indicating that the proposed resort service fee will provide sufficient revenue for proposed services and projects;

(6) The proposed rate or rates, not to exceed five percent of the purchase price, of the resort service fee and the proposed classes of goods and services to which each rate shall apply;

(7) The proposed effective date of the resort service fee;

(8) A certification from the State Tax Commissioner of the amount of consumers sales and service taxes collected from businesses located in the proposed district during the most recent twelve calendar month period for which such data is available that precedes the calendar quarter during which the petition will be submitted to the governing body;

(9) A development schedule; and

(10) A statement of the benefits that can be expected from the creation of the district.

(c) Within sixty days of the submission of a petition for the creation of a resort area district, the governing body shall by order determine the completeness of the petition. If the governing body determines that the petition is complete, it shall set a date for the public meeting required under section six of this article and shall cause the petition to be filed with the clerk of the governing body and be made available for inspection by interested persons before the meeting. If the governing body determines that such petition is not complete, the petition shall be returned to the petitioners with a statement of additional information required for such petition to be complete.
§7-25-6. Notice to property owners before creation or expansion of resort area district; form of notice; affidavit of publication.

(a) Before the adoption of an order creating a resort area district, the governing body shall cause notice to be given to the owners of real property located within the proposed resort area district that such order will be considered for adoption at a public meeting of the governing body at a date, time and place named in the notice and that all persons at that meeting, or any adjournment thereof, shall be given an opportunity to protest or be heard concerning the adoption or rejection of the order. At or after the meeting the governing body may amend, revise or otherwise modify the information in the petition for formation or expansion of a resort area district as it may deem appropriate after taking into account any comments received at such meeting.

(b) A resort area district may not be created by a governing body if, at the public meeting required by this section, written protest is filed by at least twenty-five percent of the owners of real property proposed to be included within the district. In the event of a such protest, the petition for the creation of the resort area district may not be resubmitted to the governing body for a period of at least one year from the date of the original submission.

(c) At least sixty days prior to the date of the meeting the notice required by this section shall, using reasonable efforts, be mailed to each owner of real property to be included in the proposed resort area district as provided in subsection (g) of this section, posted in multiple, conspicuous public locations within such proposed district and published as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code and the publication area for such publication shall be the county in which the proposed resort area
district is located. The notice shall be in the form of, or substantially in the form of, the following notice:

"NOTICE TO ALL PERSONS OWNING PROPERTY LOCATED WITHIN ................. (here describe the boundaries of the proposed resort area district) IN THE COUNTY OF .............. (name of county):

A petition has been presented to the county commission of the County of .............. (name of county) requesting establishment of a resort area district and authorization of a resort service fee under article twenty-five, chapter seven of the code of West Virginia, 1931, as amended, to .............. (describe potential projects and/or services to be provided) in the county of .............., (name of county) as the county commission may deem proper. A copy of the petition is available in the office of the clerk of the county commission of the County of .............. (name of county) for review by the public during regular office hours.

The petition to create a resort area district will be considered by the county commission at a public meeting to be held on the ...... day of .............., .............., at ... m. at ........................................... Any owner of real property whose property may be affected by the creation of the above-described resort area district, and any owner of real property whose property is not located within said resort area district but wishes his or her property to be included, will be given an opportunity, under oath, to protest or be heard at said meeting or any adjournment thereof: .............. (name of clerk)

(d) An affidavit of publication of the notice made by newspaper publisher, or a person authorized to do so on behalf of such publisher, and a copy of the notice shall be made part of the minutes of the governing body and spread on its records of the meeting described in the notice. The service of said notice
upon all persons owning any interest in any real property located
within the proposed resort area district shall conclusively be
deemed to have been given upon completion of mailing as
provided in subsection (g) of this section and such newspaper
publication.

(e) The petitioners shall bear the expense of publication of
the notice, the meeting and the mailing of the proposed order, as
requested by subsection (i') of this section.

(f) After the public meeting and before the governing body
may adopt an order creating a resort area district, the governing
body shall, using reasonable efforts, mail a true copy of the
proposed order creating the resort area district to the owners of
real property in the proposed district as provided in subsection
(g) of this section and shall post copies of such proposed order
in multiple, conspicuous public locations within such proposed
district. Unless waived in writing, any petitioning owner of real
property shall have thirty days from mailing of the proposed
order in which to withdraw his or her signature from the petition
in writing prior to the vote of the governing body on such order.
If any signatures on the petition are so withdrawn, the governing
body may adopt the proposed order only upon certification by
the petitioners that the petition otherwise continues to meet the
requirements of this article. If all petitioning owners of real
property waive the right to withdraw their signatures from the
petition, then the governing body may immediately adopt the
order.

(g) For purposes of the mailing of each notice to owners of
real property required by this section, reasonable efforts shall be
made to mail such notice to all owners of real property proposed
to be included within such resort area district using the real
property tax records and land books of the county in which such
proposed district is located and any lists maintained by a resort
operator or homeowners association within such proposed
district. Such notice shall be also mailed to each president of a homeowners association, if any, located within a proposed district which has registered with a resort operator to receive such information. Immaterial defects in the mailing of such notices shall not affect the validity of such notices.

§7-25-7. Creation of resort area district; resort area district to be a public corporation.

(a) Each resort area district shall be created by adoption of an order by the governing body.

(b) From and after the date of the adoption of the order creating a resort area district, it shall thereafter be a public corporation, but without any power to levy or collect ad valorem taxes.


Each resort area district may:

(a) Have and use a corporate seal, and alter the same:

(b) Sue and be sued, and be a party to suits, actions and proceedings;

(c) Purchase insurance;

(d) Enter into agreements, contracts or other transactions with any person or governmental agency necessary or incident to the provision of services or the development, planning, construction, acquisition or improvement of a project or for the operation, maintenance or disposition of a project or for any other services required by a project, or to carry out any purposes of the district;

(e) Establish a bank account or accounts in its name;
(f) Design, plan, finance, develop, construct, acquire, extend, improve and complete a project or projects;

(g) Upon following the procedures set forth in this article, assess the cost of all or any portion of a project on real property located within the resort area district;

(h) Accept from any public or private source appropriations, grants, gifts, bequests, devises, loans, contributions and any other benefits available for use in furtherance of district purposes, and to use or dispose of the same to carry out district purposes;

(i) Expend funds to pay the costs of providing services within the district and to acquire, or construct part of a project on property located within or outside of a district, and for any work undertaken thereon, as may be necessary or incident to the completion of a project;

(j) Enter into agreements with the county within which the resort area district is located to plan, develop, construct, acquire or improve a project jointly;

(k) Borrow money and incur indebtedness and other obligations and evidence the same by certificates, notes or debentures: Provided, That such indebtedness shall not exceed the annual budget for the Resort area district without the approval of the property owners at a meeting called for such purpose, a majority of those voting shall constitute approval. Voting may be in person, by mailed ballot, by proxy or by electronic means;

(l) Raise funds by the issuance and sale of assessment bonds and resort service fee bonds: Provided, That the source and sales of bonds shall be approved at a meeting of the property owners called for such purpose. A majority of those voting shall
constitute approval. Voting at such meeting may be done in
person, by mailed ballot, by proxy or by electronic means;

(m) Annually, on or before June 7, certify to the sheriff of
the county in which the property is located the assessments
granted against all property in the district for inclusion in the tax
ticket;

(n) Charge interest and levy fines and penalties on unpaid
assessments;

(o) Create and enforce liens for unpaid assessments;

(p) Adopt bylaws not inconsistent with law;

(q) Implement, administer and collect a resort service fee for
the purpose of providing funds for the provision of services and
to design, plan, finance, develop, construct, acquire, extend,
improve and complete a project or projects within a resort area
district;

(r) Acquire, own or hold, in its corporate name, real or
personal property, including easements and rights-of-way, by
purchase, lease, gift or otherwise, within or without a resort area
district for district purposes, as well as obtain options for the
acquisition of real property;

(s) Provide services necessary to protect the health and
welfare of residents in a resort area district and the value of
property therein and to enter into agreements with any
governmental agency, public or private agency, institution or
person for the furnishing of such services;

(t) Provide for fire protection service;

(u) Provide for the public safety, including the appointment
of resort area rangers;
(v) Provide for public recreation by means of parks, including, but not limited to, playgrounds, golf courses, swimming pools, skating rinks or recreation buildings;

(w) Provide for the opening, widening, extending, straightening and surfacing in whole, or in part of, any street and snow removal or clearance for the same or other roads or streets;

(x) Provide for the construction and improvement of street lights, bridges, culverts, curbs, gutters, drains and works incidental to any street improvement; and

(y) Do any and all other things necessary to carry out the purposes of this article and not in violation of the Constitution of this state as may be necessary or incident to the provision of services or the construction and completion of a project.


The official name of a resort area district created under the provisions of this article may contain the name of the resort area or county in which it is located.

§7-25-10. Resort area boards.

(a) The powers of each resort area district shall be vested in and exercised by a resort area board which shall be composed of seven members, the composition of which shall be as set forth in subsection (b) of this section. Board members need not be residents of the district or landowners, except where specifically required otherwise. For purposes of this section, “residential, improved real property” includes, but is not limited to, condominium units, townhouses and single-family residences.

(b) The composition of a resort area board shall be as follows:
(1) Three board members shall be owners of or representatives of owners of residential, improved real property located within the resort area district;

(2) Two board members shall be representatives of the resort operator or operators located within the resort area district;

(3) One board member shall be an owner or a representative of owners of commercial business property located within the resort area district; and

(4) One board member shall be an owner or a representative of owners of unimproved, developable real property located within the resort area district.

(c) For purposes of this section, if a parcel of real property is owned by one or more entities (such as a corporation, limited liability companies, or other entity), then the following are also eligible to serve on the board as an owner with respect to such parcel: (1) Any person having an ultimate beneficial interest in the parcel, whether directly or indirectly and regardless of the number of intermediate ownership entities; and (2) any person designated at the outset of the election as authorized, by an owning entity, to serve on the board as an owner for that particular parcel. Nothing in this provision, however, creates any additional voting rights to the owners of a single parcel of real property, and each parcel of real property shall be entitled to only one vote, regardless of the number of owners participating in ownership of the parcel. Furthermore, nothing in this provision authorizes the owners of real property of one type (such as the resort operator, owners of residential improved real estate, or owners of unimproved, developable real estate) to vote regarding a board position reserved to another ownership category.

(d) The board members shall be elected for terms of four years each and thereafter until their respective successors have
been elected and have been qualified, except, that of the board members elected at the initial election meeting, two shall serve for a term of two years, two shall serve for a term of three years and three shall serve for a term of four years. At the first meeting of the board, the board members shall determine by lot which of them shall serve the terms less than four years. Each succeeding term is four years. Board members may be reelected for any number of terms. In the event a board member who is required to own real property within the district to be eligible for such board position no longer owns real property within the district, such member may serve out the remainder of his or her term.

(e) Only owners of real property, including owners of commercial business property, located within the district shall be eligible to vote in elections for board members.

(f) Elections for board members shall be held in accordance with bylaws adopted by the board, but section eleven of this article shall govern the initial election of board members. Voting shall be in person, by mailed ballot, by proxy or by electronic means. The voting restrictions set forth in subsections (d) and (e) of section eleven of this article shall apply to all board elections and may not be altered.

(g) Before entering upon the performance of his or her duties, each member shall take and subscribe to the oath required by Section five, Article IV of the Constitution of this state.

(h) In the event that a board vacancy arises before the scheduled end of a board member's term, vacancies on the board shall be filled for the remainder of the unexpired term of the member whose office shall be vacant and such appointment, pursuant to the procedures set forth in subsection (r) of this section. Any board member may be removed by the board in case of incompetency, neglect of duty, gross immorality or malfeasance in office, upon a unanimous vote of the remaining
six board members. A vote of four board members is sufficient to schedule and conduct an election to fill an unexpired board member’s term. Any other action of the board taken while one or more board positions are vacant must be unanimously approved by a board which is comprised of at least six active serving board members.

(i) The board shall organize within thirty days following the first election of board members and annually thereafter at its first meeting after January 1, of each year by selecting one of its members to serve as chairman, one to serve as treasurer and one to serve as secretary. The secretary, or his or her designee, shall keep a record of all proceedings of the board which shall be available for inspection as other public records and the treasurer, or his or her designee, shall maintain records of all financial matters relating to the resort area district, which shall also be made available for inspection as other public records. The secretary and treasurer shall perform such other duties pertaining to the affairs of the resort area district as shall be prescribed by the board.

(j) The initial board shall adopt bylaws for the district; Provided, That the adoption of such bylaws and any subsequent amendments thereto shall require approval by six sevenths of the board.

(k) The members of the board, and the chairman, secretary and treasurer thereof, shall make available, at all reasonable times and upon reasonable notice, all of its books and records pertaining to the resort area district’s operation, finances and affairs for inspection and audit. The board shall meet at least semiannually.

(l) A majority of the members of the board constitutes a quorum and meetings shall be held at the call of the chairman.
Board members may vote either in person, by telephone or by electronic means.

(m) Staff, office facilities and costs of operation of the board may be provided by the county which created the resort area district or by contract and said costs of operations shall be funded from resort service fees collected within the district or any other source.

(n) The chairman shall preside at all meetings of the board and shall vote as any other members of the board, but if he or she should be absent from any meeting the remaining members may select a temporary chairman, and if the member selected as chairman resigns as chairman or ceases for any reason to be a member of the board, the board shall select one of its members to serve as chairman until the next annual organizational meeting.

(o) The board shall, by resolution, determine its own rules of procedure, fix the time and place of its meetings and the manner in which special meeting may be called. The members of the board shall not be personally liable or responsible for any obligations of the resort area district or the board but are answerable only for willful misconduct in the performance of their duties.

(p) The members of the board shall serve without compensation but shall receive reimbursement for actual and necessary expenses incurred in connection with the performance of their duties.

(q) Every board member who handles public funds or property, and every other officer or employee of a resort area district of whom it shall be required, shall, unless otherwise provided by law, give bond, with good security, to be approved by the board, and in such penalty as such board, conditioned
upon the faithful discharge of the duties of his or her office or employment and the faithful accounting for and paying over, as required by law, of any funds or property coming into his or her possession.

(r) Vacancies on the board shall be filled by a special election within 120 days of the vacancy, on a date specified by the board, which shall not be less than 45 days sooner than publication of notice of the election. The publication process for an election to fill a vacancy shall be the same as set forth in subsections (c), (d) and (e) of section 11 of this article, and only those owners eligible to vote for the board member whose departure from office caused the vacancy shall be eligible to vote to replace the member. Without limiting the foregoing, and by way of example, only owners of improved residential property may vote to fill a vacancy created by the departure from office of a board member elected by that class of owner.

Notwithstanding the provisions of this subsection, a vacancy in the office of board as to a board member elected or appointed as a resort operator representative, may be filled by direct appointment of the resort operator, rather than by election, if only one resort operator exists in the district.

§7-25-11. Election procedure for initial members of resort area board; subsequent elections; elections and procedures to fill board vacancies.

(a) Within ninety days of the adoption of the order creating the resort area district, a public meeting shall be held at which elections for the initial members of the board shall be held. Such meeting shall be held at a location within the district not less than twenty days after the publication of the notice required by subsection (b) of this section.

(b) Prior to the meeting required by this section, the petitioners for the creation of the resort area district shall, using
reasonable efforts, cause notice of the initial election meeting to be given to all owners of real property, including owners of commercial business property, located within the district. Such notice shall be mailed to each owner of real property included in the resort area district as provided in subsection (h) of this section, posted in multiple, conspicuous public locations within such district and published at least thirty days prior to the date of the meeting as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code and the publication area for such publication shall be the resort area district. The notice shall provide, at a minimum, the following information:

(1) The purpose of the meeting;

(2) Descriptions of the board positions;

(3) A statement that only owners of real property, including owners of commercial business property, located within the district are eligible to vote in such election;

(4) The location of the meeting; and

(5) The date and time of the meeting.

(c) At the meeting required by this section, nominations shall be made for each board position. Persons nominated for board positions shall meet the criteria provided for each board position as set forth in subsection (b), section ten of this article. Nominations shall be made for each board position in the following manner:

(1) Only owners of residential, improved real property located within the resort area district may nominate persons for the three board positions provided for owners of or representatives of owners of residential, improved real property located within the resort area district;
39 (2) Only representatives of the resort operator or resort operators may nominate persons for the two board positions provided for representatives of the resort operator or resort operators located within the resort area district;

43 (3) Only owners of commercial business property located within the resort area district may nominate persons for the board position provided for an owner of or a representative of owners of commercial business property located within the resort area district; and

48 (4) Only owners of unimproved, developable real property located within the resort area district may nominate persons for the board position provided for an owner of or a representative of owners of unimproved, developable real property located within the resort area district.

(d) Following board member nominations, a vote shall be taken by written ballot for board members to be elected, but owners of any class of property may grant proxies to any person to cast the owner's ballot as if the owner were present in person. Voting shall occur in the following manner:

58 (1) Only owners of residential, improved real property located within the resort area district may vote for the three board positions provided for owners of or representatives of owners of residential, improved real property located within the resort area district. Each owner is entitled to one vote per unit or parcel of residential, improved real property he or she owns;

64 (2) Only a representative of each resort operator may vote for the two board positions provided for representatives of the resort operator or resort operators located within the resort area district;

68 (3) Only owners of commercial business property located within the resort area district may vote for the board position
provided for an owner of or a representative of owners of commercial business property located within the resort area district. Each owner is entitled to one vote per unit of commercial business property he or she owns; and

(4) Only owners of unimproved, developable real property located within the resort area may vote for the board position provided for an owner of or a representative of owners of unimproved, developable real property located within the resort area district. Each owner is entitled to one vote per parcel of unimproved, developable real property that he or she owns.

(e) For purposes of voting in the initial election and in all subsequent elections for board members:

(1) The owners of each parcel or unit of real property are entitled one vote, irrespective of the number of owners of such parcel or unit;

(2) Fractional voting shall not be permitted; and

(3) The vote pertaining to a parcel or unit shall be cast in accordance with the direction of the person or persons holding the majority interest in such parcel or unit, and in the event there is no majority, such vote shall be forfeited.

(f) Each board member shall be elected by a majority of the votes cast for such board position.

(g) The petitioners for the creation of the resort area district shall be responsible for the costs of the initial election and meeting required by this section.

(h) For purposes of the mailing of notice to owners of real property required by this section, reasonable efforts shall be made to mail such notice to all owners of real property included within such resort area district using the real property tax records
and land books of the county in which such district is located and
any lists maintained by a resort operator or homeowners
association within such district. Such notice shall be also mailed
to each president of a homeowners association, if any, located
within a district which has registered with a resort operator to
receive such information. Immaterial defects in the mailing of
such notices shall not affect the validity of such notices.

§7-25-12. Resort area districts authorized to levy resort service
fee; procedure for implementation and cessation of
resort service fee; abstract and notice of implementing
resolution; rate of resort service fee; permissible uses;
limitations on imposition.

(a) Resort area districts are hereby authorized to impose a
resort service fee within such district by following the
procedures set forth in this section.

(b) No resort service fee shall be implemented within a
resort area district without approval by six sevenths of the board.
If six sevenths of the board has approved the implementation of
a resort service fee, the board shall adopt a resolution specifying
the following:

(1) The rate or rates of the resort service fee and the classes
of goods and services to which each rate shall apply;

(2) The services and projects authorized to be funded from
the proceeds of the resort service fee; and

(3) The effective date of the resort service fee: Provided,
That the resort service fee shall not take effect less than ninety
days following the adoption of the resolution.

(c) A board may repeal the resolution authorizing
implementation of a resort service fee upon approval by six
sevenths of the board: Provided, That such resolution may not be
repealed if a district has outstanding resort service fee bonds and
the terms of such bonds restrict the repeal of such resolution.

(d) After the adoption of a resolution regarding
implementation of a resort service fee, an abstract of such
resolution, determined by the board to contain sufficient
information as to give notice of the contents of such resolution,
and notice that such resolution has been adopted shall be posted
in multiple, conspicuous public locations within such district and
published as a Class II legal advertisement in compliance with
the provisions of article three, chapter fifty-nine of this code and
the publication area for such publication shall be the resort area
district.

(e) The rate of a resort service fee shall not exceed five
percent of the purchase price of the goods or services upon
which the resort service fee is levied: Provided, That a district
may impose the resort service fee at a rate less than five percent.

(f) A resort area district may levy a resort service fee at
different rates upon different classes of goods and services.

(g) The proceeds generated by a resort service fee shall
solely be used for:

(1) Paying all or a portion of the costs of providing a service
or services within the district; or

(2) Paying all or a portion of the costs of a project or
projects, including payment of debt service on resort service fee
bonds;

(3) However, a minimum of twenty-five percent of all
service fees shall be placed in a reserve account and shall not be
used except in compliance with the bylaws.

(h) A resort service fee shall not be imposed upon goods and
services sold for resale.
§7-25-13. Resort service fee administration.

(a) Not less than thirty days prior to the date that the resort service fee becomes effective, the board shall adopt an administrative resolution governing the collection and reporting of the resort service fee. This administrative resolution may be amended at any time as may be necessary to effectively administer the resort service fee.

(b) The administrative resolution shall specify:

1. The time that the resort service fees collected by businesses are to be remitted to the district;
2. The office, officer or employee of the district responsible for collecting and accounting for the resort service fee receipts;
3. The office, officer or employee of the district responsible for enforcing collection of resort service fees and the methods and procedures to be used in enforcing the collection of resort service fees due; and
4. The penalties for failure to report resort service fees due, failure to remit resort service fees due and violation of the administrative resolution.

(c) The administrative resolution may include:

1. Further clarification and specificity in the categories of goods and services that are subject to the resort service fee consistent with subdivision (q), section three of this article; and
2. Other administrative details necessary for the efficient and effective administration of the resort service fee.
§7-25-14. Implementation and provision of services within resort area district; adoption of annual budget.

(a) Upon the creation of a resort area district and organization of its board, a resort area district may provide for the provision of services by the adoption of a resolution.

(b) A resolution providing for the provision of services shall set forth:

(1) The services to be offered;

(2) The sources of funding for such services; and

(3) All other information necessary for the administration of providing such services.

(c) A resolution providing for the provision of services may be amended from time to time, as deemed necessary by the board.

(d) Services to be offered by a resort area district shall not be inconsistent with those permitted under the bylaws of the district or this article and shall not include a service for which the resort operator charges a fee or obtains revenue, such as operation or maintenance of a ski slope or ski lift.

(e) The board shall adopt an annual budget for the district each year. Such budget shall require approval by six sevenths of the board to be adopted. Funds of the resort area district may not be expended on any service or project in excess of the amounts specified in the budget, and no material expenditures may occur on services or projects not authorized by the budget, except upon approval of at least six sevenths of the board.

(f) In setting the budget or any amendment to it, and in approving any anticipated obligation, undertaking and related
expenditure of any funds received from any resort service fee or
from any assessment, the Board shall be empowered to condition
the an expenditure or undertaking, in whole or part, upon the
receipt of grants, loans or contribution of funds by or from other
sources or parties, including the resort operator, any commercial
interests, and any governmental entity. In the event that any
such conditions established by the Board are not met, the
expenditure and any related conditionally approved undertaking
shall not be required.

§7-25-15. Authorization to implement assessments for projects;
procedures for implementing assessments; by-laws to
provide additional procedures for implementation of
assessments; notice to property owners before
implementation of assessments for projects; affidavit
of publication.

(a) An assessment for a project within a resort area district
shall be authorized by the adoption of a resolution by the board.
A resolution authorizing an assessment shall only be adopted
after following the procedures set forth in this section.

(b) The bylaws of a district:

(1) Shall provide the procedures not addressed in this section
for the implementation of an assessment to pay the costs of a
project: Provided, That such procedures must be consistent with
constitutional standards and all other laws and regulations of this
state.

(2) May provide for the maximum amount of assessments
which may be levied against a parcel of real property within the
district.

(c) Fifty-one percent or more of the owners of real property
to be benefitted by a project may petition the board to implement
an assessment to pay the costs of such project. A board may on
its own initiative propose an assessment to pay the costs of a project upon approval by six sevenths of the board.

(d) Upon following the procedures provided in this section and a resort area district's bylaws for the implementation of an assessment to pay the costs of a project, the board may, after giving notice to all real property owners and holding a public meeting as required by this section, adopt a resolution authorizing such assessment to pay the costs of a project upon approval by six sevenths of the board.

(e) Before the adoption of a resolution authorizing an assessment to pay the costs of a project, the board shall cause notice to be given to the owners of real property located within the resort area district that such resolution will be considered for adoption at a public meeting of the board at a date, time and place named in the notice and that all persons at that meeting, or any adjournment thereof, shall be given an opportunity to protest or be heard concerning the adoption or rejection of the resolution.

(f) An assessment shall not be authorized by the board if at the public meeting required by this section written protest is filed by at least twenty-five percent of the owners of the real property within the district to be benefitted by the proposed project and subject to the assessment. In the event of such protest, the proposed assessment in the same form may not be reconsidered by a board for a period of at least one year from the date of the public meeting.

(g) At least thirty days prior to the date of the public meeting, the notice required by this section shall, using reasonable efforts, be mailed to the owners of real property to be assessed for a proposed project as provided in subsection (k) of this section, posted in multiple, conspicuous public locations within such district and published as a Class II legal
advertisement in compliance with the provisions of article three,
chapter fifty-nine of this code. The publication area for such
publication shall be the resort area district.

(h) An affidavit of publication of the notice made by
newspaper publisher, or a person authorized to do so on behalf
of such publisher, and a copy of the notice shall be made part of
the minutes of the board and spread on its records of the meeting
described in the notice. The service of said notice upon all
persons owning any interest in any real property located within
the resort area district shall conclusively be deemed to have been
given upon completion of mailing as provided in subsection (k)
of this section and such newspaper publication.

(i) After the public meeting and before the board may adopt
a resolution authorizing implementation of assessments, the
board shall, using reasonable efforts, mail a true copy of the
proposed resolution authorizing implementation of an
assessment to the owners of real property in the resort area
district as provided in subsection (k) of this section.

(j) A board shall make available to the owners of real
property within the district a list of all owners of real property
within the district for the purposes of enabling such owners of
real property to solicit support for a petition proposing or a
protest against an assessment.

(k) For purposes of the mailing of each notice to owners of
real property required by this section, reasonable efforts shall be
made to mail such notice to all owners of real property required
to receive notice under this section using the real property tax
records and land books of the county in which such district is
located and any lists maintained by a resort operator or
homeowners association within such district. Such notice shall
be also mailed to each president of a homeowners association, if
any, located within a district which has registered with a resort
operator to receive such information. Immaterial defects in the mailing of such notices shall not affect the validity of such notices.


(a) Prior to beginning construction on a project, the board shall provide by resolution for the construction of the project and shall also provide in the same or subsequent resolutions for the supervision of such work by a professional engineer, governmental agency or any other person designated by the board. The board may provide for the construction of the project by one of the two following methods or any combination thereof:

(1) If there exists a governmental agency with the experience, knowledge and authority to construct the project, the board may elect to enter in a contract with such agency for the construction of all, or a part of, the project or for any other service necessary or incident to the construction of the project, in which case such governmental agency shall be responsible for entering into contracts, subject to the board’s approval, with such other persons as may be necessary or incident to the construction of the project; or

(2) The board may elect to enter into one or more contracts with such contractors and other persons as may be necessary or incident to the construction of the project, in which case it shall solicit competitive bids. All contracts for work on any project, the expense of which will exceed $50,000, shall be awarded to the lowest qualified responsible bidder who shall furnish a sufficient performance and payment bond. The board may reject any and all bids and if it rejects all bids, notices shall be published as original required before any other bids may be received. The board may let portions of the work necessary to complete a project under different contracts.
(b) The resolution described in subsection (a) of this section shall also provide for payment of the cost of the project.

c) Prior to the construction of the project, the board shall obtain such permits and licenses required by law for the construction and operation of the project.

d) No project shall be undertaken by a district that includes a ski slope or ski lift.

§7-25-17. Notice to property owners of assessments; correcting and laying assessments; report on project completion.

(a) Prior to the issuance of assessment bonds or the levying of any assessments, the board shall cause a report to be prepared describing each lot or parcel of land located within the resort area district to be assessed for the project and setting forth the total cost of the project based on the contract with the governmental agency, the accepted bid or bids, or a cost estimate certified by a professional engineer, and all other costs incurred prior to the commencement of construction and the future administrative costs, and the respective amounts chargeable upon each lot or parcel of land and the proper amount to be assessed against the respective lots or parcels of land with a description of the lots and parcels of land as to ownership and location. If two or more different kinds of projects are involved, the report shall set forth the portion of the assessment attributable to each respective project. The board shall thereupon give notice as specified below to the owners of real property to be assessed that on or after a date specified in the notice an assessment will be deemed granted against the property. The notice shall state that the owner of assessed property, or other interested party, may on said date appear before the board to move the revision or correction of the proposed assessment and shall show the total cost of the project, whether the assessments
will pay for all, or a part of, the total cost of the project and the lots or parcels of property to be assessed and the respective amounts to be assessed against such lots or parcels, with a description of the respective lots and parcels of land as to
ownership and location. The notice shall be mailed, using reasonable efforts, to the owners of real property to be assessed for a proposed project as provided in subsection (c) of this section, posted in multiple, conspicuous public locations within such district and published as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication is the resort area district. On or after the date so advertised, the board may revise, amend, correct and verify the report and proceed by resolution to establish the assessments as corrected and verified and shall certify the same to the governing body which created the district.

(b) Upon completion of a project, the board shall prepare a final report certifying the completion of the project and showing the total cost of the project and whether the cost is greater or less than the cost originally estimated. If the total cost of the project is greater or less than the cost shown in the report prepared prior to construction, the board may revise the assessment charged on each lot or parcel of property pursuant to subsection (a) of this section to reflect the total cost of the project as completed, and in doing so shall, in the case of an assessment increase only, follow the same procedure with regard to notice and providing each owner of assessed property the right to appear before the board to move for the revision or correction of such proposed reassessment as required for the original assessment. If the assessment is decreased, the board shall, by resolution and written notice to the sheriff of the county in which the resort area district is located, cause the next installment or installments or assessments then due and payable by each affected property owner to be reduced pro rata, and shall provide written notice to
such property owners of the amount of such decrease by the
deposit of such notice in the United States mail, postage prepaid.

(c) For purposes of the mailing of each notice to owners of
real property required by this section, reasonable efforts shall be
made to mail such notice to all owners of real property required
to receive notice under this section using the real property tax
records and land books of the county in which such district is
located and any lists maintained by a resort operator or
homeowners association within such district. Such notice shall
be also mailed to each president of a homeowners association, if
any, located within a district which has registered with a resort
operator to receive such information. Immaterial defects in the
mailing of such notices shall not affect the validity of such
notices.

§7-25-18. Exemption of public property from assessments.

No lots or parcels of land owned or controlled by the United
States, this state, any municipality, county, county board of
education, resort area district or other public body shall be
subject to any assessments under this article.

§7-25-19. Assessment bonds and resort service fee bonds; sinking
fund for assessment bonds and resort service fee
bonds; tax exemption.

(a) For constructing and acquiring any project authorized by
this article the board of any such district is hereby authorized to
borrow money, from time to time, and in evidence thereof issue
the bonds of such district, payable from the proceeds of the
assessments or resort service fees granted under this article. Such
bonds shall be issued in one or more series, may bear such date
or dates, may mature at such time or times not exceeding thirty
years from their respective dates, shall be fully registered as to
principal and interest in the name of the bondholder with a
10 certificate of authentication, may bear interest at such rate or
11 rates not exceeding eighteen percent per annum, may be payable
12 at such times, may be executed in such manner, may be payable
13 at such place or places, may be subject to such terms of
14 redemption with or without premium, may be declared or
15 become due before maturity date thereof, may be authenticated
16 in any manner, and upon compliance of such conditions, may
17 contain such terms and covenants as provided in the resolution
18 or resolutions of the board. All such bonds shall be, and shall be
19 treated as, negotiable instruments for all purposes. Bonds
20 bearing the signatures of officers and offices on the dates of the
21 signing thereof shall be valid and binding for all purposes
22 notwithstanding that before the delivery thereof any or all such
23 persons whose signatures appear thereon shall have ceased to be
24 such officers. Notwithstanding the requirements or provisions of
25 any other law, any such bonds may be negotiated or sold in such
26 manner at such time or times and at such price or prices as is
27 found by the board to be most advantageous. Any resolution or
28 resolutions providing for the issue of such bonds may contain
29 covenants and restrictions upon the issuance of additional bonds
30 thereafter as may be deemed necessary or advisable for the
31 assurance of the payment of the bonds thereby authorized.

32 (b) At or before the time of issuance of any bonds under this
33 article, the board shall by resolution provide for the creation of
34 a sinking fund and for payments into such fund from the
35 assessments or resort service fees granted under this article in
36 such amount as may be sufficient to pay the accruing interest and
37 retire the bonds at or before the time each will respectively
38 become due and to establish or maintain reserves therefor. All
39 sums which are or should be, in accordance with such
40 provisions, paid into such sinking fund shall be used solely for
41 the payment of interest and for the retirement of such bonds at or
42 prior to maturity as may be provided or required by such
43 resolution.
§7-25-20. Indebtedness of resort area district.

No constitutional or statutory limitation with respect to the nature or amount of or rate of interest on indebtedness which may be incurred by municipalities, counties or other public or governmental bodies shall apply to the indebtedness of a resort area district. No indebtedness of any nature of a resort area district shall constitute an indebtedness of any county creating and establishing such district or a charge against any property of said counties but shall be paid solely from the resort service fee or assessments which the resort area district is authorized to impose on the owners of the property within the district by this article. No indebtedness or obligation incurred by a resort area district shall give any right against any member of the governing body or any member of the board of a resort area district.

§7-25-21. Payment of assessments to sheriff; report to resort area district; collection of delinquent assessments.

(a) The assessments authorized to be imposed pursuant to this article will not be considered to be ad valorem taxes or the equivalent of ad valorem taxes under any provision of this code: Provided, That for the exclusive purposes of collection of the assessments authorized to be imposed under this article and enforcement of the assessment liens created by section twenty-two of this article, the provisions of chapter eleven-a of this code shall apply as if the assessments were taxes as that term is defined in section one, article one of that chapter: Provided, That any property subject to assessments may not be sold to satisfy such lien.
(b) The sheriff shall promptly deposit all assessments upon receipt thereof in a segregated account established by the sheriff for such purpose and shall maintain a record of the assessments so received. Each month, the sheriff shall pay all moneys collected for the resort area district into the district treasury or, if the sheriff consents, to a trustee for the benefit of bondholders if assessment bonds are issued by the resort area district.

(c) Payments to the resort area district shall be made in the time set forth in section fifteen, article one, chapter eleven-a of this code and the sheriff shall be entitled to take a commission for collection of the assessments on behalf of the resort area district, as provided in section seventeen of said article.

(d) For each tax year, the sheriff will prepare and deliver to the board of each resort area district located in the county, a statement setting forth the aggregate amount of assessments received for such district and the name of any property owner who failed to pay the assessments due and payable for the period in question. The report shall be due on or before August 1, of the following year.

(e) The sheriff is authorized to collect delinquent assessments and enforce the liens created in section twenty-two of this article as if those assessments were delinquent real property taxes and the taxes are tax liens using the enforcement tools provided in articles two and three, chapter eleven-a of this code.

§7-25-22. Liens; recording notice of liens; priority; release of lien; notice to future property owners.

(a) With the exception of property exempt from assessment pursuant to section eighteen of this article, there shall be a lien on all real property located within the resort area district for the assessments imposed by section seventeen of this article, which
5 lien shall attach to those parcels made subject to the assessment on the date specified in the notice to property owners. A notice of the liens of said assessments referring to the assessing resolution and setting forth a list of the property assessed, described respectively as to amounts of assessment, ownership and location of the property, shall be certified, by the chairman and secretary of the board, to the clerk of the county commission of the county wherein the project is located. The county clerk shall record the notice of such lien in the appropriate trust deed book or other appropriate county lien book and index the same in the name of each owner of real property assessed. From the date of an assessment, the trustee, for the benefit of bondholders if assessment bonds are issued by the resort area district, and/or the district shall have such lien and shall be entitled to enforce the same in its, his, her or their name to the extent of the amount, including principal and interest and any penalty due for any failure to pay an installment when due, of such assessments and against the property to which the assessment applies, as to any assessment not paid as and when due. The trustee or the district, as an alternative to the enforcement provision set forth in section twenty-one of this article, are granted all legal remedies as are necessary to collect the assessment. Such assessments shall be and constitute liens for the benefit of the resort area district or the trustee, for the benefit of bondholders if assessment bonds are issued by the resort area district, upon the respective lots and parcels of land assessed and shall have priority over all other liens except to those for land taxes due the state, county and municipality and except any liens for preexisting special assessments provided under this code. If any assessment is revised in accordance with this article, the lien created by this section shall extend to the assessment so revised and shall have the same priority as the priority of the lien created upon the laying of the original assessment. Such assessments and interest thereon shall be paid by the owners of the property assessed as and when the installments are due. Following the payment in full
of any assessment bonds including any interest thereon, the chairman and secretary of the board shall execute a release of all liens and shall certify the same to county clerk for recondition.

(b) Following the grant of any assessment on property as provided in this article, the seller of such property shall provide reasonable disclosure to the buyer in the real estate contract that an assessment has been granted on the property, the amount of the assessment and the duration of the assessment.

§7-25-23. Resort Area Rangers.

(a) A board is hereby authorized to appoint bona fide residents of this state to act as resort area rangers within its respective resort area district upon any premises which are part of said district, subject to the conditions and restrictions imposed by this section.

(b) Before performing the duties of ranger, each appointed person shall qualify for the position of ranger in the same manner as is required of county officers by the taking and filing of an oath of office as required by section three, article one, chapter six of this code and by posting an official bond as required by section one, article two, chapter six of this code. To facilitate the performance of the duties of a ranger, a ranger may carry a firearm or other dangerous weapon while the ranger is on duty.

(c) It is the duty of any person appointed and qualified as a ranger hereunder to preserve law and order on any premises which are part of a resort area district. For this purpose, the ranger shall be considered to be a law-enforcement officer in accordance with the provisions of section one, article twenty-nine, chapter thirty of this code and, as to offenses committed within those areas, have and may exercise all the powers and authority and are subject to all the requirements and
responsibilities of a law-enforcement officer. The assignment of
rangers to the duties authorized by this section may not
supersede in any way the authority or duty of other peace
officers to preserve law and order on those premises.

(d) The salary of all rangers shall be paid by the board. The
board shall furnish each ranger with an official uniform to be
worn while on duty and shall furnish and require each ranger
while on duty to wear a shield with an appropriate inscription
and to carry credentials certifying the person’s identity and
authority as a ranger.

(e) The board at its pleasure may revoke the authority of any
ranger. The chairman of the board shall report the termination of
employment of a ranger by filing a notice to that effect in the
office of the clerk of the county in which the ranger’s oath of
office was filed and in the case of a ranger licensed to carry a
firearm or other dangerous weapon, by notifying the clerk of the
circuit court of the county in which the license for the firearm or
other dangerous weapon was granted.


Each resort area district shall cause an audit of its books and
accounts to be made at least once each fiscal year by an
independent certified public accountants, and the cost thereof
may be defrayed as an administrative cost. All books and records
of the resort area district shall be available for inspection by any
property owner during reasonable business hours.

§7-25-25. Notice of transfer of change in ownership of property
within resort area district.

After the resort area district has been formed and organized,
as a part of any bylaws, the district’s board shall promulgate
rules and regulations as a part of its bylaws which require timely
notice to the District whenever ownership of property within the
District has changed, along with any change in address for any notices required by this article. If a new property owner within the District fails to notify the district board of change in the property’s ownership, any notice provided by the District to the previous property owner’s last known address shall be deemed sufficient.

§7-25-26. Liberal construction.

This article being necessary for the public health, safety and welfare and economic development, it shall be liberally construed to effectuate the purpose hereof.

CHAPTER 30. PROFESSIONS AND OCCUPATIONS.

ARTICLE 29. LAW-ENFORCEMENT TRAINING AND CERTIFICATION.

§30-29-1. Definitions.

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

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

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

(3) “County” means the fifty-five major political subdivisions of the state;
(4) "Exempt rank" means any noncommissioned or commissioned rank of sergeant or above;

(5) "Governor's committee on crime, delinquency and correction" or "Governor's committee" means the Governor's committee on crime, delinquency and correction established as a state planning agency pursuant to section one, article nine, chapter fifteen of this code;

(6) "Law-enforcement officer" means any duly authorized member of a law-enforcement agency who is authorized to maintain public peace and order, prevent and detect crime, make arrests and enforce the laws of the state or any county or municipality thereof, other than parking ordinances, and includes those persons employed as campus police officers at state institutions of higher education in accordance with the provisions of section five, article four, chapter eighteen-b of this code, and persons employed by the Public Service Commission as motor carrier inspectors and weight enforcement officers charged with enforcing commercial motor vehicle safety and weight restriction laws although those institutions and agencies may not be considered law-enforcement agencies. The term also includes those persons employed as rangers by the Hatfield-McCoy Regional Recreation Authority in accordance with the provisions of section six, article fourteen, chapter twenty of this code, or by resort area districts in accordance with the provisions of section twenty-three, article twenty-five, chapter seven of this code although neither the authority nor any resort area district may be considered a law-enforcement agency: Provided, That the subject rangers shall pay the tuition and costs of training. As used in this article, the term "law-enforcement officer" does not apply to the chief executive of any West Virginia law-enforcement agency or any watchman or special natural resources police officer;
(7) "Law-enforcement official" means the duly appointed chief administrator of a designated law-enforcement agency or a duly authorized designee;

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

(9) "Subcommittee" or "law-enforcement professional standards subcommittee" means the subcommittee of the Governor's committee on crime, delinquency and correction created by section two of this article; and

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

CHAPTER 166

(Com. Sub. for S. B. 469 - Senators Jenkins, Kessler, Mr. President)

[Passed April 13, 2013; in effect ninety days from passage.]
[Approved by the Governor on April 29, 2013.]

AN ACT to amend and reenact §5-10-14 and §5-10-18 of the Code of West Virginia, 1931, as amended, all relating to service credit; providing for the purchasing of retroactive service credit by certain
employees; requiring payment of reinstatement interest in the Public Employees Retirement System in certain circumstances.

Be it enacted by the Legislature of West Virginia:

That §5-10-14 and §5-10-18 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 10. WEST VIRGINIA PUBLIC EMPLOYEES RETIREMENT ACT.

§5-10-14. Service credit; retroactive provisions.

1 (a) The Board of Trustees shall credit each member with the prior service and contributing service to which he or she is entitled based upon rules adopted by the Board of Trustees and based upon the following:

5 (1) In no event may less than ten days of service rendered by a member in any calendar month be credited as a month of service: Provided, That for employees of the State Legislature whose term of employment is otherwise classified as temporary and who are employed to perform services required by the Legislature for its regular sessions or during the interim between regular sessions and who have been or are employed during regular sessions or during the interim between regular sessions in seven consecutive calendar years, service credit of one month shall be awarded for each ten days employed in the interim between regular sessions, which interim days shall be cumulatively calculated so that any ten days, regardless of calendar month or year, shall be calculated toward any award of one month of service credit:

19 (2) Except for hourly employees, ten or more months of service credit earned in any calendar year shall be credited as a year of service: Provided, That no more than one year of service may be credited to any member for all service rendered by him
or her in any calendar year and no days may be carried over by a member from one calendar year to another calendar year where the member has received a full-year credit for that year; and

(3) Service may be credited to a member who was employed by a political subdivision if his or her employment occurred within a period of thirty years immediately preceding the date the political subdivision became a participating public employer.

(b) The Board of Trustees shall grant service credit to employees of boards of health, the Clerk of the House of Delegates and the Clerk of the State Senate or to any former and present member of the State Teachers Retirement System who have been contributing members in the Public Employees Retirement System for more than three years, for service previously credited by the State Teachers Retirement System and shall require the transfer of the member's accumulated contributions to the system and shall also require a deposit, with reinstatement interest as set forth in the Board's Rule, Refund, Reinstatement, Retroactive Service, Loan And Employer Error Interest Factors, 162 C. S. R. 7, of any withdrawals of contributions any time prior to the member's retirement. Repayment of withdrawals shall be as directed by the Board of Trustees.

(c) Court reporters who are acting in an official capacity, although paid by funds other than the county commission or State Auditor, may receive prior service credit for time served in that capacity.

(d) Active members who previously worked in CETA (Comprehensive Employment and Training Act) may receive service credit for time served in that capacity: Provided, That in order to receive service credit under the provisions of this subsection the following conditions must be met: (1) The member must have moved from temporary employment with the
participating employer to permanent full-time employment with
the participating employer within one hundred twenty days
following the termination of the member's CETA employment;
(2) the board must receive evidence that establishes to a
reasonable degree of certainty as determined by the board that
the member previously worked in CETA; and (3) the member
shall pay to the board an amount equal to the employer and
employee contribution plus interest at the amount set by the
board for the amount of service credit sought pursuant to this
subsection: Provided, however, That the maximum service credit
that may be obtained under the provisions of this subsection is
two years: Provided further, That a member must apply and pay
for the service credit allowed under this subsection and provide
all necessary documentation by March 31, 2003: And provided
further, That the board shall exercise due diligence to notify
affected employees of the provisions of this subsection.

(e)(1) Employees of the State Legislature whose terms of
employment are otherwise classified as temporary and who are
employed to perform services required by the Legislature for its
regular sessions or during the interim time between regular
sessions shall receive service credit for the time served in that
capacity in accordance with the following. For purposes of this
section, the term "regular session" means day one through day
sixty of a sixty-day legislative session or day one through day
thirty of a thirty-day legislative session. Employees of the State
Legislature whose term of employment is otherwise classified as
temporary and who are employed to perform services required
by the Legislature for its regular sessions or during the interim
time between regular sessions and who have been or are
employed during regular sessions or during the interim time
between regular sessions in seven consecutive calendar years, as
certified by the clerk of the house in which the employee served,
shall receive service credit of six months for all regular sessions
served, as certified by the clerk of the house in which the
employee served, or shall receive service credit of three months
for each regular thirty-day session served prior to 1971:

Provided, That employees of the State Legislature whose term
of employment is otherwise classified as temporary and who are
employed to perform services required by the Legislature for its
regular sessions and who have been or are employed during the
regular sessions in thirteen consecutive calendar years as either
temporary employees or full-time employees or a combination
thereof, as certified by the clerk of the house in which the
employee served, shall receive a service credit of twelve months
for each regular session served, as certified by the clerk of the
house in which the employee served: Provided, however, That
the amendments made to this subsection during the 2002 regular
session of the Legislature only apply to employees of the
Legislature who are employed by the Legislature as either
temporary employees or full-time employees as of January 1, 2002, or who become employed by the Legislature as temporary
or full-time employees for the first time after January 1, 2002.

Employees of the State Legislature whose terms of employment
are otherwise classified as temporary and who are employed to
perform services required by the Legislature during the interim
time between regular sessions shall receive service credit of one
month for each ten days served during the interim between
regular sessions, which interim days shall be cumulatively
calculated so that any ten days, regardless of calendar month or
year, shall be calculated toward any award of one month of
service credit: Provided further, That no more than one year of
service may be credited to any temporary legislative employee
for all service rendered by that employee in any calendar year
and no days may be carried over by a temporary legislative
employee from one calendar year to another calendar year where
the member has received a full year credit for that year. Service
credit awarded for legislative employment pursuant to this
section shall be used for the purpose of calculating that
member's retirement annuity, pursuant to section twenty-two of
this article, and determining eligibility as it relates to credited
service, notwithstanding any other provision of this section.

Certification of employment for a complete legislative session and for interim days shall be determined by the clerk of the house in which the employee served, based upon employment records. Service of fifty-five days of a regular session constitutes an absolute presumption of service for a complete legislative session and service of twenty-seven days of a thirty-day regular session occurring prior to 1971 constitutes an absolute presumption of service for a complete legislative session. Once a legislative employee has been employed during regular sessions for seven consecutive years or has become a full-time employee of the Legislature, that employee shall receive the service credit provided in this section for all regular and interim sessions and interim days worked by that employee, as certified by the clerk of the house in which the employee served, regardless of when the session or interim legislative employment occurred: And provided further, That regular session legislative employment for seven consecutive years may be served in either or both houses of the Legislature.

(2) For purposes of this section, employees of the Joint Committee on Government and Finance are entitled to the same benefits as employees of the House of Delegates or the Senate: Provided, That for joint committee employees whose terms of employment are otherwise classified as temporary, employment in preparation for regular sessions, certified by the legislative manager as required by the Legislature for its regular sessions, shall be considered the same as employment during regular sessions to meet service credit requirements for sessions served.

(f) Any employee may purchase retroactive service credit for periods of employment in which contributions were not deducted from the employee's pay. In the purchase of service credit for employment prior to the year 1989 in any department, including the Legislature, which operated from the General Revenue Fund and which was not expressly excluded from budget
appropriations in which blanket appropriations were made for
the state's share of public employees' retirement coverage in the
years prior to the year 1989, the employee shall pay the
employee's share. Other employees shall pay the state's share
and the employee's share to purchase retroactive service credit.
Where an employee purchases service credit for employment
which occurred after the year 1988, that employee shall pay for
the employee's share and the employer shall pay its share for the
purchase of retroactive service credit: Provided, That no
legislative employee and no current or former member of the
Legislature may be required to pay any interest or penalty upon
the purchase of retroactive service credit in accordance with the
provisions of this section where the employee was not eligible to
become a member during the years for which he or she is
purchasing retroactive credit or had the employee attempted to
contribute to the system during the years for which he or she is
purchasing retroactive service credit and the contributions would
have been refused by the board: Provided, however, That a
current legislative employee purchasing retroactive credit under
this section does so within twenty-four months of beginning
contributions to the retirement system or no later than December
31, 2013, whichever occurs last: Provided further, That once a
legislative employee becomes a member of the retirement
system, he or she may purchase retroactive service credit for any
time he or she was employed by the Legislature and did not
receive service credit. Any service credit purchased shall be
credited as six months for each sixty-day session worked, three
months for each thirty-day session worked or twelve months for
each sixty-day session for legislative employees who have been
employed during regular sessions in thirteen consecutive
calendar years, as certified by the clerk of the house in which the
employee served, and credit for interim employment as provided
in this subsection: And provided further, That this legislative
service credit shall also be used for months of service in order to
meet the sixty-month requirement for the payments of a
temporary legislative employee member's retirement annuity:

And provided further, That no legislative employee may be required to pay for any service credit beyond the actual time he or she worked regardless of the service credit which is credited to him or her pursuant to this section: And provided further, That any legislative employee may request a recalculation of his or her credited service to comply with the provisions of this section at any time.

(g)(1) Notwithstanding any provision to the contrary, the seven consecutive calendar years requirement and the thirteen consecutive calendar years requirement and the service credit requirements set forth in this section shall be applied retroactively to all periods of legislative employment prior to the passage of this section, including any periods of legislative employment occurring before the seven consecutive and thirteen consecutive calendar years referenced in this section. Provided, That the employee has not retired prior to the effective date of the amendments made to this section in the 2002 regular session of the Legislature.

(2) The requirement of seven consecutive years and the requirement of thirteen consecutive years apply retroactively to all legislative employment prior to the effective date of the 2006 amendments to this section.

(h) The Board of Trustees shall grant service credit to any former or present member of the State Police Death, Disability and Retirement Fund who has been a contributing member of this system for more than three years for service previously credited by the State Police Death, Disability and Retirement Fund if the member transfers all of his or her contributions from the State Police Death, Disability and Retirement Fund to the system created in this article, including repayment of any amounts withdrawn any time from the State Police Death, Disability and Retirement Fund by the member seeking the
transfer allowed in this subsection: Provided, That there shall be
added by the member to the amounts transferred or repaid under
this subsection an amount which shall be sufficient to equal the
contributions he or she would have made had the member been
under the Public Employees Retirement System during the
period of his or her membership in the State Police Death,
Disability and Retirement Fund, excluding contributions on
lump sum payment for annual leave, plus interest at a rate
determined by the board.

(i) The provisions of section twenty-two-h of this article are
not applicable to the amendments made to this section during the
2006 regular session.

§5-10-18. Termination of membership; reentry.

(a) When a member of the retirement system retires,
withdraws his or her accumulated contributions, or dies, he or
she ceases to be a member. When a member leaves the employ
of a participating public employer for any reason other than
retirement or death, and withdraws his or her accumulated
contributions from the system, he or she ceases to be a member
and forfeits service credited to him or her at that time. If he or
she becomes reemployed by a participating public employer he
or she shall be reinstated as a member of the retirement system
and his or her credited service last forfeited by him or her shall
be restored to his or her credit: Provided, That he or she must be
reemployed for a period of one year or longer to have the service
restored: Provided, however, That he or she returns to the
members' deposit fund the amount, if any, he or she withdrew
from the fund, together with reinstatement interest as set forth in
the Board's Rule, Refund, Reinstatement, Retroactive Service,
Loan And Employer Error Interest Factors. 162 C. S. R. 7, on the
withdrawn amount from the date of withdrawal to the date of
repayment, and that the repayment begins within two years of
the return to employment and that the full amount is repaid within five years of the return to employment. Any failure to repay the full amount in accordance with this section shall be treated as an overpayment or excess contribution subject to section forty-four of this article.

(b) The Preajera Center for Mental Health Services, Valley Comprehensive Mental Health Center, Westbrook Health Services and Eastern Panhandle Mental Health Center, and their successors in interest, shall provide for their employees a pension plan in lieu of the Public Employees Retirement System during the existence of the named mental health centers and their successors in interest.

c) The administrative bodies of the Preajera Center for Mental Health Services, Valley Comprehensive Mental Health Center, Westbrook Health Services and Eastern Panhandle Mental Health Center shall, on or before May 1, 1997, give written notice to each employee who is a member of the Public Employees Retirement System of the option to withdraw from or remain in the system. The notice shall include a copy of this section and a statement explaining the member's options regarding membership. The notice shall include a statement in plain language giving a full explanation and actuarial projection figures in support of the explanation regarding the individual member's current account balance, vested and nonvested, and his or her projected return upon remaining in the Public Employees Retirement System until retirement, disability or death, in comparison with the projected return upon withdrawing from the Public Employees Retirement System and joining a private pension plan provided by the Community Mental Health Center and remaining in the private pension plan until retirement, disability or death. The administrative bodies shall keep in their respective records a permanent record of each employee's signature confirming receipt of the notice.
(d) Effective March 1, 2003, and ending December 31, 2004, any member may purchase credited service previously forfeited by him or her and the credited service shall be restored to his or her credit: Provided, That he or she returns to the members' deposit fund the amount, if any, he or she withdrew from the fund, together with interest on the withdrawn amount from the date of withdrawal to the date of repayment at a rate to be determined by the board. The repayment under this section may be made by lump sum or repaid over a period of time not to exceed sixty months. Where the member elects to repay the required amount other than by lump sum, the member is required to pay interest at the rate determined by the board until all sums are fully repaid.

(e) Effective July 1, 2005, and ending December 31, 2006, any emergency services personnel may purchase service credit for the time period beginning January 1, 1990, and ending December 31, 1995: Provided, That the person was employed as an emergency service person in this state for that time period: Provided, however, That any person obtaining service credit under this subsection is required to pay the employee's share and the employer's share upon his or her actual salary for the years in question plus interest at the assumed actuarial rate of return for the plan year being repurchased.

(f) Jobs for West Virginia's graduates and their successors in interest shall provide a pension plan in lieu of the Public Employees Retirement System for employees hired on or after July 1, 2005.

(g) Wetzel County Hospital and their successors in interest shall provide a pension plan in lieu of the Public Employees Retirement System for employees hired on or after July 1, 2005.
CHAPTER 167
(H. B. 2469 - By Delegates Perry, Staggers, Swartzmiller, Walker, Barill and Williams)

[Passed April 13, 2013; in effect ninety days from passage.]  
[Approved by the Governor on April 30, 2013.]

AN ACT to amend and reenact §5-10-48 of the Code of West Virginia, 1931, as amended, relating to increasing the cap on earnings during temporary reemployment after retirement.

Be it enacted by the Legislature of West Virginia:

That §5-10-48 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 10. WEST VIRGINIA PUBLIC EMPLOYEES RETIREMENT ACT.

§5-10-48. Reemployment after retirement; options for holder of elected public office.

(a) The Legislature finds that a compelling state interest exists in maintaining an actuarially sound retirement system and that this interest necessitates that certain limitations be placed upon an individual’s ability to retire from the system and to then later return to state employment as an employee with a participating public employer while contemporaneously drawing an annuity from the system. The Legislature hereby further finds and declares that the interests of the public are served when persons having retired from public employment are permitted, within certain limitations, to render post-retirement employment in positions of public service, either in elected or appointed
capacities. The Legislature further finds and declares that it has the need for qualified employees and that in many cases an employee of the Legislature will retire and be available to return to work for the Legislature as a per diem employee. The Legislature further finds and declares that in many instances these employees have particularly valuable expertise which the Legislature cannot find elsewhere. The Legislature further finds and declares that reemploying these persons on a limited per diem basis after they have retired is not only in the best interests of this state, but has no adverse effect whatsoever upon the actuarial soundness of this particular retirement system.

(b) For the purposes of this section: (1) “Regularly employed on a full-time basis” means employment of an individual by a participating public employer, in a position other than as an elected or appointed public official, which normally requires twelve months per year service and at least one thousand forty hours of service per year in that position; (2) “temporary full-time employment or temporary part-time employment” means employment of an individual on a temporary or provisional basis by a participating public employer, other than as an elected or appointed public official, in a position which does not otherwise render the individual as regularly employed; (3) “former employee of the Legislature” means any person who has retired from employment with the Legislature and who has at least ten years’ contributing service with the Legislature; and (4) “reemployed by the Legislature” means a former employee of the Legislature who has been reemployed on a per diem basis not to exceed one hundred seventy-five days per calendar year.

(c) In the event a retirant becomes regularly employed on a full-time basis by a participating public employer, payment of his or her annuity shall be suspended during the period of his or her reemployment and he or she shall become a contributing member to the retirement system. If his or her reemployment is
for a period of one year or longer, his or her annuity shall be recalculated and he or she shall be granted an increased annuity due to the additional employment, the annuity to be computed according to section twenty-two of this article. A retiree may accept legislative per diem, temporary full-time or temporary part-time employment from a participating employer without suspending his or her retirement annuity so long as he or she does not receive annual compensation in excess of $20,000.

(d) In the event a member retires and is then subsequently elected to a public office or is subsequently appointed to hold an elected public office, or is a former employee of the Legislature who has been reemployed by the Legislature, he or she has the option, notwithstanding subsection (c) of this section, to either:

(1) Continue to receive payment of his or her annuity while holding public office or during any reemployment of a former employee of the Legislature on a per diem basis, in addition to the salary he or she may be entitled to as an office holder or as a per diem reemployed former employee of the Legislature; or

(2) Suspend the payment of his or her annuity and become a contributing member of the retirement system as provided in subsection (c) of this section. Notwithstanding the provisions of this subsection, a member who is participating in the system as an elected public official may not retire from his or her elected position and commence to receive an annuity from the system and then be elected or reappointed to the same position unless and until a continuous twelve-month period has passed since his or her retirement from the position: Provided, That a former employee of the Legislature may not be reemployed by the Legislature on a per diem basis until at least sixty days after the employee has retired: Provided, however, That the limitation on compensation provided by subsection (c) of this section does not apply to the reemployed former employee: Provided further,

Provided further,
That in no event may reemployment by the Legislature of a per
diem employee exceed one hundred seventy-five days per
calendar year.

(e) A member who is participating in the system
simultaneously as both a regular, full-time employee of a
participating public employer and as an elected or appointed
member of the legislative body of the state or any political
subdivision may, upon meeting the age and service requirements
of this article, elect to retire from his or her regular full-time
state employment and may commence to receive an annuity from
the system without terminating his or her position as a member
of the legislative body of the state or political subdivision:
Provided. That the retired member shall not, during the term of
his or her retirement and continued service as a member of the
legislative body of a political subdivision, be eligible to continue
his or her participation as a contributing member of the system
and shall not continue to accrue any additional service credit or
benefits in the system related to the continued service.

(f) Notwithstanding the provisions of section twenty-seven-b
of this article, any publicly elected member of the legislative
body of any political subdivision or of the State Legislature, the
Clerk of the House of Delegates and the Clerk of the Senate may
elect to commence receiving in-service retirement distributions
from this system upon attaining the age of seventy and one-half
years: Provided, That the member is eligible to retire under the
provisions of section twenty or twenty-one of this article:
Provided, however, That the member elects to stop actively
contribute to the system while receiving the in-service
distributions.

(g) The provisions of section twenty-two-h of this article are
not applicable to the amendments made to this section during the
2006 Regular Session.
AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §5-10D-11, relating to the liability of a participating public employer and its successor to pay delinquent retirement contributions, delinquency fees and related costs; and providing for enforcement and collection of the costs by the Consolidated Public Retirement Board.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §5-10D-11, to read as follows:

ARTICLE 10D. CONSOLIDATED PUBLIC RETIREMENT BOARD.

§5-10D-11. Liability of participating public employer for delinquent retirement contributions; liability of participating public employer’s successor for delinquent retirement contributions; lien for delinquent contributions; collection by suit.

1 (a) A participating public employer of a public retirement system administered pursuant to this article that fails, for a period of sixty days, to pay: (i) An employee retirement contribution; (ii) an employer retirement contribution; (iii) a delinquency fee; (iv) any other fees, charges or costs related to the public retirement system; or (v) any combination of subdivisions (i) through (iv) of this subsection, is liable for the amount pursuant to this article.
(b) If a participating public employer of a public retirement system administered pursuant to this article: (i) Sells all or substantially all of its stock or assets; (ii) merges with another entity; (iii) dissolves its business; or (iv) participates, voluntarily or involuntarily, in an event which causes its business to terminate, all unpaid employee retirement contributions, employer retirement contributions, delinquency fees and other fees, charges, or costs related to the public retirement system shall be paid within thirty days of the date of applicable event identified in subdivision (i) through (iv) of this subsection.

(c) A transferee, successor or assignee of a participating public employer of a public retirement system administered pursuant to this article is liable for the payment of all employee retirement contributions, employer retirement contributions, delinquency fees and other fees, charges or costs related to the public retirement system, if the participating public employer does not pay those amounts as provided in subsection (b) of this section.

(d) All amounts due to the Consolidated Public Retirement Board from a participating public employer under this article is a debt owed to the Consolidated Public Retirement Board enforceable by a lien on all assets of a participating public employer, or its transferee, successor or assignee within this state. The lien attaches to all assets of a participating public employer within this state, or all assets of its transferee, successor or assignee on the date that any amount owed to the Consolidated Public Retirement Board is due. If a participating public employer, or its transferee, successor or assignee fails to pay an amount owed to the Consolidated Public Retirement Board under this article for a period of more than sixty days, the Consolidated Public Retirement Board may enforce the lien against the participating public employer, or its transferee, successor or assignee by instituting an action in the Circuit Court of Kanawha County. In the event that the Consolidated Public Retirement Board institutes an action against a participating public employer, or its transferee, successor or assignee to
enforce a lien, the Consolidated Public Retirement Board is entitled to recover the amounts identified in subsection (a) of this section and in addition to those amounts, is entitled to recover all fees and costs incurred by the Consolidated Public Retirement Board during the pendency of the action, including, without limitation, accrued interest, expert witness costs, filing fees, deposition costs and reasonable attorney fees.

(e) If a section, subsection, subdivision, provision, clause or phrase of this article or its application to any person or circumstance is held unconstitutional or invalid, the unconstitutionality or invalidity does not affect other sections, subsections, subdivisions, provisions, clauses or phrases or applications of the article, and to this end each and every section, subsection, subdivision, provision, clause and phrase of this article are declared to be severable. The Legislature declares that it would have enacted the remaining sections, subsections, subdivisions, provisions, clauses and phrases of this article even if it had known that any sections, subsections, subdivisions, provisions, clauses and phrases of this article would be declared to be unconstitutional or invalid, and that it would have enacted this article even if it had known that its application to any person or circumstance would be held to be unconstitutional or invalid.

CHAPTER 169

(S. B. 190 - By Senators Kessler (Mr. President) and M. Hall)
[By Request of the Executive]
[Passed April 13, 2013; in effect July 1, 2013.]
[Approved by the Governor on April 29, 2013.]

AN ACT to amend and reenact §17-27-5 and §17-27-9 of the Code of West Virginia, 1931, as amended, all relating to the funding of
transportation public-private partnership projects and their corresponding comprehensive agreements; eliminating requirement that money from the State Road Fund only be used for public-private partnership projects where the money serves as a required match for federal funds specifically earmarked in a federal authorization or appropriation bill and does not exceed four percent of the immediate preceding three fiscal years’ average of the Division of Highways’ construction contracts awarded under the competitive bid process; allowing public-private partnership projects to use money from the State Road Fund when the projects are in excess of $20 million, constructed by the Division of Highways and contained in its six-year plan; providing that any earnings in excess of maximum rate of return that is negotiated in comprehensive agreements be deposited in the State Road Fund; providing a sunset provision prohibiting comprehensive agreements for public-private partnership projects after June 30, 2017; eliminating the requirement that a comprehensive agreement for public-private partnership projects be approved by concurrent resolution of the Legislature and be submitted to the Governor for his or her approval or disapproval before the Division of Highways enters into the comprehensive agreement; and mandating that the Division of Highways provide a copy of any comprehensive agreement to the Legislature’s Joint Committee on Government and Finance at least thirty days prior to said agreement being executed by the Division of Highways for a public-private partnership project.

Be it enacted by the Legislature of West Virginia:

That §17-27-5 and §17-27-9 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 27. PUBLIC-PRIVATE TRANSPORTATION FACILITIES ACT.

§17-27-5. Submission and review of conceptual proposals; approval by the Commissioner of Highways.
(a) A private entity may submit in writing a solicited conceptual proposal for a transportation facility to the division for consideration. The conceptual proposal shall include the following:

(1) A statement of the private entity's qualifications and experience;

(2) A description of the proposed transportation facility;

(3) A description of the financing for the transportation facility; and

(4) A statement setting forth the degree of public support for the proposed transportation facility, including a statement of the benefits of the proposed transportation facility to the public and its compatibility with existing transportation facilities.

(b) Following review by the division, the division shall submit to the Commissioner of Highways the conceptual proposals and priority ranking for review for final selection.

(c) The conceptual proposal shall be accompanied by the following material and information unless waived by the division with respect to the transportation facility or facilities that the private entity proposes to develop as a qualifying transportation facility:

(1) A topographic map (1:2,000 or other appropriate scale) indicating the location of the transportation facility or facilities;

(2) A description of the transportation facility or facilities, including the conceptual design of the facility or facilities and all proposed interconnections with other transportation facilities;

(3) The projected total life-cycle cost of the transportation facility or facilities and the proposed date for acquisition of or
the beginning of construction of, or improvements to, the transportation facility or facilities;

(4) A statement setting forth the method by which the developer proposes to secure all property interests required for the transportation facility or facilities: Provided, That with the approval of the division, the private entity may request that the comprehensive agreement assign the division with responsibility for securing all property interests, including public utility facilities, with all costs, including costs of acquiring the property, to be reimbursed to the division by the private entity. The statement shall include the following information regarding the property interests or rights, including, but not limited to, rights to extract mineable minerals:

(A) The names and addresses, if known, of the current owners of the property needed for the transportation facility or facilities;

(B) The nature of the property interests to be acquired;

(C) Any property that the division may expect to condemn; and

(D) The extent to which the property has been or will be subjected to the extraction of mineable minerals.

(5) Information relating to the current transportation plans, if any, of each affected local jurisdiction;

(6) A list of all permits and approvals required for acquisition or construction of or improvements to the transportation facility or facilities from local, state or federal agencies and a projected schedule for obtaining the permits and approvals: Provided, That the acquisition, construction, improvement or operation of a qualifying transportation facility that includes the extraction of mineable minerals is required to
obtain all necessary permits or approvals from all applicable
authorities in the same manner as if it were not a qualifying
transportation facility under this article;

(7) A list of public utility facilities, if any, that will be
crossed or affected by or as the result of the construction or
improvement of the public port transportation facility or
facilities and a statement of the plans of the developer to
accommodate the crossings or relocations;

(8) A statement setting forth the developer’s general plans
for financing and operating the transportation facility or
facilities;

(9) The names and addresses of the persons who may be
contacted for further information concerning the request;

(10) Information about the developer, including, but not
limited to, an organizational chart of the developer,
capitalization of the developer, experience in the operation of
transportation facilities and references and certificates of good
standing from the Tax Commissioner, Insurance Commissioner
and the Division of Unemployment Compensation evidencing
that the developer is in good standing with state tax, workers’
compensation and unemployment compensation laws,
respectively; and

(11) Any additional material and information requested by
the Commissioner of Highways.

(d) The division, with approval of the Commissioner of
Highways, may solicit proposals from private entities for the
acquisition, construction or improvement of transportation
facilities in a form and with the content determined by the
division.
(e) The division may solicit any proposal for the acquisition, construction or improvement of the transportation facility or facilities as a qualifying transportation facility if it is determined that it serves the public purpose of this article. The division may determine that the acquisition, construction or improvement of the transportation facility or facilities as a qualifying transportation facility serves a public purpose if:

1. There is a public need for the transportation facility of the type the private entity proposes to operate as a qualifying transportation facility;

2. The transportation facility and the proposed interconnections with existing transportation facilities and the developer’s plans for development of the qualifying transportation facility are reasonable and compatible with the state transportation plan and with the local comprehensive plan or plans;

3. The estimated cost of the transportation facility or facilities is reasonable in relation to similar facilities;

4. The acquisition, construction, improvement or the financing of the transportation facility or facilities does not involve any moneys from the State Road Fund: Provided, That moneys from the State Road Fund may be used if the project is constructed by the division, is in excess of $20 million and is contained in the division’s six-year plan: Provided, however, That the moneys from the General Revenue Fund may also be used if so designated and approved by the Legislature.

5. The use of federal funds in connection with the financing of a qualifying transportation facility has been determined by the division to be compatible with the state transportation plan and with the local comprehensive plan or plans; and
(6) The private entity's plans will result in the timely acquisition or construction of or improvements to the transportation facility for their more efficient operation and that the private entity's plans will result in a more timely and economical delivery of the transportation facility than otherwise available under existing delivery systems.

(f) Notwithstanding any provision of this article to the contrary, the recommendation of the division to the Commissioner of Highways is subject to:

(1) The private entity's entering into a comprehensive agreement with the division; and

(2) With respect to transportation facilities, the requirement that public information dissemination with regard to any proposal under consideration comply with the division's policy on the public involvement process, as revised.

(g) In connection with its approval of the development of the transportation facility as a qualifying transportation facility, the division shall establish a date for the acquisition of or the beginning of construction of or improvements to the qualifying transportation facility. The division may extend that date.

(h) Selection by the Commissioner of Highways:

(1) Upon presentations of proposals received by the division, the commissioner shall make his or her decision for the project.

(2) The commissioner shall notify the division and the public of the final selection for the project.


(a) Prior to acquiring, constructing or improving the qualifying transportation facility, the developer shall enter into
a comprehensive agreement with the division. The comprehensive agreement shall provide for:

(1) Delivery of performance or payment bonds in connection with the construction of or improvements to the qualifying transportation facility, in the forms and amounts satisfactory to the division;

(2) Review and approval of the final plans and specifications for the qualifying transportation facility by the division;

(3) Inspection of the construction of or improvements to the qualifying transportation facility to ensure that they conform to the engineering standards acceptable to the division;

(4) Maintenance of a policy or policies of public liability insurance or self insurance, in a form and amount satisfactory to the division and reasonably sufficient to insure coverage of tort liability to the public and employees and to enable the continued operation of the qualifying transportation facility: Provided, That in no event may the insurance impose any pecuniary liability on the state, its agencies or any political subdivision of the state. Copies of the policies shall be filed with the division accompanied by proofs of coverage;

(5) Monitoring of the maintenance and operating practices of the developer by the division and the taking of any actions the division finds appropriate to ensure that the qualifying transportation facility is properly maintained and operated;

(6) Itemization and reimbursement to be paid to the division for the review and any services provided by the division;

(7) Filing of appropriate financial statements on a periodic basis;

(8) A reasonable maximum rate of return on investment for the developer;
(9) The date of termination of the developer’s duties under this article and dedication to the division; and

(10) That a transportation facility shall accommodate all public utilities on a reasonable, nondiscriminatory and completely neutral basis and in compliance with the provisions of section seventeen-b, article four, chapter seventeen of this code.

(b) The comprehensive agreement may require user fees established by agreement of the parties. Any user fees shall be set at a level that, taking into account any service payments, allows the developer the rate of return on its investment specified in the comprehensive agreement: Provided, That the schedule and amount of the initial user fees to be imposed and any increase of the user fees must be approved by the Commissioner of the Division of Highways. A copy of any service contract shall be filed with the division. A schedule of the current user fees shall be made available by the developer to any member of the public upon request. In negotiating user fees under this section, the parties shall establish fees that are the same for persons using the facility under like conditions and that will not unreasonably discourage use of the qualifying transportation facility. The execution of the comprehensive agreement or any amendment to the comprehensive agreement constitutes conclusive evidence that the user fees provided in the comprehensive agreement comply with this article. User fees established in the comprehensive agreement as a source of revenues may be in addition to, or in lieu of, service payments.

(c) In the comprehensive agreement, the division may agree to accept grants or loans from the developer, from time to time, from amounts received from the state or federal government or any agency or instrumentality of the state or federal government.

(d) The comprehensive agreement shall incorporate the duties of the developer under this article and may contain any
other terms and conditions that the division determines serve the public purpose of this chapter. Without limitation, the comprehensive agreement may contain provisions under which the division agrees to provide notice of default and cure rights for the benefit of the developer and the persons specified in the comprehensive agreement as providing financing for the qualifying transportation facility. The comprehensive agreement may contain any other lawful terms and conditions to which the developer and the division mutually agree, including, without limitation, provisions regarding unavoidable delays or provisions providing for a loan of public funds to the developer to acquire, construct or improve one or more qualifying transportation facilities.

(e) The comprehensive agreement shall require the deposit of any earnings in excess of the maximum rate of return as negotiated in the comprehensive agreement in the State Road Fund established pursuant to section one, article three, chapter seventeen of this code.

(f) Any changes in the terms of the comprehensive agreement, agreed upon by the parties, shall be added to the comprehensive agreement by written amendment.

(g) Notwithstanding any provision of this article to the contrary, the division may not enter into any comprehensive agreements with a developer after June 30, 2017.

(h) Notwithstanding any provision of this article to the contrary, at least thirty days prior to execution, the commissioner shall provide a copy of a comprehensive agreement to the Joint Committee on Government and Finance.
CHAPTER 170

(Com. Sub. for H. B. 2825 - By Delegates Perdue, Perry, Ferns, Morgan, M. Poling, Staggers, White and Williams)

[Passed April 13, 2013; in effect ninety days from passage.]
[Approved by the Governor on May 1, 2013.]

AN ACT to amend and reenact §6-7-2a of the Code of West Virginia, 1931, as amended, relating to certain appointive state officers salaries.

Be it enacted by the Legislature of West Virginia:

That §6-7-2a of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 7. COMPENSATION AND ALLOWANCES.

§6-7-2a. Terms of certain appointive state officers; appointment; qualifications; powers and salaries of such officers.

(a) Each of the following appointive state officers named in this subsection shall be appointed by the Governor, by and with the advice and consent of the Senate. Each of the appointive state officers serves at the will and pleasure of the Governor for the term for which the Governor was elected and until the respective state officers' successors have been appointed and qualified. Each of the appointive state officers are subject to the existing qualifications for holding each respective office and each has and is hereby granted all of the powers and authority and shall perform all of the functions and services heretofore vested in and performed by virtue of existing law respecting each office.
The annual salary of each named appointive state officer is as follows:

Commissioner, Division of Highways, $92,500; Commissioner, Division of Corrections, $80,000; Director, Division of Natural Resources, $75,000; Superintendent, State Police, $85,000; Commissioner, Division of Banking, $75,000; Commissioner, Division of Culture and History, $65,000; Commissioner, Alcohol Beverage Control Commission, $75,000; Commissioner, Division of Motor Vehicles, $75,000; Chairman, Health Care Authority, $80,000; members, Health Care Authority, $70,000; Director, Human Rights Commission, $55,000; Commissioner, Division of Labor, $70,000; prior to July 1, 2011, Director, Division of Veterans Affairs, $65,000; Chairperson, Board of Parole, $55,000; members, Board of Parole, $50,000; members, Employment Security Review Board, $17,000; and Commissioner, Workforce West Virginia, $75,000. Secretaries of the departments shall be paid an annual salary as follows: Health and Human Resources, $95,000; Provided, That effective July 1, 2013, the Secretary of the Department of Health and Human Resources shall be paid an annual salary not to exceed $175,000; Transportation, $95,000; Provided, That if the same person is serving as both the Secretary of Transportation and the Commissioner of Highways, he or she shall be paid $120,000; Revenue, $95,000; Military Affairs and Public Safety, $95,000; Administration, $95,000; Education and the Arts, $95,000; Commerce, $95,000; Veterans’ Assistance, $95,000; and Environmental Protection, $95,000; Provided, however, That any officer specified in this subsection whose salary is increased by more than $5,000 as a result of the amendment and reenactment of this section during the 2011 regular session of the Legislature shall be paid the salary increase in increments of $5,000 per fiscal year beginning July 1, 2011 up to the maximum salary provided in this subsection.
(b) Each of the state officers named in this subsection shall continue to be appointed in the manner prescribed in this code, and shall be paid an annual salary as follows:

Director, Board of Risk and Insurance Management, $80,000; Director, Division of Rehabilitation Services, $70,000; Director, Division of Personnel, $70,000; Executive Director, Educational Broadcasting Authority, $75,000; Secretary, Library Commission, $72,000; Director, Geological and Economic Survey, $75,000; Executive Director, prosecuting attorneys Institute, $70,000; Executive Director, Public Defender Services, $70,000; Commissioner, Bureau of Senior Services, $75,000; Director, State Rail Authority, $65,000; Executive Director, Women's Commission, $45,000; Director, Hospital Finance Authority, $35,000; member, Racing Commission, $12,000; Chairman, Public Service Commission, $85,000; members, Public Service Commission, $85,000; Director, Division of Forestry, $75,000; Director, Division of Juvenile Services, $80,000; and Executive Director, Regional Jail and Correctional Facility Authority, $80,000.

(c) Each of the following appointive state officers named in this subsection shall be appointed by the Governor, by and with the advice and consent of the Senate. Each of the appointive state officers serves at the will and pleasure of the Governor for the term for which the Governor was elected and until the respective state officers' successors have been appointed and qualified. Each of the appointive state officers are subject to the existing qualifications for holding each respective office and each has and is hereby granted all of the powers and authority and shall perform all of the functions and services heretofore vested in and performed by virtue of existing law respecting each office.

The annual salary of each named appointive state officer shall be as follows:
77 Commissioner, State Tax Division, $92,500; Insurance Commissioner, $92,500; Director, Lottery Commission, $92,500; Director, Division of Homeland Security and Emergency Management, $65,000; and Adjutant General, $125,000.

82 (d) No increase in the salary of any appointive state officer pursuant to this section may be paid until and unless the appointive state officer has first filed with the State Auditor and the Legislative Auditor a sworn statement, on a form to be prescribed by the Attorney General, certifying that his or her spending unit is in compliance with any general law providing for a salary increase for his or her employees. The Attorney General shall prepare and distribute the form to the affected spending units.

CHAPTER 171

(S. B. 394 - By Senators Kessler (Mr. President), Barnes, Beach, Blair, Boley, Cann, Carmichael, Chafin, Cole, Cookman, Edgell, Facemire, Fitzsimmons, Green, D. Hall, M. Hall, Jenkins, Kirkendoll, Laird, McCabe, Miller, Nohe, Palumbo, Plymale, Prezioso, Snyder, Stollings, Sypolt, Tucker, Unger, Walters, Wells, Williams and Yost)

[Passed April 13, 2013; in effect July 1, 2013.]
[Approved by the Governor on April 29, 2013.]

AN ACT to amend and reenact §5-10-27 of the Code of West Virginia, 1931, as amended; to amend and reenact §7-14D-20 of said code; to amend and reenact §8-22A-22 of said code; to amend and reenact §15-2-33 of said code; and to amend and reenact §15-2A-12 of said code, all relating to providing scholarships for dependent children of law-enforcement officers who die in
performance of duty; modifying scholarship benefits for certain dependents; and establishing scholarship benefits for certain dependents.

Be it enacted by the Legislature of West Virginia:

That §5-10-27 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §7-14D-20 of said code be amended and reenacted; that §8-22A-22 of said code be amended and reenacted; that §15-2-33 of said code be amended and reenacted; and that §15-2A-12 of said code be amended and reenacted, all to read as follows:

CHAPTER 5. GENERAL POWERS AND AUTHORITY OF THE GOVERNOR, SECRETARY OF STATE AND ATTORNEY GENERAL; BOARD OF PUBLIC WORKS; MISCELLANEOUS AGENCIES, COMMISSIONS, OFFICES, PROGRAMS, ETC.

ARTICLE 10. WEST VIRGINIA PUBLIC EMPLOYEES RETIREMENT ACT.

§5-10-27. Preretirement death annuities.

(a) (1) Except as otherwise provided in this section, in the event any member who has ten or more years of credited service or any former member with ten or more years of credited service and who is entitled to a deferred annuity, pursuant to section twenty-one of this article, may at any time prior to the effective date of his or her retirement, by written declaration duly executed and filed with the board of trustees, in the same manner as if he or she were then retiring from the employ of a participating public employer, elect option A provided in section twenty-four of this article and nominate a beneficiary whom the board finds to have had an insurable interest in the life of the member. Prior to the effective date of his or her retirement, a member may revoke his or her election of option A and nomination of beneficiary and he or she may again prior to his
or her retirement elect option A and nominate a beneficiary as
provided in this subsection. Upon the death of a member who
has an option A election in force, his or her beneficiary, if living,
shall immediately receive an annuity computed in the same
manner in all respects as if the same member had retired the day
preceding the date of his or her death, notwithstanding that he or
she might not have attained age sixty years, and elected the said
option A. If at the time of his or her retirement a member has an
option A election in force, his or her election of option A and
nomination of beneficiary shall thereafter continue in force. As
an alternative to annuity option A, a member or former member
may elect to have the preretirement death benefit paid as a return
of accumulated contributions in a lump sum amount to any
beneficiary or beneficiaries he or she chooses.

(2) In the event any member or former member, who first
became a member of the Public Employees Retirement System
after the effective date of amendments made to this section
during the 2006 regular legislative session and who has ten or
more years of credited service and who is entitled to a deferred
annuity, pursuant to section twenty-one of this article: Dies
without leaving a surviving spouse; but leaves surviving him or
her a child who is financially dependent on the member by virtue
of a permanent mental or physical disability upon evidence
satisfactory to the board; and has named the disabled child as
sole beneficiary, the disabled child shall immediately receive an
annuity computed in the same manner in all respects as if the
member had: (A) Retired the day preceding the date of his or her
death, notwithstanding that he or she might not have attained age
sixty or sixty-two years, as the case may be; (B) elected option
A provided in section twenty-four of this article; and (C)
nominated his or her disabled child as beneficiary. A member or
former member with ten or more years of credited service, who
does not leave surviving him or her a spouse or a disabled child,
may elect to have the preretirement death benefit paid as a return
of accumulated contributions in a lump sum amount to any beneficiary or beneficiaries he or she chooses.

(b)(1) In the event any member who has ten or more years of credited service, or any former member with ten or more years of credited service and who is entitled to a deferred annuity, pursuant to section twenty-one of this article; Dies; and leaves a surviving spouse, the surviving spouse shall immediately receive an annuity computed in the same manner in all respects as if the member had: (A) Retired the day preceding the date of his or her death, notwithstanding that he or she might not have attained age sixty or sixty-two years, as the case may be; (B) elected option A provided in section twenty-four of this article; and (C) nominated his or her surviving spouse as beneficiary. However, the surviving spouse shall have the right to waive the annuity provided in this section: Provided, That he or she executes a valid and notarized waiver on a form provided by the board and that the member or former member attests to the waiver. If the waiver is presented to and accepted by the board, the member or former member, may nominate a beneficiary who has an insurable interest in the member’s or former member’s life. As an alternative to annuity option A, the member or former member may elect to have the preretirement death benefit paid as a return of accumulated contributions in a lump sum amount to any beneficiary or beneficiaries he or she chooses in the event a waiver, as provided in this section, has been presented to and accepted by the board.

(2) Whenever any member or former member who first became a member of the retirement system after the effective date of the amendments to this section made during the 2006 regular legislative session and who has ten or more years of credited service and who is entitled to a deferred annuity, pursuant to section twenty-one of this article, dies and leaves a surviving spouse, the surviving spouse shall immediately receive
an annuity computed in the same manner in all respects as if the member had: (A) Retired the day preceding the date of his or her death, notwithstanding that he or she might not have attained age sixty or sixty-two years, as the case may be; (B) elected option A provided in section twenty-four of this article; and (C) nominated his or her surviving spouse as beneficiary. However, the surviving spouse shall have the right to waive the annuity provided in this section: Provided, That he or she executes a valid and notarized waiver on a form provided by the board and that the member or former member attests to the waiver. If the waiver is presented to and accepted by the board, the member or former member may: (1) Elect to have the preretirement death benefit paid in a lump sum amount, rather than annuity option A provided in section twenty-four of this article, as a return of accumulated contributions to any beneficiary or beneficiaries he or she chooses; or (2) may name his or her surviving child, who is financially dependent on the member by virtue of a permanent mental or physical disability, as his or her sole beneficiary to receive an annuity computed in the same manner in all respects as if the member had: (A) Retired the day preceding the date of his or her death, notwithstanding that he or she might not have attained the age of sixty or sixty-two as the case may be; (B) elected option A provided in section twenty-four of this article; and (C) nominated his or her disabled child as beneficiary.

(c) In the event any member who has ten or more years of credited service or any former member with ten or more years of credited service and who is entitled to a deferred annuity, pursuant to section twenty-one of this article: (1) Dies without leaving surviving him or her a spouse; but (2) leaves surviving him or her an infant child or children; and (3) does not have a beneficiary nominated as provided in subsection (a) of this section, the infant child or children are entitled to an annuity to be calculated as follows: The annuity reserve shall be calculated as though the member had retired as of the date of his or her
decease and elected a straight life annuity and the amount of the annuity reserve shall be paid in equal monthly installments to the member's infant child or children until the child or children attain age twenty-one or sooner marry or become emancipated; however, in no event shall any child or children receive more than $250 per month each. The annuity payments shall be computed as of the date of the death of the member and the amount of the annuity shall remain constant during the period of payment. The annual amount of the annuities payable by this section shall not exceed sixty percent of the deceased member's final average salary.

(d) In the event any member or former member does not have ten or more years of credited service, no preretirement death annuity may be authorized, owed or awarded under this section, except as provided in subdivision (4), subsection (a), section fifteen of this article as amended during the 2005 regular session of the Legislature.

(e) Any person qualified as a surviving dependent child under this section, who is the surviving dependent child of a law enforcement officer who loses his or her life in the performance of duty, in addition to any other benefits due under this or other sections of this article is entitled to receive a scholarship to be applied to the career development education of that person. This sum, up to but not exceeding $7,500 per year, shall be paid from the fund to any higher education institution in this state, career-technical education provider in this state or other entity in this state approved by the board, to offset the expenses of tuition, room and board, books, fees or other costs incurred in a course of study at any of those institutions so long as the recipient makes application to the board on an approved form and under rules as provided by the board and maintains scholastic eligibility as defined by the institution or the board. The board may by appropriate rules define age requirements, physical and
149 mental requirements, scholastic eligibility, disbursement
150 methods, institutional qualifications and other requirements as
151 necessary and not inconsistent with this section.

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 14D. DEPUTY SHERIFF RETIREMENT SYSTEM
ACT.

§7-14D-20. Additional death benefits and scholarships —
Dependent children.

(a) In addition to the spouse death benefits in sections
eighteen and nineteen of this article, the surviving spouse is
entitled to receive and there shall be paid to the spouse $100
monthly for each dependent child.

(b) If the surviving spouse dies or if there is no surviving
spouse, the fund shall pay monthly to each dependent child a
sum equal to one fourth of the surviving spouse’s entitlement
under either section nineteen or twenty of this article. If there is
neither a surviving spouse nor a dependent child, the fund shall
pay in equal monthly installments to the dependent parents of the
deceased member during their joint lifetimes a sum equal to the
amount which a surviving spouse, without children, would have
received: Provided, That when there is only one dependent
parent surviving, that parent is entitled to receive during his or
her lifetime one-half the amount which both parents, if living,
would have been entitled to receive: Provided, however, That if
there is no surviving spouse, dependent child nor dependent
parent of the deceased member the accumulated contributions
shall be paid to a named beneficiary or beneficiaries: Provided
further, That if there is no surviving spouse, dependent child, nor
dependent parent of the deceased member, nor any named
beneficiary or beneficiaries then the accumulated contributions
shall be paid to the estate of the deceased member.
(c) Any person qualifying as a dependent child under this section, in addition to any other benefits due under this or other sections of this article, is entitled to receive a scholarship to be applied to the career development education of that person. This sum, up to but not exceeding $7,500 per year, shall be paid from the fund to any higher education institution in this state, career-technical education provider in this state or other entity in this state approved by the board, to offset the expenses of tuition, room and board, books, fees or other costs incurred in a course of study at any of these institutions so long as the recipient makes application to the board on an approved form and under such rules as the board may provide, and maintains scholastic eligibility as defined by the institution or the board. The board may propose legislative rules for promulgation in accordance with article three, chapter twenty-nine-a of this code which define age requirements, physical and mental requirements, scholastic eligibility, disbursement methods, institutional qualifications and other requirements as necessary and not inconsistent with this section.

CHAPTER 8. MUNICIPAL CORPORATIONS.


(a) Except as provided in subsection (a), section nine of this article, in addition to the spouse death benefits in this article, the surviving spouse is entitled to receive and there shall be paid to the spouse $100 monthly for each dependent child.

(b) If the surviving spouse dies or if there is no surviving spouse, the fund shall pay monthly to each dependent child a sum equal to one hundred percent of the spouse’s entitlement under this article divided by the number of dependent children. If there is neither a surviving spouse nor a dependent child, the fund shall pay in equal monthly installments to the dependent
parents of the deceased member during their joint lifetimes a sum equal to the amount which a surviving spouse, without children, would have received: Provided, That when there is only one dependent parent surviving, that parent is entitled to receive during his or her lifetime one-half the amount which both parents, if living, would have been entitled to receive: Provided, however, That if there is no surviving spouse, dependent child or dependent parent of the deceased member, the accumulated contributions shall be paid to a named beneficiary or beneficiaries: Provided further, That if there is no surviving spouse, dependent child or dependent parent of the deceased member, or any named beneficiary or beneficiaries, then the accumulated contributions shall be paid to the estate of the deceased member.

(c) Any person qualifying as a dependent child under this section, in addition to any other benefits due under this or other sections of this article, is entitled to receive a scholarship to be applied to the career development education of that person. This sum, up to but not exceeding $7,500 per year, shall be paid from the fund to any higher education institution in this state, career-technical education provider in this state or other entity in this state approved by the board, to offset the expenses of tuition, room and board, books, fees or other costs incurred in a course of study at any of these institutions so long as the recipient makes application to the board on an approved form and under rules provided by the board and maintains scholastic eligibility as defined by the institution or the board. The board may propose legislative rules for promulgation in accordance with article three, chapter twenty-nine-a of this code which define age requirements, physical and mental requirements, scholastic eligibility, disbursement methods, institutional qualifications and other requirements as necessary and not inconsistent with this section.
§15-2-33. Awards and benefits to dependents of member when the member dies in performance of duty; to dependents of a duty disability retirant; dependent child scholarship and amount.

(a) The surviving spouse or the dependent child or children or dependent parent or parents of any member who has lost or loses his or her life by reason of injury, illness or disease resulting from an occupational risk or hazard inherent in or peculiar to the service required of employees while the member was or is engaged in the performance of his or her duties as an employee of the agency, or if a retirant dies from any cause after having been retired pursuant to the provisions of section twenty-nine of this article, the surviving spouse or other dependent is entitled to receive and shall be paid from the fund benefits as follows: To the surviving spouse annually, in equal monthly installments during his or her lifetime the greater of one or the other of two amounts:

(1) An amount equal to five and one-half percent of the total salary which was or would have been earned by the deceased member or duty disability retirant during twenty-five years of service based on the average earnings of the member or duty disability retirant while employed by the agency; or

(2) The sum of $6,000.

(b) In addition, the surviving spouse is entitled to receive and shall be paid $100 monthly for each dependent child or children. If the surviving spouse dies or if there is no surviving spouse, there shall be paid monthly to each dependent child or children from the fund a sum equal to twenty-five percent of the surviving spouse’s entitlement. If there is no surviving spouse
and no dependent child or children, there shall be paid annually
in equal monthly installments from the fund to the dependent
parents of the deceased member or retirant during their joint
lifetimes a sum equal to the amount which a surviving spouse,
without children, would have received: Provided, That when
there is one dependent parent surviving, that parent is entitled to
receive during his or her lifetime one half the amount which both
parents, if living, would have been entitled to receive.

(c) Any person qualified as a surviving dependent child
under this section, in addition to any other benefits due under
this or other sections of this article, is entitled to receive a
scholarship to be applied to the career development education of
that person. This sum, up to but not exceeding $7,500 per year,
shall be paid from the fund to any higher education institution in
this state, career-technical education provider in this state or
other entity in this state approved by the board, to offset the
expenses of tuition, room and board, books, fees or other costs
incurred in a course of study at any of those institutions so long
as the recipient makes application to the board on an approved
form and under rules as provided by the board and maintains
scholastic eligibility as defined by the institution or the board.
The board may by appropriate rules define age requirements,
physical and mental requirements, scholastic eligibility,
disbursement methods, institutional qualifications and other
requirements as necessary and not inconsistent with this section.

(d) A surviving spouse or dependent of an employee meeting
the requirements of this section is entitled to receive beneficiary
payments on the first day following the date the deceased
employee is removed from payroll by the agency. A surviving
spouse or dependent of a member who is not currently an
employee meeting the requirements of this section is entitled to
receive beneficiary payments on the first day following the date
of the deceased member's death. A surviving spouse or
dependent of a retirant meeting the requirements of this section
is entitled to receive beneficiary payments on the first day of the
month following the date of the deceased retirant's death. Upon
receipt of properly executed forms from the agency and the
surviving spouse or dependent, the board shall process the
surviving spouse or dependent benefit as soon as
administratively feasible.

(e) For the purposes of this section, the term "salary" does
not include any compensation paid for overtime service.

ARTICLE 2A. WEST VIRGINIA STATE POLICE
RETIREMENT SYSTEM.

§15-2A-12. Awards and benefits to dependents of employees or
retirants - When employee dies in performance of
duty, etc.; dependent child scholarship and
amount.

The surviving spouse, the dependent child or children or
dependent parent or parents of any employee who has lost or
shall lose his or her life by reason of injury, illness or disease
resulting from an occupational risk or hazard inherent in or
peculiar to the service required of employees while the employee
was engaged in the performance of his or her duties as an
employee of the agency, or the survivor of a retirant who dies
from any cause after having been retired pursuant to the
provisions of section nine of this article, is entitled to receive and
shall be paid from the fund benefits as follows: To the surviving
spouse annually, in equal monthly installments during his or her
lifetime, one or the other of two amounts, which shall become
payable the first day of the month following the employee's or
retirant's death and which shall be the greater of:

(1) An amount equal to nine-tenths of the base salary
received in the preceding full twelve-month employment period
by the deceased employee: Provided, That if the employee had
18 not been employed with the agency for twelve full months prior
19 to his or her death, the amount of monthly salary shall be
20 annualized for the purpose of determining the benefit; or
21
22 (2) The sum of $10,000.

23 In addition, the surviving spouse is entitled to receive and
24 shall be paid $150 monthly for each dependent child. If the
25 surviving spouse dies or if there is no surviving spouse, there
26 shall be paid monthly to each dependent child or children from
27 the fund a sum equal to one third of the surviving spouse's
28 entitlement. If there is no surviving spouse and no dependent
29 child or children, there shall be paid annually in equal monthly
30 installments from the fund to the dependent parents of the
31 deceased member during their joint lifetimes a sum equal to the
32 amount which a surviving spouse, without children, would have
33 received: Provided, That when there is one dependent parent
34 surviving, that parent is entitled to receive during his or her
35 lifetime one half the amount which both parents, if living, would
36 have been entitled to receive: Provided, however, That if there
37 is no surviving spouse, dependent child or dependent parent of
38 the deceased member, the accumulated contributions shall be
39 paid to a named beneficiary or beneficiaries: Provided further,
40 That if there is no surviving spouse, dependent child, dependent
41 parent of the deceased member or any named beneficiary or
42 beneficiaries, then the accumulated contributions shall be paid
43 to the estate of the deceased member.

44 Any person qualifying as a surviving dependent child under
45 this section, in addition to any other benefits due under this or
46 other sections of this article, is entitled to receive a scholarship
47 to be applied to the career development education of that person.
48 This sum, up to but not exceeding $7,500 per year, shall be paid
49 from the fund to any higher education institution in this state,
50 career-technical education provider in this state or other entity in
51 this state approved by the board to offset the expenses of tuition,
room and board, books, fees or other costs incurred in a course of study at any of these institutions as long as the recipient makes application to the board on an approved form and under rules provided by the board and maintains scholastic eligibility as defined by the institution or the board. The board may by appropriate rules define age requirements, physical and mental requirements, scholastic eligibility, disbursement methods, institutional qualifications and other requirements as necessary and not inconsistent with this section.

A surviving spouse or dependent of an employee meeting the requirements of this section is entitled to receive beneficiary payments on the first day of the month following the date the deceased member is removed from payroll by the agency. A surviving spouse or dependent of a member who is not currently an employee meeting the requirements of this section is entitled to receive beneficiary payments on the first day of the month following the date of the deceased member's death. A surviving spouse or dependent of a retirant meeting the requirements of this section is entitled to receive beneficiary payments on the first day of the month following the date of the deceased retirant's death. Upon receipt of properly executed forms from the agency and surviving spouse or dependent, the board shall process the surviving spouse or dependent benefit as soon as administratively feasible.

It is the intent of the Legislature that the levels of benefits provided by operation of this section from the effective date of the enactment of this section during the regular session of the Legislature, 2005, be the same levels of benefits as provided by this section as amended and reenacted during the fourth extraordinary session of the Legislature, 2005. Accordingly, the effective date of the operation of this section as amended and reenacted during the fourth extraordinary session of the Legislature, 2005, is expressly made retrospective to April 9, 2005.
AN ACT to amend and reenact §18-20-2 of the Code of West Virginia, 1931, as amended; to amend and reenact §18A-2-4 of said code; and to amend and reenact §18A-4-8 and §18A-4-8a of said code, all relating to school service personnel classification, compensation, duties, requirements and training; establishing certain service personnel classification titles and setting their wages; specifying employment requirements and duties for certain classifications titles; modifying certain service personnel classification titles; and establishing conditions for employer payment of and continuing education credit accrual for certain certification acquisition.

Be it enacted by the Legislature of West Virginia:

That §18-20-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §18A-2-4 of said code be amended and reenacted; and that §18A-4-8 and §18A-4-8a of said code be amended and reenacted, all to read as follows:

CHAPTER 18. EDUCATION.

ARTICLE 20. EDUCATION OF EXCEPTIONAL CHILDREN.

§18-20-2. Providing suitable educational facilities, equipment and services.

(a) Each county board shall provide suitable educational facilities, special equipment and special services that are
necessary. Special services include provisions and procedures for finding and enumerating exceptional children of each type, diagnosis by appropriate specialists who will certify the child's need and eligibility for special education and make recommendations for treatment and prosthesis as may alleviate the disability, special teaching by qualified and specially trained teachers, transportation, lunches and remedial therapeutic services. Qualifications of teachers and therapists shall be in accordance with standards prescribed or approved by the state board.

(b) A county board may provide for educating resident exceptional children by contracting with other counties or other educational agencies which maintain special education facilities. Fiscal matters shall follow policies approved by the state board.

(c) The county board shall provide a four-clock-hour program of training for any teacher aide employed to assist teachers in providing services to exceptional children under this article prior to the assignment. The program shall consist of training in areas specifically related to the education of exceptional children, pursuant to rules of the state board. The training shall occur during normal working hours and an opportunity to be trained shall be provided to a service person prior to filling a vacancy in accordance with the provisions of section eight-b, article four, chapter eighteen-a of this code.

(d) The county board annually shall make available during normal working hours to all regularly employed teachers' aides twelve hours of training that satisfies the continuing education requirements for the aides regarding:

(1) Providing services to children who have displayed violent behavior or have demonstrated the potential for violent behavior; and
(2) Providing services to children diagnosed as autistic or with autism spectrum disorder. This training shall be structured to permit the employee to qualify as an autism mentor after a minimum of four years of training. The county board shall:

(A) Notify in writing all teachers' aides of the location, date and time when training will be offered for qualification as an autism mentor; and

(B) Reimburse any regularly employed or substitute teacher's aide who elects to attend this training for one half of the cost of the tuition.

(e) For any student whose individualized education plan (IEP) or education plan established pursuant to Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. §794, requires the services of a sign support specialist or an educational sign language interpreter I or II:

(1) Any educational sign language interpreter I or II assigned to assist that student is a related service provider member of the education team who participates in IEP meetings and works with the team to implement the IEP;

(2) A sign support specialist may be assigned to a student with an exceptionality other than deaf or hard of hearing if it is determined that the student needs signs to support his or her expressive communication; and

(3) A sign support specialist may be assigned to a student who is deaf or hard of hearing in lieu of an interpreter only if an educational sign language interpreter I or II is unavailable, and the sign support specialist is executing a professional development plan while actively seeking certification as an educational sign language interpreter I or II. After two years the sign support specialist may remain in the assignment only if an educational sign language interpreter I or II remains unavailable,
and with an approved waiver by the West Virginia Department of Education. An employee in this situation is entitled to full payment of the costs of certification acquisition or renewal pursuant to the certification renewal provisions of section four, article two, chapter eighteen-a of this code.

CHAPTER 18A. SCHOOL PERSONNEL.

ARTICLE 2. SCHOOL PERSONNEL.

§18A-2-4. Commercial driver’s license for school personnel; intrastate waiver for bus operators diagnosed with diabetes mellitus requiring insulin; reimbursement of electrician’s and commercial driver’s license when required, and educational sign language interpreter certification.

(a) If a commercial driver’s license is required as a condition of employment for any school employee or qualified applicant who becomes an employee by a county board the cost is paid in full by the county board.

A county board may not require any employee or applicant who becomes an employee of the board to pay the cost of acquiring a commercial driver’s license as a condition of employment.

(b) The Division of Motor Vehicles shall accept the West Virginia Department of Education physical and psychomotor test result forms in lieu of the Division of Motor Vehicles vision report form.

(c) A school bus operator who is currently employed by a county board or who is otherwise subject to state board rules governing school bus operators and who is diagnosed with diabetes mellitus requiring insulin is not ineligible for employment as a school bus operator because of the diagnosis if
the operator is issued a passenger endorsement for his or her commercial driver license through the intrastate waiver program pertaining to diabetes of the West Virginia Division of Motor Vehicles, subject to the following:

(1) A copy of the information required to be submitted to the Division of Motor Vehicles for waiver application and proof of passenger endorsement under the waiver program is submitted to his or her employer; and

(2) The operator remains in compliance with the stipulations of and grounds for eligibility for the intrastate waiver.

(d) If a county board requires of any employee who is employed as an electrician any license renewal when the employee is exempt from renewing the license pursuant to section three, article three-b, chapter twenty-nine of this code, the cost of the license renewal is paid in full by the county board.

(e) The cost of certification renewal and satisfying the requirements of the West Virginia Registry of Interpreters is paid in full by the employer for any service person who is:

(1) Employed as an educational sign language interpreter I or II and is required to complete any testing, training or continuing education in order to renew or maintain certification at that level;

(2) Employed as an educational sign language interpreter I and is required to complete any testing, training or continuing education to advance to an educational sign language interpreter II; or

(3) Employed as a sign support specialist and is required to complete any testing, training or continuing education in order to advance to an educational sign language interpreter I or II.
(f) For any service person required to hold certification as a condition of employment, any time devoted to acquiring or maintaining the certification, including instructional time and training, constitutes hours of continuing education for purposes of meeting the annual continuing education requirements in state board policy.

(g) Compliance with or failure to comply by a health care provider licensed and authorized pursuant to chapter thirty of this code, with the reporting requirements of the Division of Motor Vehicles regarding the provisions of subsection (c) of this section does not constitute negligence, nor may compliance or noncompliance with the requirements of this section be admissible as evidence of negligence in any civil or criminal action.

ARTICLE 4. SALARIES, WAGES AND OTHER BENEFITS.

§18A-4-8. Employment term and class titles of service personnel; definitions.

(a) The purpose of this section is to establish an employment term and class titles for service personnel. The employment term for service personnel may not be less than ten months. A month is defined as twenty employment days. The county board may contract with all or part of these service personnel for a longer term.

(b) Service personnel employed on a yearly or twelve-month basis may be employed by calendar months. Whenever there is a change in job assignment during the school year, the minimum pay scale and any county supplement are applicable.

(c) Service personnel employed in the same classification for more than the two hundred-day minimum employment term are paid for additional employment at a daily rate of not less than the
daily rate paid for the two hundred-day minimum employment term.

(d) A service person may not be required to report for work more than five days per week without his or her agreement, and no part of any working day may be accumulated by the employer for future work assignments, unless the employee agrees thereto.

(e) If a service person whose regular work week is scheduled from Monday through Friday agrees to perform any work assignments on a Saturday or Sunday, the service person is paid for at least one-half day of work for each day he or she reports for work. If the service person works more than three and one-half hours on any Saturday or Sunday, he or she is paid for at least a full day of work for each day.

(f) A custodian, aide, maintenance, office and school lunch service person required to work a daily work schedule that is interrupted is paid additional compensation in accordance with this subsection.

(1) A maintenance person means a person who holds a classification title other than in a custodial, aide, school lunch, office or transportation category as provided in section one, article one of this chapter.

(2) A service person’s schedule is considered to be interrupted if he or she does not work a continuous period in one day. Aides are not regarded as working an interrupted schedule when engaged exclusively in the duties of transporting students:

(3) The additional compensation provided in this subsection:

(A) Is equal to at least one eighth of a service person’s total salary as provided by the state minimum pay scale and any county pay supplement; and
(B) Is payable entirely from county board funds.

(g) When there is a change in classification or when a service person meets the requirements of an advanced classification, his or her salary shall be made to comply with the requirements of this article and any county salary schedule in excess of the minimum requirements of this article, based upon the service person's advanced classification and allowable years of employment.

(h) A service person's contract, as provided in section five, article two of this chapter, shall state the appropriate monthly salary the employee is to be paid, based on the class title as provided in this article and on any county salary schedule in excess of the minimum requirements of this article.

(i) The column heads of the state minimum pay scale and class titles, set forth in section eight-a of this article, are defined as follows:

1. "Pay grade" means the monthly salary applicable to class titles of service personnel;

2. "Years of employment" means the number of years which an employee classified as a service person has been employed by a county board in any position prior to or subsequent to the effective date of this section and includes service in the Armed Forces of the United States, if the employee was employed at the time of his or her induction. For the purpose of section eight-a of this article, years of employment is limited to the number of years shown and allowed under the state minimum pay scale as set forth in section eight-a of this article;

3. "Class title" means the name of the position or job held by a service person;
(4) "Accountant I" means a person employed to maintain payroll records and reports and perform one or more operations relating to a phase of the total payroll;

(5) "Accountant II" means a person employed to maintain accounting records and to be responsible for the accounting process associated with billing, budgets, purchasing and related operations;

(6) "Accountant III" means a person employed in the county board office to manage and supervise accounts payable, payroll procedures, or both;

(7) "Accounts payable supervisor" means a person employed in the county board office who has primary responsibility for the accounts payable function and who either has completed twelve college hours of accounting courses from an accredited institution of higher education or has at least eight years of experience performing progressively difficult accounting tasks. Responsibilities of this class title may include supervision of other personnel;

(8) "Aide I" means a person selected and trained for a teacher-aide classification such as monitor aide, clerical aide, classroom aide or general aide;

(9) "Aide II" means a service person referred to in the "Aide I" classification who has completed a training program approved by the state board, or who holds a high school diploma or has received a general educational development certificate. Only a person classified in an Aide II class title may be employed as an aide in any special education program;

(10) "Aide III" means a service person referred to in the "Aide I" classification who holds a high school diploma or a general educational development certificate; and
(A) Has completed six semester hours of college credit at an institution of higher education; or

(B) Is employed as an aide in a special education program and has one year's experience as an aide in special education;

(11) "Aide IV" means a service person referred to in the "Aide I" classification who holds a high school diploma or a general educational development certificate; and

(A) Has completed eighteen hours of state board-approved college credit at a regionally accredited institution of higher education; or

(B) Has completed fifteen hours of state board-approved college credit at a regionally accredited institution of higher education; and has successfully completed an in-service training program determined by the State Board to be the equivalent of three hours of college credit;

(12) "Audiovisual technician" means a person employed to perform minor maintenance on audiovisual equipment, films, and supplies and who fills requests for equipment;

(13) "Auditor" means a person employed to examine and verify accounts of individual schools and to assist schools and school personnel in maintaining complete and accurate records of their accounts;

(14) "Autism mentor" means a person who works with autistic students and who meets standards and experience to be determined by the State Board. A person who has held or holds an aide title and becomes employed as an autism mentor shall hold a multiclassification status that includes both aide and autism mentor titles, in accordance with section eight-b of this article;
(15) "Braille specialist" means a person employed to provide braille assistance to students. A service person who has held or holds an aide title and becomes employed as a braille specialist shall hold a multiclassification status that includes both aide and braille specialist title, in accordance with section eight-b of this article;

(16) "Bus operator" means a person employed to operate school buses and other school transportation vehicles as provided by the state board;

(17) "Buyer" means a person employed to review and write specifications, negotiate purchase bids and recommend purchase agreements for materials and services that meet predetermined specifications at the lowest available costs;

(18) "Cabinetmaker" means a person employed to construct cabinets, tables, bookcases and other furniture;

(19) "Cafeteria manager" means a person employed to direct the operation of a food services program in a school, including assigning duties to employees, approving requisitions for supplies and repairs, keeping inventories, inspecting areas to maintain high standards of sanitation, preparing financial reports and keeping records pertinent to food services of a school;

(20) "Carpenter I" means a person classified as a carpenter's helper;

(21) "Carpenter II" means a person classified as a journeyman carpenter;

(22) "Chief mechanic" means a person employed to be responsible for directing activities which ensure that student transportation or other county board-owned vehicles are properly and safely maintained;
(23) “Clerk I” means a person employed to perform clerical tasks;

(24) “Clerk II” means a person employed to perform general clerical tasks, prepare reports and tabulations, and operate office machines;

(25) “Computer operator” means a qualified person employed to operate computers;

(26) “Cook I” means a person employed as a cook’s helper;

(27) “Cook II” means a person employed to interpret menus and to prepare and serve meals in a food service program of a school. This definition includes a service person who has been employed as a “Cook I” for a period of four years;

(28) “Cook III” means a person employed to prepare and serve meals, make reports, prepare requisitions for supplies, order equipment and repairs for a food service program of a school system;

(29) “Crew leader” means a person employed to organize the work for a crew of maintenance employees to carry out assigned projects;

(30) “Custodian I” means a person employed to keep buildings clean and free of refuse;

(31) “Custodian II” means a person employed as a watchman or groundsman;

(32) “Custodian III” means a person employed to keep buildings clean and free of refuse, to operate the heating or cooling systems and to make minor repairs;
(33) "Custodian IV" means a person employed as a head custodian. In addition to providing services as defined in "Custodian III" duties may include supervising other custodian personnel;

(34) "Director or coordinator of services" means an employee of a county board who is assigned to direct a department or division.

(A) Nothing in this subdivision prohibits a professional person or a professional educator from holding this class title;

(B) Professional personnel holding this class title may not be defined or classified as service personnel unless the professional person held a service personnel title under this section prior to holding the class title of "director or coordinator of services";

(C) The director or coordinator of services is classified either as a professional person or a service person for state aid formula funding purposes;

(D) Funding for the position of director or coordinator of services is based upon the employment status of the director or coordinator either as a professional person or a service person;

(E) A person employed under the class title "director or coordinator of services" may not be exclusively assigned to perform the duties ascribed to any other class title as defined in this subsection: Provided, That nothing in this paragraph prohibits a person in this position from being multiclassified;

(35) "Draftsman" means a person employed to plan, design and produce detailed architectural/engineering drawings;

(36) "Early Childhood Classroom Assistant Teacher - Temporary Authorization" means a person who does not possess
minimum requirements for the permanent authorization
requirements, but is enrolled in and pursuing requirements;

(37) "Early Childhood Classroom Assistant Teacher -
Permanent Authorization" means a person who has completed
the minimum requirements for a state-awarded certificate for
everal childhood classroom assistant teachers that meet or exceed
the requirements for a child development associate. Equivalency
for the West Virginia Department of Education will be
determined as the child development associate or the West
Virginia Apprenticeship for Child Development Specialists;

(38) "Early Childhood Classroom Assistant Teacher -
Paraprofessional Certificate" means a person who has completed
permanent authorization requirements, as well as additional
requirements comparable to current paraprofessional certificate;

(39) "Educational Sign Language Interpreter I" means a
person employed to provide communication access across all
educational environments to students who are deaf or hard of
hearing, and who holds the Initial Paraprofessional Certificate –
Educational Interpreter pursuant to state board policy;

(40) "Educational Sign Language Interpreter II" means a
person employed to provide communication access across all
educational environments to students who are deaf or hard of
hearing, and who holds the Permanent Paraprofessional
Certificate – Educational Interpreter pursuant to state board
policy;

(41) "Electrician I" means a person employed as an
apprentice electrician helper or one who holds an electrician
helper license issued by the State Fire Marshal;

(42) "Electrician II" means a person employed as an
electrician journeyman or one who holds a journeyman
electrician license issued by the State Fire Marshal;
(43) "Electronic technician I" means a person employed at the apprentice level to repair and maintain electronic equipment;

(44) "Electronic technician II" means a person employed at the journeyman level to repair and maintain electronic equipment;

(45) "Executive secretary" means a person employed as secretary to the county school superintendent or as a secretary who is assigned to a position characterized by significant administrative duties;

(46) "Food services supervisor" means a qualified person who is not a professional person or professional educator as defined in section one, article one of this chapter. The food services supervisor is employed to manage and supervise a county school system's food service program. The duties include preparing in-service training programs for cooks and food service employees, instructing personnel in the areas of quantity cooking with economy and efficiency and keeping aggregate records and reports;

(47) "Foreman" means a skilled person employed to supervise personnel who work in the areas of repair and maintenance of school property and equipment;

(48) "General maintenance" means a person employed as a helper to skilled maintenance employees, and to perform minor repairs to equipment and buildings of a county school system;

(49) "Glazier" means a person employed to replace glass or other materials in windows and doors and to do minor carpentry tasks;

(50) "Graphic artist" means a person employed to prepare graphic illustrations;
"Groundsman" means a person employed to perform duties that relate to the appearance, repair and general care of school grounds in a county school system. Additional assignments may include the operation of a small heating plant and routine cleaning duties in buildings;

"Handyman" means a person employed to perform routine manual tasks in any operation of the county school system;

"Heating and air conditioning mechanic I" means a person employed at the apprentice level to install, repair and maintain heating and air conditioning plants and related electrical equipment;

"Heating and air conditioning mechanic II" means a person employed at the journeyman level to install, repair and maintain heating and air conditioning plants and related electrical equipment;

"Heavy equipment operator" means a person employed to operate heavy equipment;

"Inventory supervisor" means a person employed to supervise or maintain operations in the receipt, storage, inventory and issuance of materials and supplies;

"Key punch operator" means a qualified person employed to operate key punch machines or verifying machines;

"Licensed practical nurse" means a nurse, licensed by the West Virginia Board of Examiners for Licensed Practical Nurses, employed to work in a public school under the supervision of a school nurse;

"Locksmith" means a person employed to repair and maintain locks and safes;
“Lubrication man” means a person employed to lubricate and service gasoline or diesel-powered equipment of a county school system;

“Machinist” means a person employed to perform machinist tasks which include the ability to operate a lathe, planer, shader, threading machine and wheel press. A person holding this class title also should have the ability to work from blueprints and drawings;

“Mail clerk” means a person employed to receive, sort, dispatch, deliver or otherwise handle letters, parcels and other mail;

“Maintenance clerk” means a person employed to maintain and control a stocking facility to keep adequate tools and supplies on hand for daily withdrawal for all school maintenance crafts;

“Mason” means a person employed to perform tasks connected with brick and block laying and carpentry tasks related to these activities;

“Mechanic” means a person employed to perform skilled duties independently in the maintenance and repair of automobiles, school buses and other mechanical and mobile equipment to use in a county school system;

“Mechanic assistant” means a person employed as a mechanic apprentice and helper;

“Multiclassification” means a person employed to perform tasks that involve the combination of two or more class titles in this section. In these instances the minimum salary scale is the higher pay grade of the class titles involved;
(68) "Office equipment repairman I" means a person employed as an office equipment repairman apprentice or helper;

(69) "Office equipment repairman II" means a person responsible for servicing and repairing all office machines and equipment. A person holding this class title is responsible for the purchase of parts necessary for the proper operation of a program of continuous maintenance and repair;

(70) "Painter" means a person employed to perform duties painting, finishing and decorating wood, metal and concrete surfaces of buildings, other structures, equipment, machinery and furnishings of a county school system;

(71) "Paraprofessional" means a person certified pursuant to section two-a, article three of this chapter to perform duties in a support capacity including, but not limited to, facilitating in the instruction and direct or indirect supervision of students under the direction of a principal, a teacher or another designated professional educator.

(A) A person employed on the effective date of this section in the position of an aide may not be subject to a reduction in force or transferred to create a vacancy for the employment of a paraprofessional;

(B) A person who has held or holds an aide title and becomes employed as a paraprofessional shall hold a multiclassification status that includes both aide and paraprofessional titles in accordance with section eight-b of this article; and

(C) When a service person who holds an aide title becomes certified as a paraprofessional and is required to perform duties that may not be performed by an aide without paraprofessional certification, he or she shall receive the paraprofessional title pay grade;
(72) "Payroll supervisor" means a person employed in the county board office who has primary responsibility for the payroll function and who either has completed twelve college hours of accounting from an accredited institution of higher education or has at least eight years of experience performing progressively difficult accounting tasks. Responsibilities of this class title may include supervision of other personnel;

(73) "Plumber I" means a person employed as an apprentice plumber and helper;

(74) "Plumber II" means a person employed as a journeyman plumber;

(75) "Printing operator" means a person employed to operate duplication equipment, and to cut, collate, staple, bind and shelve materials as required;

(76) "Printing supervisor" means a person employed to supervise the operation of a print shop;

(77) "Programmer" means a person employed to design and prepare programs for computer operation;

(78) "Roofing/sheet metal mechanic" means a person employed to install, repair, fabricate and maintain roofs, gutters, flashing and duct work for heating and ventilation;

(79) "Sanitation plant operator" means a person employed to operate and maintain a water or sewage treatment plant to ensure the safety of the plant's effluent for human consumption or environmental protection;

(80) "School bus supervisor" means a qualified person:

(A) Employed to assist in selecting school bus operators and routing and scheduling school buses, operate a bus when needed,
relay instructions to bus operators, plan emergency routing of buses and promote good relationships with parents, students, bus operators and other employees; and

(B) Certified to operate a bus or previously certified to operate a bus;

(81) "Secretary I" means a person employed to transcribe from notes or mechanical equipment, receive callers, perform clerical tasks, prepare reports and operate office machines;

(82) "Secretary II" means a person employed in any elementary, secondary, kindergarten, nursery, special education, vocational, or any other school as a secretary. The duties may include performing general clerical tasks; transcribing from notes; stenotype, mechanical equipment or a sound-producing machine; preparing reports; receiving callers and referring them to proper persons; operating office machines; keeping records and handling routine correspondence. Nothing in this subdivision prevents a service person from holding or being elevated to a higher classification;

(83) "Secretary III" means a person assigned to the county board office administrators in charge of various instructional, maintenance, transportation, food services, operations and health departments, federal programs or departments with particular responsibilities in purchasing and financial control or any person who has served for eight years in a position which meets the definition of "secretary II" or "secretary III";

(84) "Sign Support Specialist" means a person employed to provide sign supported speech assistance to students who are able to access environments through audition. A person who has held or holds an aide title and becomes employed as a sign support specialist shall hold a multi-classification status that
includes both aide and sign support specialist titles, in accordance with section eight-b of this article.

(85) "Supervisor of maintenance" means a skilled person who is not a professional person or professional educator as defined in section one, article one of this chapter. The responsibilities include directing the upkeep of buildings and shops, and issuing instructions to subordinates relating to cleaning, repairs and maintenance of all structures and mechanical and electrical equipment of a county board;

(86) "Supervisor of transportation" means a qualified person employed to direct school transportation activities properly and safely, and to supervise the maintenance and repair of vehicles, buses and other mechanical and mobile equipment used by the county school system. After July 1, 2010, all persons employed for the first time in a position with this classification title or in a multi-classification position that includes this title shall have five years of experience working in the transportation department of a county board. Experience working in the transportation department consists of serving as a bus operator, bus aide, assistant mechanic, mechanic, chief mechanic or in a clerical position within the transportation department;

(87) "Switchboard operator-receptionist" means a person employed to refer incoming calls, to assume contact with the public, to direct and to give instructions as necessary, to operate switchboard equipment and to provide clerical assistance;

(88) "Truck driver" means a person employed to operate light or heavy duty gasoline and diesel-powered vehicles;

(89) "Warehouse clerk" means a person employed to be responsible for receiving, storing, packing and shipping goods;

(90) "Watchman" means a person employed to protect school property against damage or theft. Additional assignments
may include operation of a small heating plant and routine cleaning duties;

(91) "Welder" means a person employed to provide acetylene or electric welding services for a school system; and

(92) "WVEIS data entry and administrative clerk" means a person employed to work under the direction of a school principal to assist the school counselor or counselors in the performance of administrative duties, to perform data entry tasks on the West Virginia Education Information System, and to perform other administrative duties assigned by the principal.

(j) Notwithstanding any provision in this code to the contrary, and in addition to the compensation provided for service personnel in section eight-a of this article, each service person is entitled to all service personnel employee rights, privileges and benefits provided under this or any other chapter of this code without regard to the employee's hours of employment or the methods or sources of compensation.

(k) A service person whose years of employment exceeds the number of years shown and provided for under the state minimum pay scale set forth in section eight-a of this article may not be paid less than the amount shown for the maximum years of employment shown and provided for in the classification in which he or she is employed.

(l) Each county board shall review each service person's job classification annually and shall reclassify all service persons as required by the job classifications. The state superintendent may withhold state funds appropriated pursuant to this article for salaries for service personnel who are improperly classified by the county boards. Further, the state superintendent shall order a county board to correct immediately any improper classification matter and, with the assistance of the Attorney
General, shall take any legal action necessary against any county board to enforce the order.

(m) Without his or her written consent, a service person may not be:

(1) Reclassified by class title; or

(2) Relegated to any condition of employment which would result in a reduction of his or her salary, rate of pay, compensation or benefits earned during the current fiscal year; or for which he or she would qualify by continuing in the same job position and classification held during that fiscal year and subsequent years.

(n) Any county board failing to comply with the provisions of this article may be compelled to do so by mandamus and is liable to any party prevailing against the board for court costs and the prevailing party’s reasonable attorney fee, as determined and established by the court.

(o) Notwithstanding any provision of this code to the contrary, a service person who holds a continuing contract in a specific job classification and who is physically unable to perform the job’s duties as confirmed by a physician chosen by the employee, shall be given priority status over any employee not holding a continuing contract in filling other service personnel job vacancies if the service person is qualified as provided in section eight-e of this article.

(p) Any person employed in an aide position on the effective date of this section may not be transferred or subject to a reduction in force for the purpose of creating a vacancy for the employment of a licensed practical nurse.

(q) Without the written consent of the service person, a county board may not establish the beginning work station for a
bus operator or transportation aide at any site other than a county board-owned facility with available parking. The workday of the bus operator or transportation aide commences at the bus at the designated beginning work station and ends when the employee is able to leave the bus at the designated beginning work station, unless he or she agrees otherwise in writing. The application or acceptance of a posted position may not be construed as the written consent referred to in this subsection.

(r) Itinerant status means a service person who does not have a fixed work site and may be involuntarily reassigned to another work site. A service person is considered to hold itinerant status if he or she has bid upon a position posted as itinerant or has agreed to accept this status. A county board may establish positions with itinerant status only within the aide and autism mentor classification categories and only when the job duties involve exceptional students. A service person with itinerant status may be assigned to a different work site upon written notice ten days prior to the reassignment without the consent of the employee and without posting the vacancy. A service person with itinerant status may be involuntarily reassigned no more than twice during the school year. At the conclusion of each school year, the county board shall post and fill, pursuant to section eight-b of this article, all positions that have been filled without posting by a service person with itinerant status. A service person who is assigned to a beginning and ending work site and travels at the expense of the county board to other work sites during the daily schedule, is not considered to hold itinerant status.

(s) Any service person holding a classification title on June 30, 2013, that is removed from the classification schedule pursuant to amendment and reenactment of this section in the year 2013, has his or her employment contract revised as follows:
Any service person holding the Braille or Sign Language Specialist classification title has that classification title renamed on his or her employment contract as either Braille Specialist or Sign Support Specialist. This action does not result in a loss or reduction of salary or supplement by any employee. Any seniority earned in the Braille or Sign Language Specialist classification prior to July 1, 2013, continues to be credited as seniority earned in the Braille Specialist or Sign Support Specialist classification;

(2) Any service person holding the Paraprofessional classification title and holding the Initial Paraprofessional Certificate — Educational Interpreter has the title Educational Sign Language Interpreter I added to his or her employment contract. This action does not result in a loss or reduction of salary or supplement by any employee. Any seniority earned in the Paraprofessional classification prior to July 1, 2013, continues to be credited as seniority earned in the Educational Sign Language Interpreter I classification; and

(3) Any service person holding the Paraprofessional classification title and holding the Permanent Paraprofessional Certificate — Educational Interpreter has the title Educational Sign Language Interpreter II added to his or her employment contract. This action does not result in a loss or reduction of salary or supplement by any employee. Any seniority earned in the Paraprofessional classification prior to July 1, 2013, continues to be credited as seniority earned in the Educational Sign Language Interpreter II classification.

§18A-4-8a. Service personnel minimum monthly salaries.

(a) The minimum monthly pay for each service employee shall be as follows:

(1) Beginning July 1, 2011, and continuing thereafter, the minimum monthly pay for each service employee whose
employment is for a period of more than three and one-half
hours a day shall be at least the amounts indicated in the State
Minimum Pay Scale Pay Grade and the minimum monthly pay
for each service employee whose employment is for a period of
three and one-half hours or less a day shall be at least one half
the amount indicated in the State Minimum Pay Scale Pay Grade
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<td>2,306</td>
<td>2,368</td>
<td>2,399</td>
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56  (2) Each service employee shall receive the amount prescribed in the Minimum Pay Scale in accordance with the provisions of this subsection according to their class title and pay grade as set forth in this subdivision:
<table>
<thead>
<tr>
<th>CLASS TITLE</th>
<th>PAY GRADE</th>
</tr>
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<tbody>
<tr>
<td>Accountant I</td>
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<tr>
<td>Accountant II</td>
<td>E</td>
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<tr>
<td>Accountant III</td>
<td>F</td>
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<tr>
<td>Accounts Payable Supervisor</td>
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<tr>
<td>Aide I</td>
<td>A</td>
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<tr>
<td>Aide II</td>
<td>B</td>
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<tr>
<td>Aide III</td>
<td>C</td>
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<tr>
<td>Aide IV</td>
<td>D</td>
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<tr>
<td>Audiovisual Technician</td>
<td>C</td>
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<tr>
<td>Auditor</td>
<td>G</td>
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<tr>
<td>Autism Mentor</td>
<td>F</td>
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<tr>
<td>Braille Specialist</td>
<td>E</td>
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<tr>
<td>Bus Operator</td>
<td>D</td>
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<tr>
<td>Buyer</td>
<td>F</td>
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<tr>
<td>Cabinetmaker</td>
<td>G</td>
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<tr>
<td>Cafeteria Manager</td>
<td>D</td>
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<tr>
<td>Carpenter I</td>
<td>E</td>
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<tr>
<td>Carpenter II</td>
<td>F</td>
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<tr>
<td>Chief Mechanic</td>
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<td>Code</td>
<td>Title</td>
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<tr>
<td>80</td>
<td>Clerk I</td>
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<td>Clerk II</td>
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<td>82</td>
<td>Computer Operator</td>
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<td>83</td>
<td>Cook I</td>
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<td>84</td>
<td>Cook II</td>
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<td>85</td>
<td>Cook III</td>
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<td>86</td>
<td>Crew Leader</td>
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<td>87</td>
<td>Custodian I</td>
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<td>88</td>
<td>Custodian II</td>
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<td>89</td>
<td>Custodian III</td>
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<td>90</td>
<td>Custodian IV</td>
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<td>91</td>
<td>Director or Coordinator of Services</td>
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<tr>
<td>92</td>
<td>Draftsman</td>
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<td>93</td>
<td>Early Childhood Classroom Assistant Teacher</td>
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<tr>
<td>94</td>
<td>Temporary Authorization</td>
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<tr>
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<td>Early Childhood Classroom Assistant Teacher</td>
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<td>96</td>
<td>Permanent Authorization</td>
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<td>97</td>
<td>Early Childhood Classroom Assistant Teacher</td>
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<td>Paraprofessional Certificate</td>
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<td>99</td>
<td>Educational Sign Language Interpreter I</td>
</tr>
<tr>
<td>100</td>
<td>Educational Sign Language Interpreter II</td>
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</table>
101 Electrician I ............................................. F
102 Electrician II .......................................... G
103 Electronic Technician I ................................ F
104 Electronic Technician II ................................ G
105 Executive Secretary .................................... G
106 Food Services Supervisor ............................... G
107 Foreman .................................................. G
108 General Maintenance ................................... C
109 Glazier ..................................................... D
110 Graphic Artist ............................................ D
111 Groundsman .............................................. B
112 Handyman ................................................ B
113 Heating and Air Conditioning Mechanic I ............... E
114 Heating and Air Conditioning Mechanic II ............... G
115 Heavy Equipment Operator ............................... E
116 Inventory Supervisor ..................................... D
117 Key Punch Operator ...................................... B
118 Licensed Practical Nurse ................................ F
119 Locksmith ................................................... G
120 Lubrication Man ............................................. C
Ch. 172] SCHOOL SERVICE PERSONNEL

121 Machinist. .............................................. F
122 Mail Clerk. .............................................. D
123 Maintenance Clerk. .................................... C
124 Mason. .................................................. G
125 Mechanic. ............................................... F
126 Mechanic Assistant. ................................... E
127 Office Equipment Repairman I. ...................... F
128 Office Equipment Repairman II. ...................... G
129 Painter. .................................................. E
130 Paraprofessional. ....................................... F
131 Payroll Supervisor. ..................................... G
132 Plumber I. ................................................. E
133 Plumber II. ................................................. G
134 Printing Operator. ....................................... B
135 Printing Supervisor. ..................................... D
136 Programmer. .............................................. H
137 Roofing/Sheet Metal Mechanic. ....................... F
138 Sanitation Plant Operator. .............................. G
139 School Bus Supervisor ................................... E
140 Secretary I. .............................................. D
141 Secretary II. .............................................. E
Secretary III ..................................... F
Sign Support Specialist .......................... E
Supervisor of Maintenance ........................ H
Supervisor of Transportation ........................ H
Switchboard Operator-Receptionist ................. D
Truck Driver ....................................... D
Warehouse Clerk .................................. C
Watchman .......................................... B
Welder ............................................... F
WVEIS Data Entry and Administrative Clerk ........ B

(b) An additional $12 per month is added to the minimum
monthly pay of each service person who holds a high school
diploma or its equivalent.

(c) An additional $11 per month also is added to the
minimum monthly pay of each service person for each of the
following:

(1) A service person who holds twelve college hours or
comparable credit obtained in a trade or vocational school as
approved by the state board;

(2) A service person who holds twenty-four college hours or
comparable credit obtained in a trade or vocational school as
approved by the state board;

(3) A service person who holds thirty-six college hours or
comparable credit obtained in a trade or vocational school as
approved by the state board;
(4) A service person who holds forty-eight college hours or comparable credit obtained in a trade or vocational school as approved by the state board;

(5) A service employee who holds sixty college hours or comparable credit obtained in a trade or vocational school as approved by the state board;

(6) A service person who holds seventy-two college hours or comparable credit obtained in a trade or vocational school as approved by the state board;

(7) A service person who holds eighty-four college hours or comparable credit obtained in a trade or vocational school as approved by the state board;

(8) A service person who holds ninety-six college hours or comparable credit obtained in a trade or vocational school as approved by the state board;

(9) A service person who holds one hundred eight college hours or comparable credit obtained in a trade or vocational school as approved by the state board;

(10) A service person who holds one hundred twenty college hours or comparable credit obtained in a trade or vocational school as approved by the state board;

(d) An additional $40 per month also is added to the minimum monthly pay of each service person for each of the following:

(1) A service person who holds an associate's degree;

(2) A service person who holds a bachelor's degree;

(3) A service person who holds a master's degree;
(4) A service person who holds a doctorate degree.

(e) An additional $11 per month is added to the minimum monthly pay of each service person for each of the following:

(1) A service person who holds a bachelor's degree plus fifteen college hours;

(2) A service person who holds a master's degree plus fifteen college hours;

(3) A service person who holds a master's degree plus thirty college hours;

(4) A service person who holds a master's degree plus forty-five college hours; and

(5) A service person who holds a master's degree plus sixty college hours.

(f) To meet the objective of salary equity among the counties, each service person is paid an equity supplement, as set forth in section five of this article, of $152 per month, subject to the provisions of that section. These payments: (i) Are in addition to any amounts prescribed in the applicable State Minimum Pay Scale Pay Grade, any specific additional amounts prescribed in this section and article and any county supplement in effect in a county pursuant to section five-b of this article; (ii) is paid in equal monthly installments; and (iii) is considered a part of the state minimum salaries for service personnel.

(g) When any part of a school service person's daily shift of work is performed between the hours of six o'clock p. m. and five o'clock a. m. the following day, the employee is paid no less than an additional $10 per month and one half of the pay is paid with local funds.
(h) Any service person required to work on any legal school holiday is paid at a rate one and one-half times the person’s usual hourly rate.

(i) Any full-time service personnel required to work in excess of their normal working day during any week which contains a school holiday for which they are paid is paid for the additional hours or fraction of the additional hours at a rate of one and one-half times their usual hourly rate and paid entirely from county board funds.

(j) A service person may not have his or her daily work schedule changed during the school year without the employee’s written consent and the person’s required daily work hours may not be changed to prevent the payment of time and one-half wages or the employment of another employee.

(k) The minimum hourly rate of pay for extra duty assignments as defined in section eight-b of this article is no less than one seventh of the person’s daily total salary for each hour the person is involved in performing the assignment and paid entirely from local funds: Provided, That an alternative minimum hourly rate of pay for performing extra duty assignments within a particular category of employment may be used if the alternate hourly rate of pay is approved both by the county board and by the affirmative vote of a two-thirds majority of the regular full-time persons within that classification category of employment within that county: Provided, however, That the vote is by secret ballot if requested by a service person within that classification category within that county. The salary for any fraction of an hour the employee is involved in performing the assignment is prorated accordingly. When performing extra duty assignments, persons who are regularly employed on a one-half day salary basis shall receive the same hourly extra duty assignment pay computed as though the person were employed on a full-day salary basis.
(l) The minimum pay for any service personnel engaged in the removal of asbestos material or related duties required for asbestos removal is their regular total daily rate of pay and no less than an additional $3 per hour or no less than $5 per hour for service personnel supervising asbestos removal responsibilities for each hour these employees are involved in asbestos-related duties. Related duties required for asbestos removal include, but are not limited to, travel, preparation of the work site, removal of asbestos decontamination of the work site, placing and removal of equipment and removal of structures from the site. If any member of an asbestos crew is engaged in asbestos related duties outside of the employee’s regular employment county, the daily rate of pay is no less than the minimum amount as established in the employee’s regular employment county for asbestos removal and an additional $30 per each day the employee is engaged in asbestos removal and related duties. The additional pay for asbestos removal and related duties shall be payable entirely from county funds. Before service personnel may be used in the removal of asbestos material or related duties, they shall have completed a federal Environmental Protection Act approved training program and be licensed. The employer shall provide all necessary protective equipment and maintain all records required by the Environmental Protection Act.

(m) For the purpose of qualifying for additional pay as provided in section eight, article five of this chapter, an aide is considered to be exercising the authority of a supervisory aide and control over pupils if the aide is required to supervise, control, direct, monitor, escort or render service to a child or children when not under the direct supervision of a certified professional person within the classroom, library, hallway, lunchroom, gymnasium, school building, school grounds or wherever supervision is required. For purposes of this section, “under the direct supervision of a certified professional person” means that certified professional person is present, with and accompanying the aide.
AN ACT to amend and reenact §17C-14-15 of the Code of West Virginia, 1931, as amended; and to amend and reenact §17C-15-49, of said code, all relating to the operation of motor vehicles; making the offense of failure to wear safety belts a primary offense; and prohibiting denial of insurance coverage for prohibited use of electronic communications devices while driving.

Be it enacted by the Legislature of West Virginia:

That §17C-14-15 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §17C-15-49 of said code be amended and reenacted, all to read as follows:

CHAPTER 17C. TRAFFIC REGULATIONS AND LAWS OF THE ROAD.

ARTICLE 14. MISCELLANEOUS RULES.

§17C-14-15. Prohibited use of an electronic communications device driving without handheld features; definitions; exceptions; penalties.

(a) Except as provided in subsection (c) of this section, a person may not drive or operate a motor vehicle on a public street or highway while:

(1) Texting; or
(2) Using a cell phone or other electronic communications device, unless the use is accomplished by hands-free equipment.

(b) For purposes of this section, the following terms shall mean:

(1) "Cell phone" shall mean a cellular, analog, wireless or digital telephone.

(2) "Driving" or "operating a motor vehicle" means operating a motor vehicle, with the motor running, including while temporarily stationary because of traffic, a traffic control device, or other momentary delays, but does not include operating a motor vehicle after the driver has moved the vehicle to the side of, or off, a highway and halted in a location where the vehicle can safely remain stationary.

(3) "Electronic communication device" means a cell telephone, personal digital assistant, electronic device with mobile data access, laptop computer, pager, broadband personal communication device, 2-way messaging device, electronic game, or portable computing device. For the purposes of this section, an "electronic communication device" does not include:

(A) Voice radios, mobile radios, land mobile radios, commercial mobile radios or two way radios with the capability to transmit and receive voice transmissions utilizing a push-to-talk or press-to-transmit function; or

(B) Other voice radios used by a law-enforcement officer, an emergency services provider, an employee or agent of public safety organizations, first responders, Amateur Radio Operators (HAM) licensed by the Federal Communications Commission and school bus operators.

(4) "Engaging in a call" means when a person talks into or listens on an electronic communication device, but shall not include when a person dials or enters a phone number on a pushpad or screen to initiate the call.
(5) "Hands-free electronic communication device" means an electronic communication device that has an internal feature or function, or that is equipped with an attachment or addition, whether or not permanently part of such electronic communication device, by which a user engages in a call without the use of either hand or both hands.

(6) "Hands-free equipment" means the internal feature or function of a hands-free electronic communication device or the attachment or addition to a hands-free electronic communication device by which a user may engage in a call or text without the use of either hand or both hands.

(7) "Texting" means manually entering alphanumeric text into, or reading text from, an electronic communication device, and includes, but is not limited to, short message service, e-mailing, instant messaging, a command or request to access a World Wide Web page or engaging in any other form of electronic text retrieval or entry, for present or future communication. For purposes of this section, "texting" does not include the following actions:

(A) Reading, selecting or entering a telephone number, an extension number, or voicemail retrieval codes and commands into an electronic device by the pressing the device in order to initiate or receive a phone call or using voice commands to initiate or receive a telephone call;

(B) Inputting, selecting or reading information on a global positioning system or navigation system; or

(C) Using a device capable of performing multiple functions, including fleet management systems, dispatching devices, smartphones, citizens band radios or music players, for a purpose that is not otherwise prohibited in this section.
(8) "Using a cell phone or other electronic communication device" means holding in a person's hand or hands an electronic communication device while:

(A) Viewing or transmitting images or data;

(B) Playing games;

(C) Composing, sending, reading, viewing, accessing, browsing, transmitting, saving or retrieving e-mail, text messages or other electronic data; or

(D) Engaging in a call.

(c) Subsection (a) of this section shall not apply to:

(1) A law-enforcement officer, a firefighter, an emergency medical technician, a paramedic or the operator of an authorized emergency vehicle in the performance of their official duties;

(2) A person using an electronic communication device to report to appropriate authorities a fire, a traffic accident, a serious road hazard, or a medical or hazardous materials emergencies.

(3) The activation or deactivation of hands-free equipment or a function of hands-free equipment.

(d) This section does not supersede the provisions of section three-a, article two, chapter seventeen-b of this code or any more restrictive provisions for drivers of commercial motor vehicles prescribed by the provisions of chapter seventeen-e of this code or federal law or rule.

(e) Any person who violates the provisions of subsection (a) of this section is guilty of a traffic offense and, upon conviction thereof, shall for a first offense be fined $100; for a second
offense be fined $200; and for a third or subsequent offense be fined $300. No court costs or other fees shall be assessed for a violation of subsection (a) of this section.

(f) Notwithstanding any other provision of this code to the contrary, points may not be entered on any driver's record maintained by the Division of Motor Vehicles as a result of a violation of this section, except for the third and subsequent convictions of the offense, for which three points shall be entered on any driver's record maintained by the Division of Motor Vehicles.

(g) Driving or operating a motor vehicle on a public street or highway while texting shall be enforced as a primary offense. Driving or operating a motor vehicle on a public street or highway while using a cell phone or other electronic communication device without hands-free equipment shall be enforced as a secondary offense until July 1, 2013, when it shall be enforced as a primary offense for purposes of citation.

(h) Within ninety days of the effective date of this section, the Department of Transportation shall cause to be erected signs upon any highway entering the state of West Virginia on which a welcome to West Virginia sign is posted, and any other highway where the Division of Highways deems appropriate, posted at a distance of not more than one mile from each border crossing, each sign to bear an inscription clearly communicating to motorists entering the state that texting, or the use of a wireless communication device without hands-free equipment, is illegal within this state.

(i) Nothing contained in this section shall be construed to authorize seizure of a cell phone or electronic device by any law-enforcement agency.

(j) No policy providing liability coverage for personal lines insurance shall contain a provision which may be used to deny
coverage or exclude payment of any legal damages recoverable by law for injuries proximately caused by a violation of this section, as long as such amounts are within the coverage limits of the insured.

ARTICLE 15. EQUIPMENT.

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

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

(b) The required use of safety belts as provided herein does not apply to a duly appointed or contracted rural mail carrier of the United States Postal Service who is actually making mail deliveries or to a passenger or operator with a physically disabling condition whose physical disability would prevent appropriate restraint in the safety belt if the condition is duly certified by a physician who states the nature of the disability as well as the reason the restraint is inappropriate. The Division of Motor Vehicles shall adopt rules, in accordance with the provisions of chapter twenty-nine-a of this code, to establish a
method to certify the physical disability and to require use of an
alternative restraint system where feasible or to waive the
requirement for the use of any restraint system.

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

(d) A violation of this section is not admissible as evidence
of negligence or contributory negligence or comparative
negligence in any civil action or proceeding for damages, and is
not admissible in mitigation of damages: Provided, That the
court may, upon motion of the defendant, conduct an in camera
hearing to determine whether an injured party's failure to wear
a safety belt was a proximate cause of the injuries complained
of. Upon a finding by the court, the court may then, in a jury
trial, by special interrogatory to the jury, determine: (1) That the
injured party failed to wear a safety belt; and (2) that the failure
to wear the safety belt constituted a failure to mitigate damages.
The trier of fact may reduce the injured party's recovery for
medical damages by an amount not to exceed five percent
thereof. In the event the plaintiff stipulates to the reduction of
five percent of medical damages, the court shall make the
calculations and the issue of mitigation of damages for failure to
wear a safety belt may not be presented to the jury. In all cases,
the actual computation of the dollar amount reduction shall be
determined by the court.

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

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

61 (g) Nothing contained in this section abrogates or alters the provisions of section forty-six of this article relating to the
62 mandatory use of child passenger safety devices.

CHAPTER 174

(H. B. 2542 - By Delegates Morgan, Stephens, Jones, Paxton, P. Smith, Staggers, Hartman and Lynch)

[Passed April 12, 2013; in effect from passage.]
[Approved by the Governor on April 29, 2013.]

AN ACT to amend and reenact §29A-2-7 of the Code of West Virginia, 1931, as amended, relating to publications of the Secretary of State; requiring the State Register, Code of State Rules and other documents of the Secretary of State be available only in electronic format; exceptions; rule-making authority; and providing that the fees collected for the sale of certain records will be deposited in equal amounts into the General Revenue Fund and the service fees and collections account.

Be it enacted by the Legislature of West Virginia:

That §29A-2-7 of the Code of West Virginia, 1931, as amended be amended and reenacted to read as follows:
ARTICLE 2. STATE REGISTER.

§29A-2-7. Publication of State Register.

(a) The Legislature intends that the Secretary of State offer to the public access to the State Register and Code of State Rules. The State Register, the Code of State Rules and other documents produced by the Secretary of State’s office shall be available in electronic format on the Secretary of State’s website.

(b) All materials filed in the State Register shall be indexed as quickly as possible in chronological order of filing with a brief description of the item filed and a columnar cross index to:

(1) Agency;

(2) Code citation to which it relates and by which it is filed in the State Register; and

(3) Other information in the description or cross index as the Secretary of State believes will aid a person in using the index.

(c) The Secretary of State shall post on the website with each update of the Code of State Rules, a copy of the rule monitor and its cross index which shows the rules that have become effective, and a table showing rules which are out for public comment, and agency-approved, modified and emergency rules.

(d) The Secretary of State may propose rules for legislative approval, in accordance with the provisions of article three of this chapter, to change the procedures outlined in this section.

(e) One half of all the fees and amounts collected for the sale of the State Register, the Code of State Rules and other copies or data provided by the Secretary of State shall be deposited in the State General Revenue Fund and one half of the fees in the service fees and collections account established in accordance
with subsection (f), section two, article one, chapter fifty-nine of this code for the operations of the office of the Secretary of State. The Secretary of State shall dedicate sufficient resources from that fund or other funds to provide the services required in this article.

(f) A person who is unable to access electronic versions of documents may review the documents at the office of the Secretary of State, or may request a printed copy at a cost which is sufficient, in the judgment of the Secretary of State, to defray the expenses of publication, including labor, paper and postage:

Provided, That the Secretary of State may waive the fee.

CHAPTER 175


[Passed April 10, 2013; in effect ninety days from passage.]
[Approved by the Governor on April 22, 2013.]

AN ACT to amend and reenact §31B-8-809 of the Code of West Virginia, 1931, as amended; to amend and reenact §31B-10-1006 of said code; to amend and reenact §31D-14-1420 of said code; to amend and reenact §31D-15-1530 of said code; to amend and reenact §31E-13-1320 of said code; to amend and reenact §31E-14-1430 of said code; and to amend and reenact §59-1-2a of said code, all relating to the authority to conduct business in the state; authorizing the Secretary of State to administratively dissolve or revoke the certificate of authority of certain business entities; authorizing dissolution or revocation if certain business
entities fail to pay fees imposed by law; requiring notice to a business entity by certified mail before dissolution or revocation due to failure to pay fees; permitting a bad check fee if certain payment by check or money order is rejected for certain reasons; authorizing dissolution or revocation if one or more professional licenses have been revoked and the license is or licenses are necessary for the continued operation of the business entity; and authorizing dissolution or revocation if the business entity is in default with the Bureau of Employment Programs.

Be it enacted by the Legislature of West Virginia:

That §31B-8-809 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §31B-10-1006 of said code be amended and reenacted; that §31D-14-1420 of said code be amended and reenacted; that §31D-15-1530 of said code be amended and reenacted; that §31E-13-1320 of said code be amended and reenacted; that §31E-14-1430 of said code be amended and reenacted; and that §59-1-2a of said code be amended and reenacted, all to read as follows:

CHAPTER 31B. UNIFORM LIMITED LIABILITY COMPANY ACT.

ARTICLE 8. WINDING UP COMPANY'S BUSINESS.

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

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

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

6 (2) The company fails to deliver its annual report to the Secretary of State within sixty days after it is due;
ARTICLE 10. FOREIGN LIMITED LIABILITY COMPANIES.

§31B-10-1006. Revocation and reinstatement of certificate of authority.

(a) A certificate of authority of a foreign limited liability company to transact business in this state may be revoked by the Secretary of State in the manner provided in subsection (b) of this section if:

(1) The company fails to:

(i) Pay any fees, taxes and penalties owed to this state;

(ii) Deliver its annual report required under section 2-211 to the Secretary of State within sixty days after it is due; or

(iii) File a statement of a change in the name or business address of the agent as required by this article;

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

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

(4) The company is in default with the Bureau of Employment Programs as provided in section six, article two, chapter twenty-one-a of this code.
(4) The company is in default with the Bureau of Employment Programs as provided in section six, article two, chapter twenty-one-a of this code.

(b) The Secretary of State may not revoke a certificate of authority of a foreign limited liability company unless the Secretary of State sends the company notice of the revocation, at least sixty days before its effective date, by a record addressed to its principal office. The notice must specify the cause for the revocation of the certificate of authority. The authority of the company to transact business in this state ceases on the effective date of the revocation unless the foreign limited liability company cures the failure before that date.

(c) A foreign limited liability company administratively revoked may apply to the Secretary of State for reinstatement within two years after the effective date of revocation. The application must:

(1) Recite the name of the company and the effective date of its administrative revocation; (2) state that the ground for revocation either did not exist or has been eliminated; (3) state that the company's name satisfies the requirements of section 10-1005; and (4) contain a certificate from the Tax Commissioner reciting that all taxes owed by the company have been paid.

(d) If the Secretary of State determines that the application contains the information required by subsection (a) of this section and that the information is correct, the Secretary of State shall cancel the certificate of revocation and prepare a certificate of reinstatement that recites this determination and the effective date of reinstatement, file the original of the certificate and serve the company with a copy of the certificate.

(e) When reinstatement is effective, it relates back to and takes effect as of the effective date of the administrative
CHAPTER 31D. WEST VIRGINIA BUSINESS CORPORATION ACT.

ARTICLE 14. DISSOLUTION.

PART II. ADMINISTRATIVE DISSOLUTION.

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

1 The Secretary of State may commence a proceeding under section one thousand four hundred twenty-one of this article to administratively dissolve a corporation if:

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

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

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

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

6 (5) The corporation is in default with the Bureau of Employment Programs as provided in section six, article two, chapter twenty-one-a of this code.
ARTICLE 15. FOREIGN CORPORATIONS.

PART III. REVOCATION OF CERTIFICATE OF AUTHORITY.


1 The Secretary of State may commence a proceeding under section one thousand five hundred thirty-one of this article to revoke the certificate of authority of a foreign corporation authorized to transact business in this state if:

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

(2) The foreign corporation does not inform the Secretary of State under section one thousand five hundred eight or one thousand five hundred nine of this article that its registered agent or registered office has changed, that its registered agent has resigned or that its registered office has been discontinued within sixty days of the change, resignation or discontinuance;

(3) An incorporator, director, officer or agent of the foreign corporation signed a document he or she knew was false in any material respect with intent that the document be delivered to the Secretary of State for filing;

(4) The Secretary of State receives a duly authenticated certificate from the Secretary of State or other official having custody of corporate records in the state or country under whose law the foreign corporation is incorporated stating that it has been dissolved or disappeared as the result of a merger;

(5) The professional license of one or more of the license holders is revoked by a professional licensing board and the license is or all the licenses are required for the continued operation of the foreign corporation; or
(6) The foreign corporation is in default with the Bureau of Employment Programs as provided in section six, article two, chapter twenty-one-a of this code.

CHAPTER 31E. WEST VIRGINIA NONPROFIT CORPORATION ACT.

ARTICLE 13. DISSOLUTION.

PART II. ADMINISTRATIVE DISSOLUTION.

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

1 The Secretary of State may commence a proceeding under section one thousand three hundred twenty-one of this article to administratively dissolve a corporation if:

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

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

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

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

(5) The corporation is in default with the Bureau of Employment Programs as provided in section six, article two, chapter twenty-one-a of this code.
ARTICLE 14. FOREIGN CORPORATIONS.

PART III. REVOCATION OF CERTIFICATE OF AUTHORITY.

§31E-14-1430. Grounds for revocation.

The Secretary of State may commence a proceeding under section one thousand four hundred thirty-one of this article to revoke the certificate of authority of a foreign corporation authorized to conduct activities in this state if:

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

2. The foreign corporation does not inform the Secretary of State under sections one thousand four hundred eight or one thousand four hundred nine of this article that its registered agent or registered office has changed, that its registered agent has resigned, or that its registered office has been discontinued within sixty days of the change, resignation or discontinuance;

3. An incorporator, director, officer or agent of the foreign corporation signed a document he or she knew was false in any material respect with intent that the document be delivered to the Secretary of State for filing;

4. The Secretary of State receives a duly authenticated certificate from the Secretary of State or other official having custody of corporate records in the state or country under whose law the foreign corporation is incorporated stating that it has been dissolved or disappeared as the result of a merger;

5. The professional license of one or more of the license holders is revoked by a professional licensing board and the license is or all the licenses are required for the continued operation of the corporation; or
(6) The foreign corporation is in default with the Bureau of Employment Programs as provided in section six, article two, chapter twenty-one-a of this code.

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

ARTICLE 1. FEES AND ALLOWANCES.

§59-1-2a. Annual business fees to be paid to the Secretary of State; filing of annual reports; purchase of data.

(a) Definitions. — As used in this section:

(1) "Annual report fee" means the fee described in subsection (c) of this section that is to be paid to the Secretary of State each year by corporations, limited partnerships, domestic limited liability companies and foreign limited liability companies. After June 30, 2008, any reference in this code to a fee paid to the Secretary of State for services as a statutory attorney in fact shall mean the annual report fee described in this section.

(2) "Business activity" means all activities engaged in or caused to be engaged in with the object of gain or economic benefit, direct or indirect, but does not mean any of the activities of foreign corporations enumerated in subsection (b), section one thousand five hundred one, article fifteen, chapter thirty-one-cl of this code, except for the activity of conducting affairs in interstate commerce when activity occurs in this state, nor does it mean any of the activities of foreign limited liability companies enumerated in subsection (a), section one thousand three, article ten, chapter thirty-one-b of this code except for the activity of conducting affairs in interstate commerce when activity occurs in this state.

(3) "Corporation" means a "domestic corporation", a "foreign corporation" or a "nonprofit corporation".
(4) "Deliver or delivery" means any method of delivery used in conventional commercial practice, including, but not limited to, delivery by hand, mail, commercial delivery and electronic transmission.

(5) "Domestic corporation" means a corporation for profit which is not a foreign corporation incorporated under or subject to chapter thirty-one-d of this code.

(6) "Domestic limited liability company" means a limited liability company which is not a foreign limited liability company under or subject to chapter thirty-one-b of this code.

(7) "Foreign corporation" means a for-profit corporation incorporated under a law other than the laws of this state.

(8) "Foreign limited liability company" means a limited liability company organized under a law other than the laws of this state.

(9) "Limited partnership" means a partnership as defined by section one, article nine, chapter forty-seven of this code.

(10) "Nonprofit corporation" means a nonprofit corporation as defined by section one hundred fifty, article one, chapter thirty-one-e of this code.

(11) "Registration fee" means the fee for the issuance of a certificate relating to the initial registration of a corporation, limited partnership, domestic limited liability company or foreign limited liability company described in subdivision (2), subsection (a), section two of this article. The term "initial registration" also means the date upon which the registration fee is paid.

(b) Required payment of annual report fee and filing of annual report. — After June 30, 2008, no corporation, limited
partnership, domestic limited liability company or foreign limited liability company may engage in any business activity in this state without paying the annual report fee and filing the annual report as required by this section.

(c) Annual report fee. — After June 30, 2008, each corporation, limited partnership, domestic limited liability company and foreign limited liability company engaged in or authorized to do business in this state shall pay an annual report fee of $25 for the services of the Secretary of State as attorney-in-fact for the corporation, limited partnership, domestic limited liability company or foreign limited liability company, and for such other administrative services as may be imposed by law upon the Secretary of State. The fee is due and payable each year after the initial registration of the corporation, limited partnership, domestic limited liability company or foreign limited liability company with the annual report described in subsection (d) of this section on or before the dates specified in subsection (e) of this section. The fee is due and payable each year with the annual report from corporations, limited partnerships, domestic limited liability companies and foreign limited liability companies that paid the registration fee prior to July 1, 2008, on or before the dates specified in subsection (e) of this section. The annual report fees received by the Secretary of State pursuant to this subsection shall be deposited by the Secretary of State in the general administrative fees account established by section two of this article.

(d) Annual report. — (1) After June 30, 2008, each corporation, limited partnership, domestic limited liability company and foreign limited liability company engaged in or authorized to do business in this state shall file an annual report. The report is due each year after the initial registration of the corporation, limited partnership, domestic limited liability company or foreign limited liability company with the annual report fee described in subsection (c) of this section on or before
the dates specified in subsection (e) of this section. The report is
due each year from corporations, limited partnerships, domestic
limited liability companies and foreign limited liability
companies that paid the registration fee prior to July 1, 2008, on
or before the dates specified in subsection (e) of this section.

(2) (A) The annual report shall be filed with the Secretary of
State on forms provided by the Secretary of State for that
purpose. The annual report shall, in the case of corporations,
contain: (i) The address of the corporation’s principal office; (ii)
the names and mailing addresses of its officers and directors;
(iii) the name and mailing address of the person on whom notice
of process may be served; (iv) the name and address of the
corporation’s parent corporation and of each subsidiary of the
corporation licensed to do business in this state; (v) in the case
of limited partnerships domestic limited liability companies and
foreign limited liability companies, similar information with
respect to their principal or controlling interests as determined
by the Secretary of State or otherwise required by law to be
reported to the Secretary of State; (vi) the county or county code
in which the principal office address or mailing address of the
company is located; (vii) business class code; and (viii) any
other information the Secretary of State considers appropriate.

(B) Notwithstanding any other provision of law to the
contrary, the Secretary of State shall, upon request of any person,
disclose, with respect to corporations: (i) The address of the
corporation’s principal office; (ii) the names and addresses of its
officers and directors; (iii) the name and mailing address of the
person on whom notice of process may be served; (iv) the name
and address of each subsidiary of the corporation and the
corporation’s parent corporation; (v) the county or county code
in which the principal office address or mailing address of the
company is located; and (vi) the business class code. The
Secretary of State shall provide similar information with respect
to information in its possession relating to limited partnerships
domestic limited liability companies and foreign limited liability
companies, similar information with respect to their principal or
controlling interests.

(e) Annual reports and fees due July 1. — Each domestic
and foreign corporation, limited partnership, limited liability
company and foreign limited liability company shall file with the
Secretary of State the annual report and pay the annual report fee
by July 1 of each year.

(f) Deposit of fees. — The annual report fees received by the
Secretary of State pursuant to this section shall be deposited by
the Secretary of State in the general administrative fees account
established by section two, article one, chapter fifty-nine of this
code.

(g) (1) Duty to pay. — It shall be the duty of each
corporation, limited partnership, limited liability company and
foreign limited liability company required to pay the annual
report fees imposed under this article, to remit them with a
properly completed annual report to the Secretary of State, and
if it fails to do so it shall be subject to the late fees prescribed in
subsection (h) of this article and dissolution or revocation,
pursuant to this code: Provided, That before dissolution or
revocation for failure to pay fees may occur, the Secretary of
State shall notify the entity by certified mail, return receipt
requested, of its failure to pay, all late fees or bad check fees
associated with the failure to pay and the date upon which
dissolution or revocation will occur if all fees are not paid in full.
The certified mail required by this subdivision shall be
postmarked at least thirty days before the dissolution or
revocation date listed in the notice.

(2) Bad check fee. — If any corporation, limited partnership,
limited liability company or foreign limited liability company
submits payment by check or money order for the annual report
fee imposed under this article and the check or money order is rejected because there are insufficient funds in the account or the account is closed, the Secretary of State shall assess a bad check fee to the corporation, limited partnership, limited liability company or foreign limited liability company that is equivalent to the service charge paid by the Secretary of State due to the rejected check or money order. The bad check fee assessed under this subdivision shall be deposited into the account or accounts from which the Secretary of State paid the service charge.

(h) Late fees. — (1) The following late fees shall be in addition to any other penalties and remedies available elsewhere in this code:

(A) Administrative late fee. — The Secretary of State shall assess upon each corporation, limited partnership, limited liability company and foreign limited liability company delinquent in the payment of an annual report fee or the filing of an annual report an administrative late fee in the amount of $50.

(B) Administrative late fees for nonprofit corporations. — The Secretary of State shall assess each nonprofit corporation delinquent in the payment of an annual report fee or the filing of an annual report an administrative late fee in the amount of $25.

(2) The Secretary of State shall deposit the first $25,000 of fees collected under this subsection into the general administrative fees account established in subsection (h), section two of this article, and shall deposit any additional fees collected under this section into the General Revenue Fund of the state.

(i) Reports to Tax Commissioner; suspension, cancellation or withholding of business registration certificate. —

(1) The Secretary of State shall, within twenty days after the close of each month, make a report to the Tax Commissioner for the preceding month, in which he or she shall set out the name
of every business entity to which he or she issued a certificate to
conduct business in the State of West Virginia during that
month. The report shall set out the names and addresses all
corporations, limited partnerships, limited liability companies
and foreign limited liability companies to which he or she issued
certificates of change of name or of change of location of
principal office, dissolution, withdrawal or merger. If the
Secretary of State fails to make the report, it shall be the duty of
the Tax Commissioner to report such failure to the Governor. A
writ of mandamus shall lie for correction of such failure.

(2) Notwithstanding any other provisions of this code to the
contrary, upon receipt of notice from the Secretary of State that
a corporation, limited partnership, limited liability company and
foreign limited liability company is more than thirty days
delinquent in the payment of annual report fees or in the filing of
an annual report required by this section, the Tax Commissioner
may suspend, cancel or withhold a business registration
certificate issued to or applied for by the delinquent corporation,
limited partnership, limited liability company or foreign limited
liability company until the same is paid and filed in the manner
provided for the suspension, cancellation or withholding of
business registration certificates for other reasons under article
twelve, chapter eleven of this code.

(j) Purchase of data. — The Secretary of State will provide
electronically, for purchase, any data maintained in the Secretary
of State's Business Organizations Database. For the electronic
purchase of the entire Business Organizations Database, the cost
is $12,000. For the purchase of the monthly updates of the
Business Organizations Database, the cost is $1,000 per month.
The fees received by the Secretary of State pursuant to this
subsection shall be deposited by the Secretary of State in the
general administrative fees account established by section two,
article one, chapter fifty-nine of this code.
(k) The Secretary of State is authorized to collect the service fee per transaction, if any, charged for an online service from any customer who purchases data or conducts transactions through an online service.

(l) Rules. — The Secretary of State may propose legislative rules for promulgation pursuant to article three, chapter twenty-nine-a of this code to implement this article, and may, pending promulgation of those rules, promulgate emergency rules pursuant to those provisions for those purposes.

CHAPTER 176
(Com. Sub, for H. B. 2554 - By Delegates Morgan, Stephens, Staggers, Hartman, Jones, Diserio and Lynch)

[Passed April 12, 2013; in effect ninety days from passage.]
[Approved by the Governor on April 29, 2013.]

AN ACT to amend and reenact §31D-15-1532 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §31D-15-1533; to amend and reenact §31E-14-1432 of said code; to amend said code by adding thereto a new section, designated §31E-14-1533; and to amend and reenact §59-1-2 of said code, all relating to providing a procedure for the Secretary of State to reinstate certificates of authority for foreign corporations after an administrative revocation; providing for contents of application; providing for effective date of reinstatement; providing for appeal from denial of reinstatement; providing that reinstatement fee is the same for foreign and domestic limited liability companies and foreign and domestic corporations; and establishing a fee for additional parties to a merger when filing articles of merger.
Be it enacted by the Legislature of West Virginia:

That §31D-15-1532 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that said code be amended by adding thereto a new section, designated §31D-15-1533; that §31E-14-1432 of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §31E-14-1533; and that §59-1-2 of said code be amended and reenacted, all to read as follows:

CHAPTER 31D. WEST VIRGINIA BUSINESS CORPORATION ACT.

ARTICLE 15. FOREIGN CORPORATIONS.


(a) A corporation that has had its certificate of authority administratively revoked under section one thousand five hundred thirty-one of this article may apply to the Secretary of State for reinstatement within two years after the effective date of revocation. The application must:

(1) Recite the name of the corporation and the effective date of the administrative revocation;

(2) Demonstrate that the ground or grounds for revocation have been eliminated;

(3) Demonstrate that the corporation's name satisfies the requirements of section one thousand five hundred six, article fifteen of this chapter; and

(4) Obtain a certificate from the Tax Commissioner reciting that all taxes owed by the corporation have been paid.

(b) If the Secretary of State determines that the application contains the information required by subsection (a) of this section and that the information is accurate, the Secretary of
State shall cancel the Certificate of Revocation and prepare a Certificate of Reinstatement that recites the Secretary of State’s determination and the effective date of reinstatement. The Secretary of State shall send notice of the reinstatement to the corporation within thirty days of the determination.

(c) When a reinstatement is granted, the reinstatement relates back to and takes effect as of the effective date of the administrative revocation and the corporation resumes its business as if the administrative revocation had never occurred.


(a) If the Secretary of State denies a corporation’s application for reinstatement following administrative revocation, the Secretary of State shall notify the corporation within thirty days of application by written notice that explains the reason or reasons for denial.

(b) The corporation may appeal the denial of reinstatement to the circuit court of Kanawha County within thirty days after service of the notice of denial.

(c) The corporation may appeal by petitioning the circuit court of Kanawha County to set aside the revocation and attaching to the petition copies of the Secretary of State’s Certificate of Revocation, the corporation’s application for reinstatement and the Secretary of State’s notice of denial.

(d) The circuit court’s final decision may be appealed to the West Virginia Supreme Court of Appeals in accordance with article six, chapter twenty-nine-a of this code.

CHAPTER 31E. WEST VIRGINIA NONPROFIT CORPORATION ACT.

ARTICLE 14. FOREIGN CORPORATIONS.

§31E-14-1432. Reinstatement following administrative revocation.
(a) A corporation that has had its certificate of authority administratively revoked under section one thousand four hundred thirty-one of this article may apply to the Secretary of State for reinstatement within two years after the effective date of revocation. The application must:

1. Recite the name of the corporation and the effective date of the administrative revocation;
2. Demonstrate that the ground or grounds for revocation have been eliminated;
3. Demonstrate that the corporation’s name satisfies the requirements of section one thousand four hundred six, article fifteen of this chapter; and
4. Obtain a certificate from the Tax Commissioner reciting that all taxes owed by the corporation have been paid.

(b) If the Secretary of State determines that the application contains the information required by subsection (a) of this section and that the information is accurate, the Secretary of State shall cancel the Certificate of Revocation and prepare a Certificate of Reinstatement that recites the Secretary of State’s determination and the effective date of reinstatement. The Secretary of State shall send notice of the reinstatement to the corporation within thirty days of the determination.

(c) When a reinstatement is granted, the reinstatement relates back to and takes effect as of the effective date of the administrative revocation and the corporation resumes its business as if the administrative revocation had never occurred.

§31E-14-1533. Appeal from denial of reinstatement.

(a) If the Secretary of State denies a corporation’s application for reinstatement following administrative
revocation, the Secretary of State shall notify the corporation within thirty days of application by written notice that explains the reason or reasons for denial.

(b) The corporation may appeal the denial of reinstatement to the circuit court of Kanawha County within thirty days after service of the notice of denial.

(c) The corporation may appeal by petitioning the circuit court of Kanawha County to set aside the revocation and attaching to the petition copies of the Secretary of State’s Certificate of Revocation, the corporation’s application for reinstatement and the Secretary of State’s notice of denial.

(d) The circuit court’s final decision may be appealed to the West Virginia Supreme Court of Appeals in accordance with article six, chapter twenty-nine-a of this code.

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

ARTICLE 1. FEES AND ALLOWANCES.

§59-1-2. Fees to be charged by Secretary of State.

(a) Except as may be otherwise provided in this code, the Secretary of State shall charge for services rendered in his or her office the following fees to be paid by the person to whom the service is rendered at the time it is done:

(1) For filing, recording, indexing, preserving a record of and issuing a certificate relating to the formation, amendment, change of name, registration of trade name, merger, consolidation, conversion, renewal, dissolution, termination, cancellation, withdrawal revocation and reinstatement of business entities organized within the state, as follows:
(A) Articles of incorporation of for-profit corporation, $50;
(B) Articles of incorporation of nonprofit corporation, $25;
(C) Articles of organization of limited liability company, $100;
(D) Agreement of a general partnership, $50;
(E) Certificate of a limited partnership, $100;
(F) Agreement of a voluntary association, $50;
(G) Articles of organization of a business trust, $50;
(H) Amendment or correction of articles of incorporation, including change of name or increase of capital stock, in addition to any applicable license tax, $25;
(I) Amendment or correction, including change of name, of articles of organization of business trust, limited liability partnership, limited liability company or professional limited liability company or of certificate of limited partnership or agreement of voluntary association, $25;
(J) Amendment and restatement of articles of incorporation, certificate of limited partnership, agreement of voluntary association or articles of organization of limited liability partnership, limited liability company or professional limited liability company or business trust, $25;
(K) Registration of trade name, otherwise designated as a true name, fictitious name or D.B.A. (doing business as) name for any domestic business entity as permitted by law, $25;
(L) Articles of merger of two corporations, limited partnerships, limited liability partnerships, limited liability companies or professional limited liability companies, voluntary
associations or business trusts, $25, and for each additional party to the merger in excess of two, $5;

(M) Statement of conversion, when permitted, from one business entity into another business entity, in addition to the cost of filing the appropriate documents to organize the surviving entity, $25;

(N) Articles of dissolution of a corporation, voluntary association or business trust or statement of dissolution of a general partnership, $25;

(O) Revocation of voluntary dissolution of a corporation, voluntary association or business trust, $15;

(P) Articles of termination of a limited liability company, cancellation of a limited partnership or statement of withdrawal of limited liability partnership, $25; and

(Q) Re reinstatement of a domestic or foreign limited liability company, a professional limited liability company or a domestic or foreign corporation after administrative dissolution or revocation, $25.

(2) For filing, recording, indexing, preserving a record of and issuing a certificate relating to the registration, amendment, change of name, merger, consolidation, conversion, renewal, withdrawal or termination within this state of business entities organized in other states or countries, as follows:

(A) Certificate of authority of for-profit corporation, $100.00;

(B) Certificate of authority of nonprofit corporation, $50.00;

(C) Certificate of authority of foreign limited liability companies, $150;
(D) Certificate of exemption from certificate of authority, $25;

(E) Registration of a general partnership, $50;

(F) Registration of a limited partnership, $150;

(G) Registration of a limited liability partnership for two-year term, $500;

(H) Registration of a voluntary association, $50;

(I) Registration of a trust or business trust, $50;

(J) Amendment or correction of certificate of authority of a foreign corporation, including change of name or increase of capital stock, in addition to any applicable license tax, $25;

(K) Amendment or correction of certificate of limited partnership, limited liability partnership, limited liability company or professional limited liability company, voluntary association or business trust, $25;

(L) Registration of trade name, otherwise designated as a true name, fictitious name or D.B.A. (doing business as) name for any foreign business entity as permitted by law, $25;

(M) Amendment and restatement of certificate of authority or of registration of a corporation, limited partnership, limited liability partnership, limited liability company or professional limited liability company, voluntary association or business trust, $25;

(N) Articles of merger of two corporations, limited partnerships, limited liability partnerships, limited liability companies or professional limited liability companies, voluntary associations or business trusts, $25, and for each addition party to the merger in excess of two, $5;
(O) Statement of conversion, when permitted, from one business entity into another business entity, in addition to the cost of filing the appropriate articles or certificate to organize the surviving entity, $25; and

(P) Certificate of withdrawal or cancellation of a corporation, limited partnership, limited liability partnership, limited liability company, voluntary association or business trust, $25.

Notwithstanding any other provision of this section to the contrary, after June 13, 2008, the fees described in this subdivision that are collected for the issuance of a certificate relating to the initial registration of a corporation, limited partnership, domestic limited liability company or foreign limited liability company shall be deposited in the general administrative fees account established by this section.

(3) For receiving, filing and recording a change of the principal or designated office, change of the agent of process and/or change of officers, directors, partners, members or managers, as the case may be, of a corporation, limited partnership, limited liability partnership, limited liability company or other business entity as provided by law, $15.

(4) For receiving, filing and preserving a reservation of a name for each one hundred twenty days or for any other period in excess of seven days prescribed by law for a corporation, limited partnership, limited liability partnership or limited liability company, $15.

(5) For issuing a certificate relating to a corporation or other business entity, as follows:

(A) Certificate of good standing of a domestic or foreign corporation, $10;
124 (B) Certificate of existence of a domestic limited liability company, and certificate of authorization foreign limited liability company, $10;

127 (C) Certificate of existence of any business entity, trademark or service mark registered with the Secretary of State, $10;

129 (D) Certified copy of corporate charter or comparable organizing documents for other business entities, $15;

131 (E) Plus, for each additional amendment, restatement or other additional document, $5;

133 (F) Certificate of registration of the name of a foreign corporation, limited liability company, limited partnership or limited liability partnership, $25;

136 (G) For the annual renewal of the name registration, $10; and

138 (H) Any other certificate not specified in this subdivision, $10.

140 (6) For issuing a certificate other than those relating to business entities, as provided in this subsection, as follows:

142 (A) Certificate or apostille relating to the authority of certain public officers, including the membership of boards and commissions, $10;

145 (B) For each additional certificate pertaining to the same transaction, $5;

147 (C) Any other certificate not specified in this subdivision, $10;

149 (D) For acceptance, indexing and recordation of service of process any corporation, limited partnership, limited liability
partnership, limited liability company, voluntary association, business trust, insurance company, person or other entity as permitted by law, $15;

(E) For shipping and handling expenses for execution of service of process by certified mail upon any defendant within the United States, which fee is to be deposited to the special revenue account established in this section for the operation of the office of the Secretary of State, $5; and

(F) For shipping and handling expenses for execution of service of process upon any defendant outside the United States by registered mail, which fee is to be deposited to the special revenue account established in this section for the operation of the office of the Secretary of State, $15.

(7) For a search of records of the office conducted by employees of or at the expense of the Secretary of State upon request, as follows:

(A) For any search of archival records maintained at sites other than the office of the Secretary of State, no less than $10;

(B) For searches of archival records maintained at sites other than the office of the Secretary of State which require more than one hour, for each hour or fraction of an hour consumed in making such search, $10;

(C) For any search of records maintained on site for the purpose of obtaining copies of documents or printouts of data, $5;

(D) For any search of records maintained in electronic format which requires special programming to be performed by the state information services agency or other vendor any actual cost but not less than, $25, which cost is in addition to the cost of any copies of printouts prepared or any certificate issued pursuant to or based on the search; and
(E) For recording any paper for which no specific fee is prescribed, $5.

(8) For producing and providing photocopies or printouts of electronic data of specific records upon request, as follows:

(A) For a copy of any paper or printout of electronic data, if one sheet, $1;

(B) For each sheet after the first, $.50;

(C) For sending the copies or lists by fax transmission, $5;

(D) For producing and providing photocopies of lists, reports, guidelines and other documents produced in multiple copies for general public use, a publication price to be established by the Secretary of State at a rate approximating $2 plus $.10 per page and rounded to the nearest dollar; and

(E) For electronic copies of records obtained in data format on disk, the cost of the record in the least expensive available printed format, plus, for each required disk, which shall be provided by the Secretary of State, $5.

(b) The Secretary of State may propose legislative rules for promulgation for charges for on-line electronic access to database information or other information maintained by the Secretary of State.

(c) For any other work or service not enumerated in this subsection, the fee prescribed elsewhere in this code or a rule promulgated under the authority of this code.

(d) The records maintained by the Secretary of State are prepared and indexed at the expense of the state and those records may not be obtained for commercial resale without the written agreement of the state to a contract including reimbursement to the state for each instance of resale.
(e) The Secretary of State may provide printed or electronic information free of charge as he or she considers necessary and efficient for the purpose of informing the general public or the news media.

(f) There is hereby continued in the State Treasury a special revenue account to be known as the "service fees and collections" account. Expenditures from the account shall be used for the operation of the office of the Secretary of State and are not authorized from collections but are to be made only in accordance with appropriation by the Legislature and in accordance with the provisions of article three, chapter twelve of this code and upon the fulfillment of the provisions set forth in article two, chapter five-a of this code. Notwithstanding any other provision of this code to the contrary, except as provided in subsection (h) of this section and section two-a of this article, one half of all the fees and service charges established in the following sections and for the following purposes shall be deposited by the Secretary of State or other collecting agency to that special revenue account and used for the operation of the office of the Secretary of State:

(1) The annual attorney-in-fact fee for corporations and limited partnerships established in section five, article twelve-c, chapter eleven of this code;

(2) The fees received for the sale of the State Register, Code of State Rules and other copies established by rule and authorized by section seven, article two, chapter twenty-nine-a of this code;

(3) The registration fees, late fees and legal settlements charged for registration and enforcement of the charitable organizations and professional solicitations established in sections five, nine and fifteen-b, article nineteen, chapter twenty-nine of this code;
(4) The annual attorney-in-fact fee for limited liability companies as designated in section one hundred eight, article one, chapter thirty-one-b of this code and established in section two hundred eleven, article two of said chapter. After June 30, 2008, the annual report fees designated in section one hundred eight, article one, chapter thirty-one-b of this code shall upon collection be deposited in the general administrative fees account described in subsection (h) of this section;

(5) The filing fees and search and copying fees for uniform commercial code transactions established by section five hundred twenty-five, article nine, chapter forty-six of this code;

(6) The annual attorney-in-fact fee for licensed insurers established in section twelve, article four, chapter thirty-three of this code;

(7) The fees for the application and record maintenance of all notaries public established by section one hundred seven, article one, chapter twenty-nine-c of this code;

(8) The fees for the application and record maintenance of commissioners for West Virginia as established by section twelve, article four, chapter twenty-nine of this code;

(9) The fees for registering credit service organizations as established by section five, article six-c, chapter forty-six-a of this code;

(10) The fees for registering and renewing a West Virginia limited liability partnership as established by section one, article ten, chapter forty-seven-b of this code;

(11) The filing fees for the registration and renewal of trademarks and service marks established in section seventeen, article two, chapter forty-seven of this code;
(12) All fees for services, the sale of photocopies and data
maintained at the expense of the Secretary of State as provided
in this section; and

(13) All registration, license and other fees collected by the
Secretary of State not specified in this section.

(g) Any balance in the service fees and collections account
established by this section which exceeds $500,000 as of June
30, 2003, and each year thereafter, expires to the state fund,
General Revenue Fund.

(h)(1) Effective July 1, 2008, there is hereby created in the
State Treasury a special revenue account to be known as the
general administrative fees account. Expenditures from the
account shall be used for the operation of the Office of the
Secretary of State and are not authorized from collections but are
to be made only in accordance with appropriation by the
Legislature and in accordance with the provisions of article
three, chapter twelve of this code and upon the fulfillment of the
provisions set forth in article two, chapter eleven-b of this code.
For the fiscal year ending June 30, 2009, expenditures are
authorized from collections rather than pursuant to an
appropriation by the Legislature. Any balance in the account at
the end of each fiscal year shall not revert to the General
Revenue Fund but shall remain in the fund and be expended as
provided by this subsection.

(2) After June 30, 2008, all the fees and service charges
established in section two-a of this article for the following
purposes shall be collected and deposited by the Secretary of
State or other collecting agency in the general administrative
fees account and used for the operation of the Office of the
Secretary of State:

(A) The annual report fees paid to the Secretary of State by
corporations, limited partnerships, domestic limited liability
companies and foreign limited liability companies;
(B) The fees for the issuance of a certificate relating to the initial registration of a corporation, limited partnership, domestic limited liability company or foreign limited liability company described in subdivision (2), subsection (a) of this section; and

(C) The fees for the purchase of date and updates related to the state's Business Organizations Database described in section two-a of this article.

(i) There is continued in the office of the Secretary of State a noninterest bearing, escrow account to be known as the "prepaid fees and services account". This account is for the purpose of allowing customers of the Secretary of State to prepay for services, with payment to be held in escrow until services are rendered. Payments deposited in the account shall remain in the account until services are rendered by the Secretary of State and at that time the fees will be reallocated to the appropriate general or special revenue accounts. There shall be no fee charged by the Secretary of State to the customer for the use of this account and the customer may request the return of any moneys maintained in the account at any time without penalty. The assets of the prepaid fees and services account do not constitute public funds of the state and are available solely for carrying out the purposes of this section.

CHAPTER 177

(Com. Sub. for H. B. 2567 - By Delegates Morgan, Stephens, Diserio, Jones, Paxton, P. Smith and Staggers)

[Passed Apr. 13, 2013; in effect ninety days from passage.]
[Approved by the Governor on April 29, 2013.]

AN ACT to amend and reenact §47-9-44 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereeto two
new sections, designated §47-9-10a and §47-9-53a, all relating to limited partnerships; authorizing the Secretary of State to administratively dissolve and reinstate limited partnerships; allowing appeals to the circuit court; and authorizing the Secretary of State to revoke and reinstate certificates of authority of foreign limited partnerships.

Be it enacted by the Legislature of West Virginia:

That §47-9-44 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto two new sections, designated §47-9-10a and §47-9-53a, all to read as follows:

ARTICLE 9. UNIFORM LIMITED PARTNERSHIP ACT.

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

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

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

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

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

(4) The limited partnership is in default with the Bureau of Employment Programs as provided in section six, article two, chapter twenty-one-a of this code.
If the Secretary of State determines that adequate grounds exist to administratively dissolve a limited partnership, the Secretary of State shall make and file a record of the determination and serve the limited partnership with a notice of the determination along with copy of the record by certified mail.

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

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

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

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

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

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

(1) Recite the name of the limited partnership and the effective date of its administrative dissolution;
(2) Demonstrate that the grounds for dissolution either did not exist or have been eliminated;

(3) Demonstrate that the limited partnership’s name satisfies the requirements of section two, article nine, chapter forty-seven of this code; and

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

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

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

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

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

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

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

§47-9-44. Nonjudicial dissolution.

1 A limited partnership is dissolved and its affairs shall be wound up upon the happening of the first to occur of the following:

4 (1) At the time or upon the happening of events specified in the certificate of limited partnership;

6 (2) Upon the happening of events specified in writing in the partnership agreement;

8 (3) The written consent of all partners;

9 (4) An event of withdrawal of a general partner, unless at the time there is at least one other general partner and the written provisions of the partnership agreement permit the business of the limited partnership to be carried on by the remaining general partner and that partner does so, but the limited partnership is not dissolved and is not required to be wound up by reason of any event of withdrawal if, within ninety days after the withdrawal, all partners agree in writing to continue the business of the limited partnership and to the appointment of one or more additional general partners if necessary or desired;
(5) Entry of a decree of judicial dissolution under section forty-five of this article; or

(6) Signing of a certificate of dissolution by the Secretary of State under section ten-a of this article.

§47-9-53a. Revocation and reinstatement of foreign limited partnership certificates of authority.

(a) The Secretary of State may revoke a certificate of authority of a foreign limited partnership to transact business in this state in the manner set forth in subsection (b) of this section if:

(1) The limited partnership fails to:

(A) Pay all applicable fees, franchise taxes and penalties owed to the state within sixty days after the due date;

(B) Deliver its annual report within sixty days of the due date; or

(C) File a statement to change a name or business address of an agent as required by this article; or

(2) The limited partnership has made a misrepresentation of any material fact in any application, report, affidavit or other record submitted pursuant to this article; or

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

(4) The limited partnership is in default with the Bureau of Employment Programs as provided in section six, article two, chapter twenty-one-a of this code.

(b)(1) The Secretary of State may not revoke a certificate of authority of a foreign limited partnership unless the Secretary of
State serves notice to the foreign limited partnership of the Secretary's intent to revoke the foreign limited partnership's certificate of authority at least sixty days prior to the effective date of the revocation, by a notice addressed to the foreign limited partnership's principal office.

(2) The notice must specify the cause for the revocation of the certificate of authority.

(3) The authority of the foreign limited partnership to transact business in this state ceases on the effective date of the revocation.

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

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

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

(3) Demonstrate that the foreign limited partnership's name satisfies the requirements of section two, article nine, chapter forty-seven of this code; and

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

(d) If the Secretary of State determines that the application for reinstatement contains the information required by subsection (c) of this section and that the information is correct, the Secretary of State shall cancel the certificate of revocation and prepare a certificate of reinstatement that recites this determination and the effective date of reinstatement.
(2) The Secretary of State shall file the certificate of reinstatement, and serve the foreign limited partnership with a copy of the certificate.

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

CHAPTER 178

(Com. Sub. for S. B. 202 - By Senator Kessler (Mr. President), Fitzsimmons, Beach, Miller, Laird, Nohe and Stollings)

[Passed April 13, 2013; in effect ninety days from passage.]
[Approved by the Governor on May 1, 2013.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated § 19-20C-1, § 19-20C-2 and § 19-20C-3, all relating to establishing the West Virginia Spay Neuter Assistance Program and Fund; designating the Commissioner of the Department of Agriculture to manage the program and fund; providing grants to nonprofit spay neuter programs in state; limiting administrative expenses of fund; requiring annual reporting; and authorizing rulemaking.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated § 19-20C-1, § 19-20C-2 and § 19-20C-3, all to read as follows:
ARTICLE 20C. WEST VIRGINIA SPAY NEUTER ASSISTANCE PROGRAM.

§19-20C-1. West Virginia Spay Neuter Assistance Program.

The Department of Agriculture shall establish a spay neuter assistance program that provides grants to nonprofit spay neuter organizations and programs in the state. The purpose of this program is to have more dogs and cats sterilized, thereby reducing shelter populations and costs, euthanasia rates and threats to public health and safety from rabies and other problems posed by the growing population of stray, feral and abandoned dogs and cats.

§19-20C-2. Fund established; acceptance of funds.

(a) There is created in the State Treasury a special revenue account to be designated the West Virginia Spay Neuter Assistance Fund and administered by the Commissioner of Agriculture. Expenditures from the fund are for the purposes set forth in this article and are to be made in accordance with appropriation by the Legislature and in accordance with the provisions of article three, chapter twelve of this code and upon the fulfillment of the provisions set forth in article two, chapter eleven-b of this code.

(b) All moneys received and collected pursuant to this article shall be deposited into the fund. The fund may receive any appropriations, gifts, grants, contributions or other money from any source that is designated for deposit into the fund.

(c) Administrative expenses of the department may not exceed ten percent of the funds deposited in any fiscal year. The remainder shall be used exclusively for implementation of the program.
§19-20C-3. Rulemaking; annual report.

(a) The commissioner shall propose rules for legislative approval in accordance with article three, chapter twenty-nine-a of this code, to implement the provisions of this article.

(b) Rules promulgated under this section shall, at a minimum:

(1) Identify the types of nonprofit organizations and programs that qualify for spay neuter grants;

(2) Establish parameters for spay neuter grants;

(3) Establish procedures and requirements for grant applications; and

(4) Establish administration, record-keeping and reporting requirements for nonprofit organizations and programs that receive spay neuter grants.

(c) Beginning the year following the program's inception, the commissioner shall file an annual report with the Joint Committee on Government and Finance regarding the program, funds received and grants awarded, the number of dogs and cats sterilized and other pertinent data.

CHAPTER 179

(Com. Sub. for H. B. 2836 - By Delegates Boggs, White, Lane and Ellem)

[Passed April 13, 2013; in effect from passage.]  
[Approved by the Governor on May 3, 2013.]

AN ACT to amend and reenact §4-5-2 of the Code of West Virginia, 1931, as amended, relating to the Commission on Special
Investigations generally; granting certain commission personnel the right to carry firearms in the course of their employment; establishing minimum training and certification requirements for such personnel; requiring such personnel to secure a license to carry a concealed weapon in accordance with the provisions of article seven, chapter sixty-one of this code.

Be it enacted by the Legislature of West Virginia:

That §4-5-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 5. COMMISSION ON SPECIAL INVESTIGATIONS.

§4-5-2. Powers and duties generally.

(a) The Commission on Special Investigations shall have the power, duty and responsibility, upon a majority vote of the members appointed, to:

1. Conduct a comprehensive and detailed investigation into the purchasing practices and procedures of the state;

2. Determine if there is reason to believe that the laws or public policy of the state in connection with purchasing practices and procedures have been violated or are inadequate;

3. Determine if any criminal or civil statutes relating to the purchasing practices and procedures in this state are necessary to protect and control the expenditures of money by the state;

4. Investigate or examine any matter involving conflicts of interest, bribery of state officials, malfeasance, misfeasance or nonfeasance in office by any employee or officer of the state;

5. Conduct comprehensive and detailed investigations to determine if any criminal or civil statutes have been violated at any level of state government;

6. Determine whether to recommend criminal prosecution or civil action for any violation, either criminal or civil, at any
level of state government and, if it is determined that action is
necessary, to make appropriate recommendation to the Attorney
General, prosecuting attorney or other authority empowered to
act on such recommendation; and

(7) Make such written reports to the members of the
Legislature between sessions thereof as the commission may
deem advisable and on the first day of each regular session of the
Legislature make an annual report to the Legislature containing
the commission's findings and recommendations including in
such report drafts of any proposed legislation which it deems
necessary to carry such recommendations into effect.

(b) The commission is also expressly empowered and
authorized to:

(1) Sit during any recess of the Senate and House of
Delegates;

(2) Recommend to the judge of any circuit court that a grand
jury be convened pursuant to the provisions of section fourteen,
article two, chapter fifty-two of this code, to consider any matter
which the commission may deem in the public interest and, in
support thereof, make available to such court and such grand
jury the contents of any reports, files, transcripts of hearings or
other evidence pertinent thereto;

(3) Employ such legal, technical, investigative, clerical,
stenographic, advisory and other personnel as it deems needed
and, within the appropriation herein specified, fix reasonable
compensation of such persons and firms as may be employed:
Provided, That such personnel as the commission may determine
shall have the authority to administer oaths and take affidavits
and depositions anywhere in the state.

(4) Consult and confer with all persons and agencies, public
(whether federal, state or local) and private, that have
information and data pertinent to an investigation; and all state
and local governmental personnel and agencies shall cooperate to the fullest extent with the commission;

(5) Call upon any department or agency of state or local government for such services, information and assistance as it may deem advisable; and

(6) Refer such matters as are appropriate to the office of the United States attorney and cooperate with such office in the disposition of matters so referred.

(c) Notwithstanding any provision of this code to the contrary, specific personnel may be designated by the commission to carry a firearm in the course of performing his or her official duties: Provided, That as a precondition of being authorized to carry a concealed weapon in the course of their official duties, any such designated personnel must have first successfully completed a firearms training and certification program which is equivalent to that which is required of members of the state police. The designated persons must also possess a license to carry a concealed deadly weapon in the manner prescribed in article seven, chapter sixty-one of this code.

CHAPTER 180

(H. B. 2968 - By Delegates Boggs and Young)

[Passed April 12, 2013; in effect July 1, 2013.]
[Approved by the Governor on April 29, 2013.]

AN ACT to amend and reenact §5A-8-20 of the Code of West Virginia, 1931, as amended, relating to the creation of preservation duplicates of state records and destruction of the original records;
authorizing the use of additional medium for use in archiving the records; setting forth the standards the additional medium must meet; requiring the state records administrator to establish a procedure for executive agencies to follow; permitting, consistent with the State Constitution, each house of the Legislature to determine on its own or jointly the procedure for the storage of legislative records; permitting any person or entity to purchase one copy of any archived or preserved state record; and defining a term.

Be it enacted by the Legislature of West Virginia:

That §5A-8-20 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 8. PUBLIC RECORDS MANAGEMENT AND PRESERVATION ACT.

§5A-8-20. Alternate storage of state records.

(a) Findings and purpose. — The Legislature finds that continuous advances in technology have resulted and will continue to result in the development of alternate formats for the nonerasable storage of state records, and that the use of such alternative storage formats, where deemed advisable, promote the efficient and economical administration of government and provide a means for the preservation of valuable records that are subject to decay or destruction. It is the purpose of the Legislature to authorize the storage of state records in those alternate formats, as may be determined by the various branches of the government of this state, that will reasonably ensure that the originals of those records are copied into alternative formats in a manner in which the image of the original records is not erased or altered, and from which true and accurate reproductions of the original state records may be retrieved.

(b) Approved format. — (1) In addition to those formats, processes and systems described in section ten of this article,
sections seven-a and seven-c, article one, chapter fifty-seven of
this code, and section twelve, article five of that chapter which
are otherwise authorized for the reproduction of state records, a
preservation duplicate of a state record may be stored in any
approved format where the image of the original state record is
preserved in a form in which the image thereof is incapable of
erasure or alteration, and from which a reproduction of the stored
state record may be retrieved which truly and accurately depicts
the image of the original state record.

(2) As a substitute for using medium that is incapable of
erasure or alteration, a preservation duplicate of a state record
may be stored on other electronic storage medium or other
medium capable of storing digitized documents if:

(A) The medium is stored to maximize its life by minimizing
exposure to environmental contaminants;

(B) At least two copies of the preservation duplicate are
made and one copy is stored in an off-site location; and

(C) A procedure is established and followed which ensures
that:

(i) Modifications in the archiving process are made as
technology changes so that the preservation duplicates are
readily accessible, which may include migrating the preservation
duplicates to different medium or different file formats; and

(ii) The medium is periodically examined to determine if the
preservation duplicates remain readable and intact.

(c) Executive agency records. — (1) The alternate formats
for the storage of state records described in this section are
authorized for the storage of the state records of any agency of
this state. The state records administrator shall establish a
procedure for executive agencies to follow implementing the
provisions of subsection (b) of this section by July 1, 2013. The procedure shall include, at a minimum, the identification of examples of medium and accompanying procedures to be followed for executive agencies when making preservation duplicates of state records on medium readily available, other than microfilm or microfiche.

(2) Upon creation of a preservation duplicate from which a reproduction of the stored state record may be retrieved which truly and accurately depicts the image of the original state record, the state records administrator may destroy or otherwise dispose of the original in accordance with the provisions of section seventeen of this article for the destruction of records.

(d) Judicial records. — (1) Except for those formats, processes and systems used for the storage of state records on the effective date of this section, no alternate format for the storage of state records described in this section is authorized for the storage of the state records of any court of this state unless the particular format has been approved by the Supreme Court of Appeals by rule. This section does not prohibit the Supreme Court of Appeals from prohibiting the use of any format, process or system used for the storage of judicial state records upon its determination that the same is not reasonably adequate to preserve the state records from destruction, alteration or decay.

(2) Upon creation of a preservation duplicate which stores an original judicial state record in an approved format from which a reproduction of the stored state record may be retrieved which truly and accurately depicts the image of the original state record, the court or the clerk thereof creating the same may, consistent with rules of the Supreme Court of Appeals, destroy or otherwise dispose of the original in accordance with the provisions of section seven, article one, chapter fifty-seven of this code for the destruction of records.

(e) Legislative records. — In accordance with all applicable provisions of the West Virginia Constitution, the procedures for
the storage and destruction of legislative records shall be
determined by each house, or by a joint rule.

(f) Upon request and payment of a reasonable cost, one copy
of any state record archived or preserved pursuant to the
provisions of this article shall be provided to any person or
entity: Provided, That the person or entity that has produced the
state record may receive one copy without charge. For the
purpose of this subsection “state record” means electronic record
created and maintained by state agencies.

CHAPTER 181

(Com. Sub. for S. B. 464 - By Senators Stollings, Beach, Wells,
Kessler (Mr. President), Yost and Unger)

[Passed April 13, 2013; in effect ninety days from passage.]
[Approved by the Governor on May 1, 2013.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by
adding thereto a new article, designated §16-45-1, §16-45-2,
§16-45-3, §16-45-4, §16-45-5 and §16-45-6, all relating generally
to regulation of tanning facilities; defining terms; setting forth
requirements for registration, inspection and obtaining a permit;
requiring a consent form; setting forth consent form language;
creating operating standards; prohibiting the use of tanning devices
by anyone under the age of eighteen; granting rule-making
authority to the Department of Health and Human Resources to
regulate tanning facilities; setting forth minimum requirements for
the rule; allowing fees; and establishing criminal penalties.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by
adding thereto a new article, designated §16-45-1, §16-45-2, §16-45-3,
§16-45-4 and §16-45-5, all to read as follows:
ARTICLE 45. TANNING FACILITIES.

§16-45-1. Definitions.

As used in this article:

1. "Photo therapy device" means a device used for exposure to daylight or to specific wavelengths of light using lasers, light-emitting diodes, fluorescent lamps, dichroic lamps or very bright, full-spectrum light, usually controlled with various devices.

2. "Tanning device" means any equipment that emits radiation used for tanning of the skin, such as a sun lamp, tanning booth or tanning bed, and includes any accompanying equipment, such as protective eye wear, timers and handrails.

3. "Tanning facility" means any commercial location, place, area, structure or business where a tanning device is used for a fee, membership dues or other compensation.

§16-45-2. Exception for health care providers.

Nothing in this article may be construed as prohibiting any health care provider licensed under chapter thirty of this code from performing any action within the scope of his or her practice that results in prescribing the use of a photo therapy device to a patient regardless of the patient’s age for treatment of a medical condition.

§16-45-3. Operation standards.

(a) A tanning facility shall provide to any patron who wishes to use a tanning device located within its tanning facility a disclosure and consent form relating to use of a tanning device that contains the current United States Food and Drug Administration warning as follows: “Danger. Ultraviolet Radiation. Follow instructions. Avoid overexposure. As with natural sunlight, overexposure can cause eye and skin injury and allergic reactions. REPEATED EXPOSURE MAY CAUSE
PREMATURE AGING OF THE SKIN AND SKIN CANCER. WEAR PROTECTIVE EYEWEAR; FAILURE TO DO SO MAY RESULT IN SEVERE BURNS OR LONG-TERM INJURY TO THE EYES. Medications or cosmetics may increase your sensitivity to the ultraviolet radiation. Consult physician before using tanning device if you are using medications or have a history of skin problems or believe yourself especially sensitive to sunlight. If you do not tan in the sun, you are unlikely to tan from use of this product."

The disclosure and consent form must have a place for the patron’s signature and the date. A signed and dated copy of the disclosure and consent form shall be maintained by the tanning facility and remains valid for one year from the date it was signed.

(b) All patrons are required to present proof of age prior to use of a tanning device. Proof of age shall be satisfied with a driver’s license or other government-issued identification containing the date of birth and a photograph of the individual. Persons under the age of eighteen may not be permitted to use a tanning device without the prior written consent of the person’s parent or legal guardian. Photographic identification of the parent or legal guardian is required. A copy of the signed parental or legal guardian consent shall be maintained by the tanning facility and remains valid for one year from the date it was signed. Persons under the age of fourteen may not be permitted to use a tanning device.

§16-45-4. Local health department authority to inspect.

Local health departments shall have the authority to enter and inspect a tanning facility to determine compliance with the requirements of this article.

§16-45-5. Violations and penalties.

(a) Any owner of a tanning facility who fails to obtain parental consent for a minor under the age of eighteen or
otherwise violates the requirements of this article is guilty of a
misdemeanor and, upon conviction thereof, for a first offense,
shall be fined $100.

(b) For a second offense, the owner is guilty of a
misdemeanor and, upon conviction thereof, shall be fined not
less than $250 nor more than $500.

(c) For a third offense or subsequent offense, the owner is
guilty of a misdemeanor and, upon conviction thereof, shall be
fined not less than $500 nor more than $1,000.

CHAPTER 182

(S. B. 441 - By Senators Prezioso, Facemire,
Stollings, Plymale and McCabe)

[Passed April 13, 2013; in effect ninety days from passage.]
[Approved by the Governor on April 30, 2013.]

AN ACT to amend and reenact §11-10-12 of the Code of West
Virginia, 1931, as amended; and to amend and reenact §38-10C-2
of said code, all relating to the withdrawal of state tax liens
recorded prematurely, inadvertently or erroneously.

Be it enacted by the Legislature of West Virginia:

That §11-10-12 of the Code of West Virginia, 1931, as amended,
be amended and reenacted; and that §38-10C-2 of said code be
amended and reenacted, all to read as follows:

CHAPTER 11. TAXATION.

ARTICLE 10. WEST VIRGINIA TAX PROCEDURE AND
ADMINISTRATION ACT.
§11-10-12. Liens, release; subordination; foreclosure; withdrawal.

(a) General. — Any tax, additions to tax, penalties or interest due and payable under this article or any of the other articles of this chapter to which this article is applicable is a debt due this state. It is a personal obligation of the taxpayer and is a lien upon the real and personal property of the taxpayer.

(b) Duration of lien. — The lien created by this section continues until the liability for the tax, additions to tax, penalties and interest is satisfied or upon the expiration of ten years from the date the tax, additions to tax, penalties and interest are due and payable under section eight of this article or the date the tax return is filed, whichever is later.

(c) Recordation. — The lien created by this section is subject to the restrictions and conditions embodied in article ten-c. chapter thirty-eight of this code and any amendment made or which may hereafter be made thereto: Provided, That the notice of lien shall indicate the date the tax, additions to tax, penalties and interest are due and payable under section eight of this article or the date the tax return was filed.

(d) Release or subordination. — The Tax Commissioner, pursuant to rules prescribed by him or her, may issue his or her certificate of release of any lien created pursuant to this section when the debt is adequately secured by bond or other security. He or she shall issue his or her certificate of release when the debt secured has been satisfied. The certificate of release shall be issued in duplicate. One copy shall be forwarded to the taxpayer, and the other copy shall be forwarded to the clerk of the county commission of the county wherein the lien is recorded. The clerk of the county commission shall record the release without payment of any fee and the recordation is a release and full discharge of the lien. The Tax Commissioner may issue his or her certificate of release of the lien as to all or any part of the
property subject to the lien, or may subordinate the lien to any
other lien or interest, but only if there is paid to the state an
amount not less than the value of the interest of the state in the
property, or if the interest of the state in the property has no
value.

(e) Foreclosure. – The Tax Commissioner may enforce any
 lien created and recorded under this section, against any property
subject to the lien by civil action in the circuit court of the
county wherein the property is located, in order to subject the
property to the payment of the tax secured by the lien. All
persons having liens upon or having any interest in the property
shall be made parties to the action. The court may appoint a
receiver or commissioner who shall ascertain and report all liens,
claims and interests in and upon the property, the validity,
amount and priority of each. The court shall, after notice to all
parties, proceed to adjudicate all matters involved therein, shall
determine the validity, amount and priorities of all liens, claims
and interests in and upon the property and shall decree a sale of
the property by the sheriff or any commissioner to whom the
action is referred, and shall decree distribution of the proceeds
of the sale according to the findings of the court in respect to the
interests of the parties.

(f) Discharge of lien. – A sale of property against which the
state has a lien under this section, made pursuant to an
instrument creating a lien on the property, or made pursuant to
a statutory lien on the property, or made pursuant to a judicial
order to enforce any judgment in any civil action, shall be made
subject to and without disturbing the state tax lien if the state tax
lien was recorded more than thirty days before the sale, unless:

(1) The Tax Commissioner is made a party to the civil
action;

(2) The Tax Commissioner is given notice of the sale in
writing not less than fifteen days prior to sale; or
(3) The Tax Commissioner consents to the sale. The notice shall contain the name of the owner of the property and the social security number or federal employer identification number of the owner.

(g) Withdrawal of lien. — Upon the determination of the Tax Commissioner or the Tax Commissioner’s designee that the lien was recorded prematurely, inadvertently or otherwise erroneously, a withdrawal of the lien shall be issued in duplicate. One copy shall be forwarded to the taxpayer, and the other copy shall be forwarded to the clerk of the county commission of the county wherein the lien is recorded. The clerk of the county commission shall record the withdrawal of lien without payment of any fee.

CHAPTER 38. LIENS.

ARTICLE 10C. STATE AND LOCAL TAX LIENS.

§38-10C-2. Notices of liens of state, political subdivisions and municipalities to be filed; indexes; withdrawal release.

It is the duty of the Tax Commissioner, or the proper officers of the political subdivisions of the state for its subdivisions and of the proper officers of the municipalities for the municipalities, having liens, to file a notice of the liens in the office of the clerk of the county commission of the county in which the property of the taxpayer against whom the lien is claimed, is situate, stating in the notice what amount of money is owing to the State of West Virginia, the political subdivision or the municipality, on account of the lien from the taxpayer owing the money; and the clerk of the county commission of the county shall, upon the filing of notice, index the lien in the judgment or tax lien docket in his or her office as a tax lien against the taxpayer in favor of the State of West Virginia, the political subdivision or the
municipality. Upon the determination of the Tax Commissioner or the Tax Commissioner's designee that the lien was recorded prematurely, inadvertently or otherwise erroneously, a withdrawal of the lien shall be issued in duplicate. One copy shall be forwarded to the taxpayer, and the other copy shall be forwarded to the clerk of the county commission of the county wherein the lien is recorded. The clerk of the county commission shall record the withdrawal of lien without payment of any fee. Upon the satisfaction of the lien, a release of the lien for recordation shall be signed and delivered to the taxpayer by the proper officer. The signature of the Tax Commissioner or the Tax Commissioner's designee on the notice and on the release or withdrawal may be either a properly acknowledged manual signature or a facsimile signature authenticated pursuant to the filing of an affidavit and a manual signature with the Secretary of State in the manner specified in section two, article fourteen, chapter six of this code. The facsimile signature has the same legal effect as the manual signature.

All acts or parts of acts inconsistent or in conflict herewith are hereby repealed.

CHAPTER 183

(Com. Sub. for H. B. 2585 - By Delegates Skaff, Craig, P. Smith, Poore, Guthrie, Hunt, Reynolds, White, Raines and E. Nelson)

[Passed April 9, 2013; in effect ninety days from passage.]
[Approved by the Governor on April 30, 2013.]

AN ACT to amend and reenact §11-3-15c and §11-3-15d of the Code of West Virginia, 1931, as amended. relating to increasing the time
to file a petition for review or appeal in response to a notice of an increased assessment of certain real and personal property; and defining business day.

Be it enacted by the Legislature of West Virginia:

That §11-3-15c and §11-3-15d of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 3. PROPERTY TAX ASSESSMENTS GENERALLY.

§11-3-15c. Petition for assessor review of improper valuation of real property.

(a) A taxpayer who is of the opinion that his or her real property has been valued too high or otherwise improperly valued or listed in the notice given as provided in section two-a of this article may, but is not required to, file a petition for review with the assessor on a written form prescribed by the Tax Commissioner. This section shall not apply to industrial and natural resource property appraised by the Tax Commissioner.

(b) The petition shall state the taxpayer's opinion of the true and actual value of the property and substantial information that justifies that opinion of value for the assessor to consider for purposes of basing a change in classification or correction of the valuation. For purposes of this subsection, the taxpayer shall provide substantial information to justify the opinion of value by stating the method or methods of valuation on which the opinion is based:

(1) Under the income approach, including the information required in section fifteen-e of this article;

(2) Under the market approach, including the true and actual value of at least three comparable properties in the same geographic area or the sale of the subject property; or
(3) Under the cost approach, including the replacement cost or the cost to build or rebuild the property, plus the true and actual value of the land.

(c) The petition may include more than one parcel of property if they are part of the same economic unit according to the Tax Commissioner’s guidelines or if they are owned by the same owner, have the same use, are appealed on the same basis and are located in the same tax district or in contiguous tax districts of the county, and are in a form prescribed by the Tax Commissioner.

(d) The petition shall be filed within eight business days after the date the taxpayer receives the notice of increased assessment under section two-a of this article or the notice of increased value was published as a Class II-0 legal advertisement as provided in that section. For purposes of this section, ‘business day’ means any day other than Saturday, Sunday or any legal holiday set forth in section one, article two, chapter two of this code.

§11-3-15d. Administrative review of tangible personal property valuation by assessor.

(a) The owner of business tangible personal property that is valued by the assessor or the person in whose possession it is found on the assessment date may appeal to the assessor within eight business days after the date the notice of increased assessment required by section fifteen-b of this article was received by filing a petition with the assessor on a form prescribed by the Tax Commissioner. For purposes of this section, ‘business day’ means any day other than Saturday, Sunday or any legal holiday set forth in section one, article two, chapter two of this code. The petition shall set forth in writing:

(1) The taxpayer’s opinion of the value of the tangible personal property; and
(2) Substantial information that justifies the opinion of value in order for the assessor to consider the information for the purpose of basing a change in the valuation.

(b) The assessor shall rule on each petition no later than February 10 of the tax year.

(c) The notice of the assessor's ruling provided under this section shall be given in the same manner as prescribed in section fifteen-h of this article.

(d) If the request of the petitioner is denied, in whole or in part, the notice required by subsection (c) of this section shall include the grounds for refusing to grant the request contained in the petition.

(e) This section shall not apply to tangible personal property appraised by the Tax Commissioner as part of an industrial or natural resource property appraisal.

CHAPTER 184

(Com. Sub. for S. B. 185 - By Senators Kessler (Mr. President) and M. Hall)
[By Request of the Executive]

[Passed April 13, 2013; in effect from passage.]
[Approved by the Governor on May 3, 2013.]

AN ACT to amend and reenact §11-6D-1, §11-6D-2, §11-6D-3, §11-6D-4, §11-6D-5, §11-6D-6, §11-6D-7 and §11-6D-9 of the Code of West Virginia, 1931, as amended, all relating to the tax credit for alternative-fuel motor vehicles and qualified alternative-
fuel vehicle refueling infrastructure and qualified alternative-fuel vehicle home refueling infrastructure; setting forth legislative findings; defining terms; restricting credit to purchases of and conversions to natural gas-fueled motor vehicles and liquefied petroleum gas-fueled motor vehicles; narrowing allowance of credit for alternative-fuel motor vehicle purchases, alternative-fuel motor vehicle conversions and alternative-fuel motor vehicle refueling infrastructure; outlining eligibility for credit and cessation of eligibility for credit for specified construction, purchases, expenditures, investments, installations or conversions made on or after cessation dates or tax years as specified; requiring that not more than one tax credit be granted under said article six-d, or any combination of articles set forth in said chapter eleven for purchase of an alternative-fuel motor vehicle or for costs relating to conversion of a motor vehicle to an alternative-fuel motor vehicle, or for costs associated with alternative-fuel vehicle refueling infrastructure or for costs associated with alternative-fuel home refueling infrastructure; providing amount of credit for qualified alternative-fuel vehicle refueling infrastructure; providing limitations on credit; allowing pass-through entities to distribute credits to pass-through equity owners in any manner such equity owners see fit; providing for the termination of tax credit for alternative-fuel motor vehicles purchased after December 31, 2017; providing for the termination of tax credit for motor vehicles converted to operate on alternative fuel after December 31, 2017; providing for the termination of tax credit for construction or purchase and installation of alternative-fuel vehicle refueling infrastructure occurring after December 31, 2017; providing for the termination of tax credit for construction or purchase and installation of qualified alternative-fuel vehicle home refueling infrastructure occurring on or after April 15, 2013; providing for the termination of tax credit for purchases of motor vehicles that operate on fuels other than compressed natural gas or liquefied natural gas, or liquefied petroleum gas, occurring on or after April 15, 2013; providing for the termination of tax credit for
conversions of motor vehicles to operate on fuels other than compressed natural gas or liquefied natural gas or liquefied petroleum gas occurring on or after April 15, 2013; providing limitations and restrictions of credit carryover; and providing that credit is nontransferable.

Be it enacted by the Legislature of West Virginia:

That §11-6D-1, §11-6D-2, §11-6D-3, §11-6D-4, §11-6D-5, §11-6D-6, §11-6D-7 and §11-6D-9 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 6D. ALTERNATIVE-FUEL MOTOR VEHICLE TAX CREDIT.

§11-6D-1. Legislative findings and purpose.

Consistent with the public policy as stated in section one, article two-d, chapter twenty-four of this code, the Legislature hereby finds that the use of natural gas-based alternative fuels is in the public interest and promotes the general welfare of the people of this state insofar as it addresses serious concerns for our environment and our state’s and nation’s dependence on foreign oil as a source of energy. The Legislature further finds that by encouraging the use of natural gas-fueled and liquefied petroleum gas-fueled motor vehicles, the state will be reducing its dependence on foreign oil and attempting to improve its air quality. The Legislature further finds that the wholesale cost of fuel for certain natural gas-fueled and liquefied petroleum gas-fueled motor vehicles is significantly lower than the cost of fuel for traditional motor vehicles.

However, because the cost of motor vehicles which utilize natural gas-fueled or liquefied petroleum gas-fueled technologies remains high in relation to motor vehicles that employ more traditional technologies, citizens of this state who might otherwise choose a natural gas-fueled or liquefied
petroleum gas-fueled motor vehicle are forced by economic necessity to continue using motor vehicles that are fueled by more conventional means. Additionally, the availability of commercial infrastructure to support natural gas-fueled and liquefied petroleum gas-fueled vehicles available to the public is inadequate to encourage the use of natural gas-fueled and liquefied petroleum gas-fueled motor vehicles. It is the intent of the Legislature that the alternative-fuel motor vehicle tax credit previously expired in 2006 be hereby reinstated with changes and amendments as set forth herein. Therefore, in order to encourage the use of natural gas-fueled and liquefied petroleum gas-fueled motor vehicles and possibly reduce unnecessary pollution of our environment and reduce our dependence on foreign sources of energy, there is hereby created an alternative-fuel motor vehicle tax credit and an alternative-fuel vehicle refueling infrastructure tax credit.

§11-6D-2. Definitions.

As used in this article, the following terms have the meanings ascribed to them in this section.

(a) "Alternative fuel".–

(I) For purchase or installations occurring on and after January 1, 2011, but prior to April 15, 2013, the term "alternative fuel" means and includes:

(A) Compressed natural gas;

(B) Liquefied natural gas;

(C) Liquefied petroleum gas;

(D) Ethanol;

(E) Fuel mixtures that contain eighty-five percent or more by
volume, when combined with gasoline or other fuels, of the following:

(i) Methanol;
(ii) Ethanol; or
(iii) Other alcohols;
(F) Natural gas hydrocarbons and derivatives;
(G) Hydrogen;
(H) Coal-derived liquid fuels; and
(I) Electricity, including electricity from solar energy.

(2) For purchases or installations occurring on or after April 15, 2013, the term “alternative fuel” means and is limited to:
(A) Compressed natural gas;
(B) Liquefied natural gas; or
(C) Liquefied petroleum gas.

(b) “Alternative-fuel motor vehicle” or “qualified motor vehicle” means a motor vehicle that as a new or retrofitted or converted fuel vehicle:
(1) Operates solely on one alternative fuel;
(2) Is capable of operating on one or more alternative fuels, singly or in combination; or
(3) Is capable of operating on an alternative fuel and is also capable of operating on gasoline or diesel fuel.

(c) “Bi-fueled motor vehicle” means a motor vehicle fueled from two or more tanks, each of which stores a separate type of
(d) “Liquefied petroleum gas” means fuel commonly known and designated as “liquefied petroleum gas” or “LP gas”. The term “liquefied petroleum gas” also means and includes:

(1) Propane;

(2) Butane; or

(3) A mix of gases used as motor fuel which is predominantly propane or butane, or predominantly a mixture of propane and butane.

(e) “Plug-in hybrid electric vehicle” means:

(1) A plug-in hybrid electric vehicle manufactured by an established motor vehicle manufacturer of plug-in hybrid electric vehicles that can operate solely on electric power and that is capable of recharging its battery from an on-board generation source and an off-board electricity source; and

(2) A plug-in hybrid electric vehicle conversion that provides an increase in city fuel economy of seventy-five percent or more as compared to a comparable nonhybrid version vehicle for a minimum of twenty miles and that is capable of recharging its battery from an on-board generation source and an off-board electricity source. A vehicle is comparable if it is the same model year and the same vehicle class as established by the United States Environmental Protection Agency and is comparable in weight, size and use. Fuel economy comparisons shall be made using city fuel economy standards in a manner that is substantially similar to the manner in which city fuel economy is measured in accordance with procedures set forth in 40 C. F. R. 600 as in effect on January 1, 2011.
(f) "Qualified alternative-fuel vehicle refueling infrastructure" means property owned by the applicant for the tax credit and used for storing alternative fuels and for dispensing such alternative fuels into fuel tanks of motor vehicles, including, but not limited to, natural gas supply lines, compression equipment, storage tanks and dispensing units for alternative fuel at the point where the fuel is delivered into a motor vehicle for consumption: Provided, That the property is installed and located in this state and is not located in or on a private residence or private home.

(g) "Qualified alternative-fuel vehicle home refueling infrastructure" means property owned by the applicant for the tax credit located on a private residence or private home and used for storing alternative fuels and for dispensing such alternative fuels into fuel tanks of motor vehicles, including, but not limited to, compression equipment, storage tanks and dispensing units for alternative fuel at the point where the fuel is delivered or for providing electricity to plug-in hybrid electric vehicles or electric vehicles: Provided, That the property is installed and located in this state.

(h) "Taxpayer" means any natural person, corporation, limited liability company or partnership subject to the tax imposed under article twenty-one, article twenty-three or article twenty-four of this chapter or any combination thereof.

§11-6D-3. Credit allowed for alternative-fuel motor vehicles and qualified alternative-fuel vehicle refueling infrastructure; application against personal income tax, business franchise tax or corporate net income tax; effective date.

The tax credits for the purchase of alternative-fuel motor vehicles or conversion to alternative-fuel motor vehicles, qualified alternative-fuel vehicle refueling infrastructure and
qualified alternative-fuel vehicle home refueling infrastructure provided in this article may be applied against the tax liability of a taxpayer imposed by the provisions of either article twenty-one, article twenty-three or article twenty-four of this chapter, but in no case may more than one tax credit be granted under this article or any combination of articles set forth in this chapter for purchase of an alternative-fuel motor vehicle or for costs relating to conversion to an alternative-fuel motor vehicle, or for costs associated with alternative-fuel vehicle refueling infrastructure or for costs associated with alternative-fuel home refueling infrastructure as defined in this article. This credit shall be available for those tax years beginning on or after January 1, 2011, but shall not be available for, or with relation to, any purchase, expenditure, investment, installation, construction or conversion made in any tax year beginning after the termination dates specified in this article, as applicable to specified purchases, expenditures, investments, installations, construction or conversions.

§11-6D-4. Eligibility for credit.

A taxpayer is eligible to claim the credit against tax provided in this article if the taxpayer:

(a) Converts a motor vehicle that is presently registered in West Virginia to operate exclusively on an alternative fuel as defined in this article or to operate as a bi-fueled alternative-fuel motor vehicle; or

(b) Purchases from an original equipment manufacturer or an after-market conversion facility or any other automobile retailer, a new dedicated alternative-fuel motor vehicle or bi-fueled alternative-fuel motor vehicle for which the taxpayer then obtains a valid West Virginia registration; or

(c) Constructs or purchases and installs qualified alternative-fuel vehicle refueling infrastructure that is capable of dispensing alternative fuel for alternative-fuel motor vehicles.
(d) (1) The credit provided in this article is not available to and may not be claimed by any taxpayer under any obligation pursuant to any federal or state law, policy or regulation to convert to the use of alternative fuels for any motor vehicle.

(2) The credit provided in this article is not available to and may not be claimed by any taxpayer for construction or purchase and installation of alternative-fuel vehicle home refueling infrastructure on or after April 15, 2013.

(e) The credit provided in this article for purchase of an alternative-fuel motor vehicle or conversion of a motor vehicle to an alternative-fuel motor vehicle, is not available to and may not be claimed by any taxpayer in, or for, any tax year in which the taxpayer did not own the alternative-fuel motor vehicle for which the claim is filed on the last day of the taxpayer’s tax year for which the credit is claimed.

(f) Effective date.

§11-6D-5. Amount of credit for alternative-fuel motor vehicles.

(a) For taxable years beginning on and after January 1, 2011, but prior to termination or cessation of this credit as specified in this article, the amount of the credit allowed under this article for an alternative-fuel motor vehicle that weighs less than twenty-six thousand pounds is thirty-five percent of the purchase price of the alternative-fuel motor vehicle up to a maximum amount of $7,500 or fifty percent of the actual cost of converting from a traditionally fueled motor vehicle to an alternative-fuel motor vehicle up to a maximum amount of $7,500.

(b) For taxable years beginning on and after January 1, 2011, but prior to termination or cessation of this credit as specified in
this article, the amount of the credit allowed under this article for
an alternative-fuel motor vehicle that weighs more than
twenty-six thousand pounds is thirty-five percent of the purchase
price of the alternative-fuel motor vehicle up to a maximum
amount of $25,000 or fifty percent of the actual cost of
converting from a traditionally fueled motor vehicle to an
alternative-fuel motor vehicle up to a maximum amount of
$25,000.

§11-6D-6. Amount of credit for qualified alternative-fuel vehicle
refueling infrastructure.

(a) For taxable years beginning on and after January 1, 2011,
but prior to January 1, 2014, the amount of the credit allowed
under this article for qualified alternative-fuel vehicle refueling
infrastructure is equal to fifty percent of the total costs directly
associated with the construction or purchase and installation of
the alternative-fuel vehicle refueling infrastructure up to a
maximum of $250,000: Provided, That if the qualified
alternative-fuel vehicle refueling infrastructure is generally
accessible for public use, the amount of the credit allowed will
be multiplied by 1.25 and the maximum amount allowable will
be $312,500. The amount of credit allowed may not exceed the
cost of construction of the alternative-fuel vehicle refueling
infrastructure.

(b) For taxable years beginning on and after January 1, 2014,
but prior to termination or cessation of this credit as specified in
this article, the amount of the credit allowed under this article for
qualified alternative-fuel vehicle refueling infrastructure is equal
to twenty percent per facility of the total costs directly associated
with the construction or purchase and installation of the
alternative-fuel vehicle refueling infrastructure up to a maximum
of $400,000 per facility.

(c) The cost of construction of the alternative-fuel vehicle
refueling infrastructure or alternative-fuel vehicle home
refueling infrastructure eligible for a tax credit under this article
does not include costs associated with exploration, development
or production activities necessary for severing natural resources
from the soil or ground.

(d) When the taxpayer is a pass-through entity treated like a
partnership for federal and state income tax purposes, the credit
allowed under this article for the year shall flow through to the
equity owners of the pass-through entity in any manner that such
equity owners see fit and is not required to flow through such
equity owners in the same manner as distributive share flows
through to the equity owners and in accordance with any
legislative rule the Tax Commissioner may propose for
legislative approval in accordance with article three, chapter
twenty-nine-a of this code to administer this section.

(e) No credit allowed by this article may be applied against
employer withholding taxes imposed by article twenty-one of
this chapter.

§11-6D-7. Duration of availability of credit.

No person is eligible to receive a tax credit under this article
for:

(1) An alternative-fuel motor vehicle purchased after
December 31, 2017;

(2) A vehicle converted to an alternative-fuel motor vehicle
after December 31, 2017;

(3) The construction or purchase and installation of qualified
alternative-fuel vehicle refueling infrastructure occurring after
December 31, 2017;

(4) The construction or purchase and installation of qualified
alternative-fuel vehicle home refueling infrastructure occurring
on or after April 15, 2013;
(5) Purchases of motor vehicles that operate on fuels other than compressed natural gas, liquefied natural gas or liquefied petroleum gas, occurring on or after April 15, 2013; or

(6) Conversions of motor vehicles to operate on fuels other than compressed natural gas, liquefied natural gas or liquefied petroleum gas, occurring on or after April 15, 2013.

§11-6D-9. Carryover credit allowed; recapture of credit.

(a) If the alternative-fuel motor vehicle tax credit allowed under this article in the first taxable year in which the tax credit is allowable to offset tax exceeds the taxpayer’s tax liability as determined in accordance with article twenty-one, article twenty-three and article twenty-four of this chapter for that taxable year, the excess may be applied for not more than the four next succeeding taxable years until the excess tax credit is used or the end of the fourth next succeeding taxable year, whichever occurs first. Any excess credit remaining at the end of the fourth next succeeding taxable year shall be forfeited.

(b) If the qualified alternative-fuel vehicle refueling infrastructure tax credit allowed under this article in any taxable year exceeds the taxpayer’s tax liability as determined in accordance with article twenty-one, article twenty-three or article twenty-four of this chapter for that taxable year, the excess may be applied for succeeding taxable years until the full amount of the excess tax credit is used.

(c) No carryback to a prior taxable year is allowed for the amount of any unused credit in any taxable year.

(d) A tax credit is subject to recapture, elimination or reduction if it is determined by the State Tax Commissioner that a taxpayer was not entitled to the credit, in whole or in part, in the tax year in which it was claimed by the taxpayer. The amount of credit that flows through to equity owners of a pass-through
entity may be recaptured or recovered from either the taxpayer
or the equity owners in the discretion of the Tax Commissioner.

(e) The tax credit allowed under this article may not be sold,
transferred or assigned to any person or entity. The tax credit
allowed under this article does not attach to or follow the
qualified motor vehicle or qualified infrastructure upon sale,
resale, transfer, assignment or any other change of ownership of
such vehicle or infrastructure. Credit shall not be available to any
successor owner of any qualified motor vehicle or any qualified
infrastructure property for which the credit was available to the
original owner or predecessor owner.

CHAPTER 185

(Com Sub. for S. B. 440 - By Senators Prezioso,
Facemire, Stollings and Plymale)

[Passed April 11, 2013; in effect from passage.]
[Approved by the Governor on April 30, 2013.]

AN ACT to amend and reenact §11-10-5s of the Code of West
Virginia, 1931, as amended, relating to disclosure of confidential
taxpayer information; authorizing the disclosure of specified tax
information by the Tax Commissioner to the Attorney General;
authorizing the disclosure of specified tax information by the
Attorney General to specified persons relevant to enforcement of
Tobacco Master Settlement Agreement; authorizing the Tax
Commissioner to enter into a written agreement with the State
Auditor for disclosure of confidential tax information to the State
Auditor to facilitate the State Auditor's participation in federal and
state offset programs to collect unpaid taxes; and providing for
protection and limited use of confidential information.
Be it enacted by the Legislature of West Virginia:

That §11-10-5s of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 10. WEST VIRGINIA TAX AND PROCEDURE ADMINISTRATION ACT.

§11-10-5s. Disclosure of certain taxpayer information.

(a) Purpose. – The Legislature hereby recognizes the importance of confidentiality of taxpayer information as a protection of taxpayers' privacy rights and to enhance voluntary compliance with the tax law. The Legislature also recognizes the citizens' right to accountable and efficient state government. To accomplish these ends, the Legislature hereby creates certain exceptions to the general principle of confidentiality of taxpayer information.

(b) Exceptions to confidentiality. –

(1) Notwithstanding any provision in this code to the contrary, the Tax Commissioner shall publish in the State Register the name and address of every taxpayer and the amount, by category, of any credit asserted on a tax return under articles thirteen-c, thirteen-d, thirteen-e, thirteen-f, thirteen-g, thirteen-q, thirteen-r and thirteen-s of this chapter and article one, chapter five-e of this code. The categories by dollar amount of credit received are as follows:

(A) More than $1 but not more than $50,000;

(B) More than $50,000 but not more than $100,000;

(C) More than $100,000 but not more than $250,000;

(D) More than $250,000 but not more than $500,000;
(E) More than $500,000 but not more than $1 million; and
(F) More than $1 million.

(2) Notwithstanding any provision in this code to the contrary, the Tax Commissioner shall publish in the State Register the following information regarding a compromise of a pending civil tax case that occurs on or after the effective date of this section in which the Tax Commissioner is required to seek the written recommendation of the Attorney General and the Attorney General has not recommended acceptance of the compromise or when the Tax Commissioner compromises a civil tax case for an amount that is more than $250,000 less than the assessment of tax owed made by the Tax Commissioner:

(A) The names and addresses of taxpayers that are parties to the compromise;

(B) A summary of the compromise;

(C) Any written advice or recommendation rendered by the Attorney General regarding the compromise; and

(D) Any written advice or recommendation rendered by the Tax Commissioner’s staff.

Under no circumstances may the tax return of the taxpayer or any other information which would otherwise be confidential under other provisions of law be disclosed pursuant to the provisions of this subsection.

(3) Notwithstanding any provision in this code to the contrary, the Tax Commissioner may disclose any relevant return information to the prosecuting attorney for the county in which venue lies for a criminal tax offense when there is reasonable cause, based upon and substantiated by the return information, to believe that a criminal tax law has been or is being violated.
(4) Notwithstanding any provision in this code to the contrary, the Tax Commissioner may enter into written exchange of information agreements with the commissioners of Labor, Employment Security, Alcohol Beverage Control and Workers' Compensation to disclose and receive timely return information. The Tax Commissioner may promulgate rules pursuant to chapter twenty-nine-a of this code regarding additional agencies with which written exchange of information agreements may be sought but may not promulgate emergency rules regarding these additional agencies. The agreements shall be published in the State Register and are only for the purpose of facilitating premium collection, tax collection and facilitating licensure requirements directly enforced, administered or collected by the respective agencies. The provisions of this subsection do not preclude or limit disclosure of tax information authorized by other provisions of this code. Confidential return information so disclosed remains confidential in the other agency to the extent provided by section five-d of this article and by other applicable federal or state laws.

(5) Notwithstanding any provision of this code to the contrary, the Tax Commissioner may enter into a written agreement with the State Treasurer to disclose to the State Treasurer the following business registration information:

(A) The names, addresses and federal employer identification numbers of businesses which have registered to do business in West Virginia; and

(B) The type of business activity and organization of those businesses.

Disclosure of this information shall begin as soon as practicable after the effective date of this subsection and may be used only for the purpose of recovery and disposition of unclaimed property in accordance with the provisions of article
eight, chapter thirty-six of this code. The provisions of this 
subsection do not preclude or limit disclosure of tax information 
authorized by other provisions of this code. Confidential return 
information disclosed hereunder or thereunder remains 
confidential as provided by section five-d of this article and by 
other applicable federal or state laws.

(6) Notwithstanding any provision of this code to the 
contrary, the Tax Commissioner may disclose to the Attorney 
General any tax return, report, declaration or tax return 
information, including the identity of a taxpayer, that relates to 
any taxpayer's sales of tobacco products subject to state excise 
tax or to such sales of tobacco products that were manufactured 
or imported by a nonparticipating manufacturer as defined in 
section two, article nine-d of chapter sixteen of this code, for the 
purpose of enforcement of articles nine-b and nine-d, chapter 
sixteen of this code, or for the purpose of representing the State 
of West Virginia in any arbitration or litigation arising under the 
Tobacco Master Settlement Agreement or articles nine-b and 
nine-d, chapter sixteen of this code. Nothing herein shall 
authorize the disclosure of any taxpayer's income tax returns or 
business franchise tax returns, or authorize the use of the 
disclosed information for any purpose other than as specified 
herein.

(7) Notwithstanding any provision of this code to the 
contrary, the Attorney General, upon the consent of the Tax 
Commissioner, may disclose information provided by the Tax 
Commissioner under the authority of subdivision six of this 
subsection as follows:

(A) To a party or parties participating in arbitration or 
litigation arising under the terms of the Tobacco Master 
Settlement Agreement; or

(B) To a judge, arbitrator, administrative law judge, legal 
counsel or other officer, official or participant in proceedings for
or relating to administration, implementation, enforcement, defense or settlement and arbitration of the provisions of articles nine-b and nine-d of chapter sixteen of this code.

(C) Notwithstanding any provision of this code to the contrary, the Attorney General may introduce into evidence or disclose the information in the arbitration or litigation proceedings or an action for administration, implementation, enforcement, defense or settlement and arbitration of the provisions of articles nine-b and nine-d of chapter sixteen of this code.

(D) This subdivision does not apply to a document, tax return or other information subject to disclosure restrictions imposed by federal statute or regulation.

(E) Any information disclosed pursuant to this subdivision is subject to the following restrictions:

(i) specific identifiers shall first be redacted or otherwise removed from any such information that was reported by a taxpayer who is not a party to any proceeding, arbitration or litigation;

(ii) No such disclosure shall be made unless it is subject to a protective order or agreement restricting the use of the disclosed information to such proceeding, arbitration or litigation;

(F) For purposes of this section, “specific identifiers” shall mean the name, address, telephone number, taxpayer identification number, logo, trademark or other markings unique to the taxpayer.

(G) Notwithstanding any provision of this code to the contrary, the Tax Commissioner may enter into a written exchange agreement with the Auditor to disclose certain taxpayer information to facilitate participation in the following:
(A) The federal offset program authorized by section thirty-seven, article one, chapter fourteen of this code; and

(B) The state offset program, as authorized by subsection (h), section thirty-seven, article one, chapter fourteen of this code, for the purpose of protecting return information as defined in section five-d, article ten of this chapter and collecting debts, fees and penalties due the state, its departments, agencies or institutions.

(C) The taxpayer information exchanged or disclosed pursuant to this subdivision is to be used only for the purpose of facilitating the collection of unpaid and delinquent tax liabilities through offset against state payments due and owing to taxpayers, vendors and contractors providing goods or services to the state, its departments, agencies or institutions.

(D) The Tax Commissioner may disclose the following taxpayer information:

(i) Name;

(ii) Address;

(iii) Social Security number or tax identification number;

(iv) Amount of the tax liability; and

(v) Any other information required by the written agreement.

(E) Disclosure of this information begins as soon as practicable after the effective date of this subdivision.

(F) The provisions of this section do not preclude or limit disclosure of tax information authorized by other provisions of this code. Any confidential return information disclosed hereunder or thereunder remains confidential to the extent
provided by section five-d of this article and by other applicable federal or state laws.

(c) Tax expenditure reports. – Beginning on January 15, 1992, and every January 15 thereafter, the Governor shall submit to the President of the Senate and the Speaker of the House of Delegates a tax expenditure report. This report shall expressly identify all tax expenditures. Within three-year cycles, the reports shall be considered together to analyze all tax expenditures by describing the annual revenue loss and benefits of the tax expenditure based upon information available to the Tax Commissioner. For purposes of this section, the term "tax expenditure" means a provision in the tax laws administered under this article including, but not limited to, exclusions, deductions, tax preferences, credits and deferrals designed to encourage certain kinds of activities or to aid taxpayers in special circumstances. The Tax Commissioner shall promulgate rules setting forth the procedure by which he or she will compile the reports and setting forth a priority for the order in which the reports will be compiled according to type of tax expenditure.

(d) Federal and state return information confidential. – Notwithstanding any other provisions of this section or of this code, no return information made available to the Tax Commissioner by the Internal Revenue Service or department or agency of any other state may be disclosed to another person in a manner inconsistent with the provisions of Section 6103 of the Internal Revenue Code of 1986, as amended, or of the other states' confidentiality laws.
AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §11-10-5bb, relating to the collection of taxes; requiring the Lottery Commission to offset certain lottery prizes against the state tax liabilities of the prize winner; providing limitations period; and authorizing an agreement between the Tax Department and the Lottery Commission for the purpose of establishing collection procedures.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §11-10-5bb, to read as follows:

ARTICLE 10. WEST VIRGINIA TAX PROCEDURE AND ADMINISTRATION ACT.

§11-10-5bb. Applying lottery prizes to tax liabilities.

1. (a) Offset lottery prizes against tax liabilities. — Upon notification by the State Tax Department that a person who is entitled to all or part of a lottery prize is delinquent in the payment of any of the taxes administered under chapter eleven, article ten of this code, the Lottery Director shall forward to the State Tax Department the prize or portion thereof to be distributed directly from the State Lottery Office, and such amount shall be applied to pay the tax liabilities of the prize
9 winner: Provided, That such distribution shall be subject to the
10 limitations on collection provided in section sixteen of this
11 article.

12 (b) Administration. - (1) The Tax Commissioner shall enter
13 into a written agreement with the Lottery Director for the
14 purpose of establishing a procedure for the collection of prizes
15 as set forth in subsection (a) of this section. The director shall
16 include in the agreement a method by which Lottery Director
17 will provide the names of lottery winners as expeditiously as
18 possible.

19 (2) Notwithstanding any provision in this code to the
20 contrary, the Tax Commissioner may disclose tax information to
21 the Lottery Director for the purpose of administering the
22 collection procedure authorized in subsection (a) of this section,
23 and the Tax Commissioner and Lottery Director may enter into
24 a written agreement allowing and providing for the disclosure of
25 tax information for the purpose of administering the collection
26 procedure authorized in subsection (a) of this section.

27 (c) Effective date. - The provisions of this section shall apply
28 to all tax years beginning after December 31, 2013.

CHAPTER 187

(Com. Sub. for H. B. 2913 - By Delegates White and Marcum)

[Passed April 12, 2013; in effect ninety days from passage.]
[Approved by the Governor on April 30, 2013.]

AN ACT to amend Code of West Virginia, 1931, as amended by
adding thereto a new section, designated §11-10-26, relating to
correction of certain erroneous distributions, transfers, allocations,
overpayments or underpayments; specifying immunity of agencies, subdivisions and instrumentalities of this state from any fine, penalty, assessment or imposition as a result of, or attributable to the erroneous distribution, transfer, allocation, overpayment or underpayment of moneys; and specifying when discovery and distribution have occurred; specifying that provisions shall not be applied to alter, abrogate or terminate any current and ongoing agreement or arrangement in operation on the effective date.

Be it enacted by the Legislature of West Virginia:

That of the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §11-10-26, to read as follows:

ARTICLE 10. WEST VIRGINIA TAX PROCEDURE AND ADMINISTRATION ACT.

§11-10-26. Adjustments for correction or erroneous distribution of funds, limitation period, immunity of agencies, subdivisions, and instrumentalities of this state.

(a) (1) An erroneous distribution, transfer, allocation, overpayment or underpayment dedicated, distributed or directed by the state or an instrumentality of the state to a state or local governmental subdivision or a fund, entity, agency or instrumentality of the state or a political subdivision of the state, under the provision of this code administered under this article, or under the provisions of article twenty-two, twenty-two-a, twenty-two-b, twenty-two-c or twenty-five, chapter twenty-nine of this code, or any other provision of this code, or any combination thereof, caused by clerical error or mistake, or a computational, information or other mistake or error, may be corrected by an adjustment to a distribution, transfer, allocation or payment to the subdivision, entity, agency, instrumentality or fund and by transfer of moneys from the subdivision, entity, agency, instrumentality or fund until the amount of the erroneous
distribution, transfer, allocation, overpayment or underpayment
has been corrected: Provided, That no correction or adjustment
may be made for an erroneous distribution, transfer, allocation,
overpayment or underpayment of moneys that is first discovered
by the distributor or the distributee more than three years after
the date on which the erroneous distribution, transfer, allocation,
overpayment or underpayment of moneys was made, and no
action lies for collection, correction or remediation of the late
discovered erroneous distribution, transfer, allocation, over-
payment or underpayment of the moneys.

(2) A distribution, transfer, allocation, overpayment or
underpayment of moneys is deemed to have been made on the
date when the moneys related thereto are under the actual,
substantive control of the transferee, and subject to expenditure,
disbursement, consumption or disposition by the transferee.

(3) An erroneous distribution, transfer, allocation, over-
payment or underpayment of moneys is deemed to have been
discovered on the date when the distributor or the distributee or
any employee, officer, agent or representative of the distributor
or distributee has actual substantive knowledge of the erroneous
distribution, transfer, allocation, overpayment or underpayment
of moneys.

(b) An agency, governmental subdivision or instrumentality
of this state is not subject to a fine, penalty, assessment or
imposition as a result of, or attributable to, an erroneous
distribution, transfer, allocation, overpayment or underpayment
of moneys.

(c) The provision of subsection (a) of this section shall not
be applied to alter, abrogate or terminate any current and
ongoing agreement or arrangement which was in operation on
the effective date of this section, to correct or adjust an
erroneous distribution, transfer, allocation, overpayment or
underpayment, between (1) this state or an instrumentality of this
AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §11-13A-22, relating to exemptions from the tax on the privilege of severing natural gas and oil; terminating a severance tax exemption for natural gas or oil produced from any horizontally drilled well that has not produced marketable quantities for five consecutive years immediately preceding the year in which such well is placed back into production and thereafter produces marketable quantities of natural gas or oil; providing an exception thereto; and specifying a controlling effective date.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §11-13A-22, to read as follows:

ARTICLE 13A. SEVERANCE AND BUSINESS PRIVILEGE TAX ACT.


1 (a) On and after July 1, 2013, the exemption set forth in subdivision (4), subsection (a), section three-a of this article is void and of no force or effect with respect only to horizontally
4 drilled wells. However, if a well for which the producer
5 established entitlement to that exemption on or before June 30,
6 2013, the exemption from tax continues for natural gas or oil
7 produced from that well for the remainder of the ten-year period
8 for which the exemption was originally applicable.

9 (b) “Horizontally drilled well” means any well that is drilled
10 using a “horizontal drilling” method as that term is defined in
11 subdivision (5), subsection (b), section four, article six-a, chapter
12 twenty-two of this code.

13 (c) Pursuant to section five-p, article ten of this chapter,
14 termination of the exemption set forth in subdivision (4),
15 subsection (a), section three-a of this article on and after July 1,
16 2013, is subject to the controlling internal effective date of this
17 section and is not subject to the alternative effective date
18 provisions of section five-p, article ten of this chapter.

CHAPTER 189

(H.B. 3043 - By Mr. Speaker, (Mr. Thompson)
and Delegates Craig, Hunt, Marcum, Caputo, Ferro,
R. Phillips, Williams and Boggs)

[Passed April 13, 2013; in effect ninety days from passage.]
[Approved by the Governor on May 3, 2013.]

AN ACT to amend and reenact §11-13BB-3 of the Code of West
Virginia, 1931, as amended, relating to including methane
monitoring equipment as eligible safety equipment for tax credit
purposes.

Be it enacted by the Legislature of West Virginia:

That §11-13BB-3 of the Code of West Virginia, 1931, as amended,
be amended and reenacted to read as follows:
ARTICLE 13BB. WEST VIRGINIA INNOVATIVE MINE SAFETY TECHNOLOGY TAX CREDIT ACT.


(a) Any term used in this article has the meaning ascribed by this section unless a different meaning is clearly required by the context of its use or by definition in this article.

(b) For purposes of this article, the term:

1. "Certified eligible safety property" means eligible safety property in which an eligible taxpayer has made qualified investment for which credit has been certified under this article.

2. "Coal mining company" means:
   (A) A person subject to tax imposed on the severance of coal by section three, article thirteen-a of this chapter; or
   (B) A person working as a contract miner of coal, mining coal in this state, under contract with a person subject to tax imposed on the severance of coal by section three, article thirteen-a of this chapter.

3. "Director" means the Director of the Office of Miners’ Health, Safety and Training or West Virginia Office of Miners’ Health, Safety and Training established under article one, chapter twenty-two-a of this code.

4. "Eligible safety property" means safety technology equipment that, at the time of acquisition, is on the list of approved innovative mine safety technology: Provided, That eligible safety property includes machine mounted methane monitors required by section forty-three, article two, chapter twenty-two-a of this code.

5. "Eligible taxpayer" means a coal mining company that purchases eligible safety property.
(6) "List of approved innovative mine safety technology" means the list required to be compiled and maintained by the Mine Safety Technology Task Force and approved and published by the director under this article.

(7) "Office of Miners’ Health, Safety and Training" or "West Virginia Office of Miners’ Health, Safety and Training" means the Office of Miners’ Health, Safety and Training established under article one, chapter twenty two-a of this code.

(8) "Person" includes any corporation, limited liability company or partnership.

(9) "Qualified investment" means the eligible taxpayer’s investment in eligible safety property pursuant to a qualified purchase as qualified and limited by section six of this article.

(10) "Qualified purchase" means and includes only acquisitions of eligible safety property for use in this state.

(A) A lease of eligible safety property may constitute a qualified purchase if the lease was entered into and became effective at a time when the equipment is on the list of approved innovative mine safety technology and if the primary term of the lease for the eligible safety property is five years or more. Leases having a primary term of less than five years do not qualify.

(B) "Qualified purchase" does not include:

(i) Purchases or leases of realty or any cost for, or related to, the construction of a building, facility or structure attached to realty;

(ii) Purchases or leases of property not exclusively used in West Virginia;

(iii) Repair costs including materials used in the repair unless, for federal income tax purposes, the cost of the repair must be capitalized and not expensed;

(iv) Motor vehicles licensed by the Division of Motor Vehicles;
(v) Clothing;
(vi) Airplanes;
(vii) Off-premises transportation equipment;
(viii) Leases of tangible personal property having a primary term of less than five years;
(ix) Property that is used outside this state; and
(x) Property that is acquired incident to the purchase of the stock or assets of an industrial taxpayer that was or had been used by the seller in his or her industrial business in this state or in which investment was previously the basis of a credit against tax taken under any other article of this chapter.

(C) Acquisitions, including leases, of eligible safety property may constitute qualified purchases for purposes of this article only if:

(i) The property is not acquired from a person whose relationship to the person acquiring it would result in the disallowance of deductions under Section 267 or 707(b) of the United States Internal Revenue Code of 1986, as amended;
(ii) The property is not acquired from a related person or by one component member of a controlled group from another component member of the same controlled group but the Tax Commissioner may waive this requirement if the property was acquired from a related party for its then fair market value; and
(iii) The basis of the property for federal income tax purposes, in the hands of the person acquiring it, is not determined, in whole or in part, by reference to the federal adjusted basis of the property in the hands of the person from whom it was acquired or under Section 1014(e) of the United States Internal Revenue Code of 1986, as amended.

(11) “Safety technology” means depreciable tangible personal property and equipment, other than clothing, principally designed to directly minimize workplace injuries and fatalities in coal mines.
AN ACT to amend and reenact §11-13X-5 of the Code of West Virginia, 1931, as amended, relating to lowering the total amount of tax credits available in a given fiscal year under the Film Industry Investment Act.

Be it enacted by the Legislature of West Virginia:

That §11-13X-5 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 13X. WEST VIRGINIA FILM INDUSTRY INVESTMENT ACT.

§11-13X-5. Amount of credit allowed; limitation of the credits.

(a) Base allowance. —

The amount of credit allowed to every eligible company, except as provided in subsection (b) of this section, is twenty-seven percent.

(b) Extra allowance for hiring of local workers. — Any amount allowed in subsection (a) of this section shall be increased by an additional four percent if the eligible company,
or its authorized payroll service company, employs ten or more
West Virginia residents as part of its full-time employees
working in the state or as apprentices working in the state.

(c) Application of the credits. — The tax credit allowed
under this section shall be applied to the eligible company’s state
tax liability as provided in section seven of this article.

(d) Limitation of the credits. — No more than $5 million of
the tax credits may be allocated by the film office in any given
West Virginia state fiscal year. The film office shall allocate the
tax credits in the order the applications therefore are received.

CHAPTER 191

(S. B. 446 - By Senators Prezioso, Facemire and Beach)

[Passed April 12, 2013; in effect July 1, 2013.]
[Approved by the Governor on April 30, 2013.]

AN ACT to amend and reenact §11-14B-14 of the Code of West
Virginia, 1931, as amended, relating to conformity with the
International Fuel Tax Agreement; and specifying that on and after
July 1, 2013, specified provisions of the International Fuel Tax
Agreement, as amended and in effect on that date, apply to motor
fuel taxes collected under the International Fuel Tax Agreement.

Be it enacted by the Legislature of West Virginia:

That §11-14B-14 of the Code of West Virginia, 1931, as amended,
be amended and reenacted to read as follows:

ARTICLE 14B. INTERNATIONAL FUEL TAX AGREEMENT.

§11-14B-14. General procedure and administration; conformity
with agreement.
(a) All of the provisions of the West Virginia Tax Procedure and Administration Act set forth in article ten of this chapter, including amendments thereto, apply to motor fuel taxes collected under an International Fuel Tax Agreement.

(b) In the event of any inconsistency between the provisions of article ten of this chapter and the terms of the International Fuel Tax Agreement, the terms of said article ten control.

(c) Notwithstanding the provisions of subsections (a) and (b) of this section, on and after July 1, 2013, the provisions of section R1230 of the International Fuel Tax Agreement, as amended and in effect on that date, apply to motor fuel taxes collected under the International Fuel Tax Agreement.

CHAPTER 192

(Com. Sub. for S. B. 454 - By Senators Prezioso and Facemire)

[Passed April 13, 2013; in effect ninety days from passage.]
[Approved by the Governor on May 3, 2013.]

AN ACT to amend and reenact §§11-14C-2, §§11-14C-5, §§11-14C-9, §§11-14C-10, §§11-14C-13 and §§11-14C-19 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §§11-14C-6a; to amend and reenact §§11-15-18b of said code; and to amend and reenact §§11-15A-13a of said code, all relating to the taxation of alternative fuel; defining terms; requiring the Tax Commissioner to determine the gasoline gallon equivalent for alternative fuels; imposing tax on motor fuel equivalent gallons; specifying the point of imposition of tax on alternative fuels not otherwise taxed at the point of imposition; providing that propane used in a motor vehicle is subject to the tax; requiring alternative-fuel bulk end users, providers of alternative fuel
fuels and retailers of alternative fuels to be licensed; establishing bonding requirements for alternative-fuel bulk end users, providers of alternative fuels and retailers of alternative fuels; establishing due dates for returns and payments of tax on alternative fuels; and specifying effective dates for amendments.

Be it enacted by the Legislature of West Virginia:

That §11-14C-2, §11-14C-5, §11-14C-9, §11-14C-10, §11-14C-13 and §11-14C-19 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that said code be amended by adding thereto a new section, designated §11-14C-6a; that §11-15-18b of said code be amended and reenacted; and that §11-15A-13a of said code be amended and reenacted, all to read as follows:

ARTICLE 14C. MOTOR FUEL EXCISE TAX.

PART 1. GENERAL PROVISIONS.

§11-14C-2. Definitions.

1 As used in this article and unless the context requires otherwise, the following terms have the meaning ascribed herein.

2 (1) "Agricultural purposes" means the activities of:

3 (A) Cultivating the soil, including the planting and harvesting of crops, for the commercial production of food, fiber and ornamental woodland products;

4 (B) Using land for breeding and management of farm livestock including dairy, apiary, equine or poultry husbandry;

5 and

6 (C) Using land for the practice of horticulture including the growing of Christmas trees, orchards and nursery stock.

7 Agricultural purposes do not include commercial forestry,
(2) “Aircraft” includes any airplane or helicopter.

(3) “Alcohol” means motor fuel-grade ethanol or a mixture of motor fuel-grade ethanol and methanol, excluding denaturant and water that is a minimum of ninety-eight percent ethanol or methanol by volume.

(4) “Alternative fuel” means a combustible gas or liquid that is used or suitable for use as a motor fuel in an internal combustion engine or motor to propel or operate any form of vehicle, machine or mechanical contrivance and includes, but is not limited to, products commonly known as butane, propane, compressed natural gas, liquefied natural gas, liquefied petroleum gas, natural gas hydrocarbons and derivatives, liquid hydrocarbons derived from biomass, P-series fuels and hydrogen. “Alternative fuel” does not include diesel fuel, gasoline, blended fuel, aviation fuel or any special fuel. For purposes of this article electricity is not an alternative fuel.

(5) “Alternative-fuel bulk end user” means a person who maintains storage facilities for alternative fuel and uses part or all of the stored fuel to operate a motor vehicle.

(6) “Alternative-fuel commercial refueling infrastructure” means property owned by a commercial establishment and used for storing alternative fuels and for dispensing such alternative fuels into the fuel tanks of vehicles owned by the same person or entity that owns the alternative-fuel commercial refueling infrastructure or into the fuel tanks of privately owned vehicles or commercial vehicles other than those owned by the same person or entity that owns the alternative-fuel commercial refueling infrastructure, or any combination thereof.
"Alternative-fuel vehicle commercial refueling infrastructure" includes, but is not limited to, compression equipment, storage tanks and dispensing units for alternative fuel at the point where the fuel is delivered. Provided, That the property is not located on a private residence or private home. "Alternative-fuel commercial refueling infrastructure" does not include any building, infrastructure, equipment, apparatus, terminal or connections for servicing, charging or providing electricity to plug-in hybrid electric vehicles or electric vehicles. "Alternative-fuel vehicle commercial refueling infrastructure" includes alternative-fuel vehicle commercial refueling infrastructure property as described in this subdivision which is owned by a lessor or landlord and leased to or rented to a lessee or tenant as part of a residence for such lessee or tenant.

(7) "Alternative-fuel home refueling infrastructure" means property owned by a private individual for personal use that is located at the individual’s private residence or private home and used for storing and dispensing alternative fuels into fuel tanks of the property owner’s motor vehicles. This includes, but is not limited to, compression equipment, storage tanks and dispensing units for alternative fuel at the point where the fuel is delivered. For purposes of this article, "alternative-fuel home refueling infrastructure" does not include any building, infrastructure, equipment, apparatus, terminal or connections for servicing, charging or providing electricity to plug-in hybrid electric vehicles or electric vehicles. "Alternative-fuel home refueling infrastructure" does not include alternative-fuel vehicle refueling infrastructure property owned by a lessor or landlord which is leased to or rented to a lessee or tenant as part of a residence for such lessee or tenant.

(8) "Article" or "this article" means article fourteen-c, chapter eleven of this code.

(9) "Assessment" means a written determination by the commissioner of the amount of taxes owed by a taxpayer.
(10) "Aviation fuel" means aviation gasoline or aviation jet fuel.

(11) "Aviation gasoline" means motor fuel designed for use in the operation of aircraft other than jet aircraft and sold or used for that purpose.

(12) "Aviation jet fuel" means motor fuel designed for use in the operation of jet or turbo-prop aircraft and sold or used for that purpose.

(13) "Biodiesel fuel" means motor fuel or mixture of motor fuels that is derived, in whole or in part, from agricultural products or animal fats, or the wastes of such products or fats, and is advertised as, offered for sale as, suitable for use or used as motor fuel in an internal combustion engine.

(14) "Blended fuel" means a mixture composed of gasoline or diesel fuel and another liquid including, but not limited to, gasoline blend stocks, gasohol, ethanol, methanol, fuel-grade alcohol, diesel fuel enhancers and resulting blends, other than a de minimus amount of a product such as carburetor detergent or oxidation inhibitor, that can be used as a motor fuel in a highway vehicle.

(15) "Blender" means a person who produces blended motor fuel outside the bulk transfer/terminal system.

(16) "Blending" means the mixing of one or more petroleum products, with or without another product, regardless of the original character of the product blended, if the product obtained by the blending is capable of use in the generation of power for the propulsion of a motor vehicle, an airplane or a marine vessel. Blending does not include mixing that occurs in the process of refining by the original refiner of crude petroleum or the blending of products known as lubricating oil in the production of lubricating oils and greases.
(17) "Bulk plant" means a motor fuel storage and distribution facility that is not a terminal and from which motor fuel may be removed at a rack.

(18) "Bulk transfer" means any transfer of motor fuel from one location to another by pipeline tender or marine delivery within a bulk transfer/terminal system, including, but not limited to, all of the following:

(A) Movement of motor fuel from a refinery or terminal to a terminal by a marine vessel;

(B) Pipeline movements of motor fuel from a refinery or terminal to a terminal;

(C) Book transfer of motor fuel within a terminal between licensed suppliers prior to completion of removal across the rack; and

(D) Two-party exchange between licensed suppliers or between licensed suppliers and permissive suppliers.

(19) "Bulk user" means a person who maintains storage facilities for motor fuel and uses part or all of the stored motor fuel to operate a motor vehicle, watercraft or aircraft.

(20) "Bulk transfer/terminal system" means the motor fuel distribution system consisting of refineries, pipelines, marine vessels and terminals. Motor fuel in a refinery, a pipeline, a terminal or a marine vessel transporting motor fuel to a refinery or terminal is in the bulk transfer/terminal system. Motor fuel in a motor fuel storage facility including, but not limited to, a bulk plant that is not part of a refinery or terminal, in the motor fuel supply tank of an engine or motor vehicle, in a marine vessel transporting motor fuel to a motor fuel storage facility that is not in the bulk transfer/terminal system, or in a tank car, rail car, trailer, truck or other equipment suitable for ground transportation is not in the bulk transfer/terminal system.
(21) “Carrier” means an operator of a pipeline or marine vessel engaged in the business of transporting motor fuel above the terminal rack.

(22) “Code” means the Code of West Virginia, 1931, as amended.

(23) “Commercial watercraft” means a watercraft employed in the business of commercial fishing, transporting persons or property for compensation or hire or other trade or business.

(24) “Commissioner” or “Tax Commissioner” means the West Virginia State Tax Commissioner or his or her delegate.

(25) “Compressed natural gas” means natural gas that has been compressed and dispensed into motor fuel storage containers and is advertised as, offered for sale as, suitable for use as or used as an engine motor fuel.

(26) “Corporate or partnership officer” means an officer or director of a corporation, partner of a partnership or member of a limited liability company who as an officer, director, partner or member is under a duty to perform on behalf of the corporation, partnership or limited liability company, the tax collection, accounting or remitting obligations.

(27) “Dead storage” is the amount of motor fuel that cannot be pumped out of a motor fuel storage tank because the motor fuel is below the mouth of the draw pipe. The amount of motor fuel in dead storage is two hundred gallons for a tank with a capacity of less than ten thousand gallons and four hundred gallons for a tank with a capacity of ten thousand gallons or more.

(28) “Denaturants” means and includes gasoline, natural gasoline, gasoline components or toxic or noxious materials added to motor fuel-grade ethanol to make it unsuitable for beverage use but not unsuitable for automotive use.
(29) "Designated inspection site" means a state highway inspection station, weigh station, agricultural inspection station, mobile station or other location designated by the commissioner to be used as a motor fuel inspection site.

(30) "Destination state" means the state, territory or foreign country to which motor fuel is directed for delivery into a storage facility, a receptacle, a container or a type of transportation equipment for the purpose of resale or use. The term does not include a tribal reservation of a recognized Native American tribe.

(31) "Diesel fuel" means a liquid that is advertised as, offered for sale as, sold for use as, suitable for use as or used as a motor fuel in a diesel-powered highway vehicle or watercraft. The term includes #1 fuel oil, #2 fuel oil, undyed diesel fuel and kerosene but does not include gasoline or aviation fuel.

(32) "Distributor" means a person who acquires motor fuel from a licensed supplier, permissive supplier or from another licensed distributor for subsequent sale or use.

(33) "Diversion" means transporting motor fuel outside a reasonably direct route from the source to the destination state.

(34) "Division" or "State Tax Division" means the Tax Division of the West Virginia Department of Revenue.

(35) "Dyed diesel fuel" means diesel fuel that meets the dyeing and marking requirements of section 4082, Title 26, United States Code, regardless of how the diesel fuel was dyed.

(36) "End seller" means the person who sells motor fuel to the ultimate user of the motor fuel.

(37) "Export" means to obtain motor fuel in West Virginia for sale or other distribution in another state, territory or foreign country.
(38) "Exporter" means a person that exports motor fuel from this state. The seller is the exporter of motor fuel delivered out-of-state by or for the seller and the purchaser is the exporter of motor fuel delivered out-of-state by or for the purchaser.

(39) "Fuel" means motor fuel.

(40) "Fuel-grade ethanol" means the ASTM standard in effect on the effective date of this article as the D-4806 specification for denatured motor fuel grade ethanol for blending with gasoline.

(41) "Fuel supply tank" means a receptacle on a motor vehicle from which motor fuel is supplied for the propulsion of the motor vehicle.

(42) "Gallon" means a unit of liquid measure as customarily used in the United States containing two hundred thirty-one cubic inches by volume and expresses the volume at 60 degrees Fahrenheit.

(43) "Gasohol" means a blended motor fuel composed of gasoline and motor fuel alcohol.

(44) "Gasoline" means a product commonly or commercially known as gasoline, regardless of classification, that is advertised as, offered for sale as, sold for use as, suitable for use as or used as motor fuel in an internal combustion engine, including gasohol, but does not include special fuel as defined in this section.

(45) "Gasoline blend stocks" includes any petroleum product component of gasoline, such as naphtha, reformate, or toluene, listed in Treas. Reg. §48.4081-1(c) (3) that can be blended for use in a motor fuel. The term does not include any substance that will be ultimately used for consumer nonmotor fuel use and is sold or removed in drum quantities of fifty-five gallons or less at the time of the removal or sale.
“Gallon equivalent” means the amount of an alternative fuel that is considered to be the equivalent of a gallon of gasoline according to the National Institute of Standards and Technology Handbook 130 or pursuant to guidelines issued by the Tax Commissioner.

“Gross gallons” means the total measured product, exclusive of any temperature or pressure adjustments, considerations or deductions, in U.S. gallons.

“Governmental entity” means this state or a political subdivision thereof or the United States or its commissioners, agencies and instrumentalities.

“Heating oil” means any combustible liquid, including, but not limited to, #1 fuel oil, #2 dyed fuel oil and kerosene that is burned in a boiler, furnace or stove for heating or industrial processing purposes.

“Highway” means every way or place of whatever nature open to the use of the public for purposes of vehicular travel in this state including the streets and alleys in towns and cities.

“Highway vehicle” means any self-propelled vehicle, trailer or semitrailer that is designed or used for transporting persons or property over the public highway and includes all vehicles subject to registration under article three, chapter seventeen-a of this code.

“Import” means to bring motor fuel into this state by motor vehicle, marine vessel, pipeline or any other means. Import does not include bringing motor fuel into this state in the motor fuel supply tank of a motor vehicle if the motor fuel is used to power that motor vehicle.

“Importer” means a person that imports motor fuel into this state. The seller is the importer for motor fuel delivered into
this state from outside of this state by or for the seller and the purchaser is the importer for motor fuel delivered into this state from outside of this state by or for the purchaser.

(54) "Import verification number" means the number assigned by the commissioner to a single transport vehicle delivery into this state from another state upon request for an assigned number by an importer or the transporter carrying taxable motor fuel into this state for the account of an importer.

(55) "In this state" means the area within the borders of West Virginia including all territory within the borders of West Virginia that is owned by the United States of America.

(56) "Invoiced gallons" means the gallons actually billed on an invoice for payment.

(57) "Licensee" means a person licensed by the commissioner pursuant to section ten of this article.

(58) "Liquid" means a substance that is liquid above its freezing point.

(59) "Liquefied natural gas" means natural gas that has been liquefied at -126.1 degrees centigrade and stored in insulated cryogenic tanks for use as an engine motor fuel.

(60) "Motor carrier" means a vehicle used, designated or maintained for the transportation of persons or property and having two axles and a gross vehicle weight exceeding twenty-six thousand pounds or having three or more axles regardless of weight or used in combination when the weight of the combination exceeds twenty-six thousand pounds or registered gross vehicle weight, and any aircraft, barge or other watercraft or railroad locomotive transporting passengers or freight in or through this state: Provided, That the gross vehicle weight rating of the vehicles being towed is in excess of ten
293 thousand pounds. The term “motor carrier” does not include any type of recreational vehicle.

295 (61) “Motor fuel” means gasoline, blended fuel, aviation fuel, any special fuel and alternative fuel.

297 (62) “Motor fuel transporter” means a person who transports motor fuel outside the bulk transfer/terminal system by means of a transport vehicle, a railroad tank car or a marine vessel.

299 (63) “Motor vehicle” means automobiles, motor carriers, motor trucks, motorcycles and all other vehicles or equipment, engines or machines which are operated or propelled by combustion of motor fuel.

301 (64) “Net gallons” means the amount of motor fuel measured in gallons when adjusted to a temperature of sixty degrees Fahrenheit and a pressure of fourteen and seven-tenths pounds pressure per square inch.

303 (65) “Permissive supplier” is a person who may not be subject to the taxing jurisdiction of this state but who meets both of the following requirements: (A) is registered under Section 4101 of the Internal Revenue Code for transactions in motor fuel in the bulk transfer/terminal system; and (B) a position holder in motor fuel only located in another state or a person who receives motor fuel only in another state pursuant to a two-party exchange: Provided, That a person is classified as a supplier if it has or maintains, occupies or uses, within this state, directly or by a subsidiary, an office, distribution house, sales house, warehouse, or other place of business, or any agent or representative (BY WHATEVER NAME CALLED) operating within this state under the authority of the supplier or its subsidiary.

308 (66) “Person” means an individual, firm, cooperative, association, corporation, limited liability corporation, estate,
guardian, executor, administrator, trust, business trust, syndicate, partnership, limited partnership, copartnership, organization, limited liability partnership, joint venture, receiver and trustee in bankruptcy. "Person" also means a club, society or other group or combination acting as a unit, a public body including, but not limited to, this state and any other state and an agency, commissioner, institution, political subdivision or instrumentality of this state or any other state and, also, an officer, employee or member of any of the foregoing who, as an officer, employee or member, is under a duty to perform or is responsible for the performance of an act prescribed by the provisions of this article.

(67) "Position holder" means the person who holds the inventory position in motor fuel in a terminal as reflected on the records of the terminal operator. A person holds the inventory position in motor fuel when that person has a contract with the terminal operator for the use of storage facilities and terminaling services for motor fuel at the terminal. The term includes a terminal operator who owns motor fuel in the terminal.

(68) "Principal" means:

(A) If a partnership, all its partners;

(B) If a corporation, all its officers, directors, and controlling direct or indirect owners;

(C) If a limited liability company, all its members; or

(D) An individual.

(69) "Producer/manufacturer" means a person who produces, refines, blends, distills, manufactures or compounds motor fuel.

(70) "Provider of alternative fuel" means a person who does one or more of the following:
(A) Acquires alternative fuel for sale or delivery to an alternative-fuel bulk end user or an alternative-fuel retailer;

(B) Maintains storage facilities for alternative fuel including alternative-fuel home refueling infrastructures and alternative-fuel commercial refueling infrastructures, part or all of which the person uses or sells to someone other than an alternative-fuel bulk end user or an alternative-fuel retailer to operate a highway vehicle;

(C) Sells alternative fuel and uses part of the fuel acquired for sale to operate a highway vehicle by means of a fuel supply line from the cargo tank of the vehicles to the engine of the vehicle;

(D) Imports alternative fuel into this state by a means other than the usual tank or receptacle connected with the engine of a highway vehicle for use by that person to operate a highway vehicle.

(71) "Rack" means a mechanism for delivering motor fuel from a refinery, terminal, marine vessel or bulk plant into a transport vehicle, railroad tank car or other means of transfer that is outside the bulk transfer/terminal system.

(72) "Railroad locomotive" means diesel-powered equipment or machinery that rides on railroad rails and includes a switching engine.

(73) "Receive" means acquisition of ownership or possession of motor fuel.

(74) "Refiner" means a person who owns, operates or otherwise controls a refinery.

(75) "Refinery" means a facility for the manufacture or reprocessing of finished or unfinished petroleum products usable
as motor fuel and from which motor fuel may be removed by pipeline or marine vessel or at a rack.

(76) "Removal" means a physical transfer other than by evaporation, loss or destruction. A physical transfer to a transport vehicle or other means of conveyance outside the bulk transfer/terminal system is complete upon delivery into the means of conveyance.

(77) "Retailer" means a person who sells motor fuel at retail or dispenses motor fuel at a retail location.

(78) "Retailer of alternative fuel" means a person who maintains storage facilities, including alternative-fuel vehicle commercial refueling infrastructure, for alternative fuel and who sells the fuel at retail or dispenses the fuel at a retail location to operate a motor vehicle.

(79) "Special fuel" means a gas or liquid, other than gasoline, used or suitable for use as motor fuel in an internal combustion engine or motor to propel or operate any form of vehicle, machine, or mechanical contrivance and includes products commonly known as natural or casing-head gasoline, diesel fuel, dyed diesel fuel, biodiesel fuel, transmix, methanol, ethanol, methanol fuel, M100, ethanol fuel, E100, ethanol fuel blend, E85 and any fuel mixture that contains eighty-five percent or more alcohol by volume when combined with gasoline or other fuels and liquid fuel derived from coal through the Fischer-Tropsch process. "Special fuel" does not include alternative fuel or any petroleum product or chemical compound such as alcohol, industrial solvent, heavy furnace oil or lubricant, unless blended in or sold for use as motor fuel in an internal combustion engine.

(80) "State" or "this state" means the State of West Virginia.

(81) "Supplier" means a person that is:

(A) Subject to the general taxing jurisdiction of this state;
(B) Registered under Section 4101 of the Internal Revenue Code for transactions in motor fuel in the bulk transfer/terminal distribution system; and

(C) One of the following:

(i) A position holder in motor fuel in a terminal or refinery in this state and may concurrently be a position holder in motor fuel in another state; or

(ii) A person who receives motor fuel in this state pursuant to a two-party exchange.

A terminal operator is not a supplier based solely on the fact that the terminal operator handles motor fuel consigned to it within a terminal.

(82) "Tax" or "this tax" is the motor fuel excise tax imposed by this article and includes within its meaning interest and additions to tax and penalties unless the context requires a more limited meaning.

(83) "Taxpayer" means a person required to file a return for the tax imposed by this article or a person liable for payment of the tax imposed by this article.

(84) "Terminal" means a motor fuel storage and distribution facility to which a terminal control number has been assigned by the Internal Revenue Service, to which motor fuel is supplied by pipeline or marine vessel and from which motor fuel may be removed at a rack.

(85) "Terminal operator" means a person who owns, operates or otherwise controls a terminal.

(86) "Transmix" means: (A) The buffer or interface between two different products in a pipeline shipment; or (B) a mix of
two different products within a refinery or terminal that results in an off-grade mixture.

(87) "Transport vehicle" means a vehicle designed or used to carry motor fuel over the highway and includes a straight truck, a straight truck/trailer combination and a semitrailer combination rig.

(88) "Trustee" means a person who is licensed as a supplier or a permissive supplier and receives tax payments from and on behalf of another pursuant to section twenty-four of this article.

(89) "Two-party exchange" means a transaction in which motor fuel is transferred from one licensed supplier or permissive supplier to another licensed supplier or permissive supplier pursuant to an exchange agreement; and

(A) Includes a transfer from the person who holds the inventory position in taxable motor fuel in the terminal as reflected on the records of the terminal operator;

(B) Is completed prior to removal of the product from the terminal by the receiving exchange partner; and

(C) Is recorded on the terminal operator's books and records with the receiving exchange partner as the supplier that removes the motor fuel across the terminal rack for purposes of reporting the transaction to this state.

(90) "Use" means the actual consumption or receipt of motor fuel by a person into a motor vehicle, aircraft or watercraft.

(91) "Watercraft" means any vehicle used on waterways.

§11-14C-5. Taxes levied; rate.

1 (a) There is hereby levied on all motor fuel an excise tax composed of a flat rate equal to $.205 per invoiced gallon and,
on alternative fuel, on each gallon equivalent, plus a variable component comprised of:

(1) On motor fuel other than alternative fuel, either the tax imposed by section eighteen-b, article fifteen of this chapter or the tax imposed under section thirteen-a, article fifteen-a of this chapter, as applicable: Provided, That the motor fuel excise tax shall take effect January 1, 2004; Provided, however, That the variable component shall be equal to five percent of the average wholesale price of the motor fuel: Provided further, That the average wholesale price shall be no less than $.97 per invoiced gallon and is computed as hereinafter prescribed in this section; And provided further, That on and after January 1, 2010, the average wholesale price shall be no less than $2.34 per invoiced gallon and is computed as hereinafter prescribed in this section; and

(2) On alternative fuel, either the tax imposed by section eighteen-b, article fifteen of this chapter or the tax imposed under section thirteen-a, article fifteen-a of this chapter, as applicable. The tax on alternative fuel takes effect on January 1, 2014, with a variable component equal to five percent of the average wholesale price of the alternative fuel.

(b) Determination of average wholesale price. –

(1) To simplify determining the average wholesale price of all motor fuel, the Tax Commissioner shall, effective with the period beginning the first day of the month of the effective date of the tax and each January 1 thereafter, determine the average wholesale price of motor fuel for each annual period on the basis of sales data gathered for the preceding period of July 1 through October 31. Notification of the average wholesale price of motor fuel shall be given by the Tax Commissioner at least thirty days in advance of each January 1 by filing notice of the average wholesale price in the State Register and by other means as the Tax Commissioner considers reasonable.
(2) The “average wholesale price” means the single, statewide average per gallon wholesale price, rounded to the third decimal (thousandth of a cent), exclusive of state and federal excise taxes on each gallon of motor fuel or on each gallon equivalent of alternative fuel as determined by the Tax Commissioner from information furnished by suppliers, importers and distributors of motor fuel and alternative-fuel providers, alternative-fuel bulk end users and retailers of alternative fuel in this state, or other information regarding wholesale selling prices as the Tax Commissioner may gather or a combination of information. In no event shall the average wholesale price be determined to be less than $.97 per gallon of motor fuel. For calendar year 2009, the average wholesale price of motor fuel shall not exceed the average wholesale price of motor fuel for calendar year 2008 as determined pursuant to the notice filed by the Tax Commissioner with the Secretary of State on November 21, 2007, and published in the State Register on November 30, 2007. On and after January 1, 2010, in no event shall the average wholesale price be determined to be less than $2.34 per gallon of motor fuel. On and after January 1, 2011, the average wholesale price shall not vary by more than ten percent from the average wholesale price of motor fuel as determined by the Tax Commissioner for the previous calendar year. Any limitation on the average wholesale price of motor fuel contained in this subsection shall not be applicable to alternative fuel.

(3) All actions of the Tax Commissioner in acquiring data necessary to establish and determine the average wholesale price of motor fuel, in providing notification of his or her determination prior to the effective date of a change in rate, and in establishing and determining the average wholesale price of motor fuel may be made by the Tax Commissioner without compliance with the provisions of article three, chapter twenty-nine-a of this code.

(4) In an administrative or court proceeding brought to challenge the average wholesale price of motor fuel as
determined by the Tax Commissioner, his or her determination
is presumed to be correct and shall not be set aside unless it is
clearly erroneous.

(c) There is hereby levied a floorstocks tax on motor fuel
held in storage outside the bulk transfer/terminal system as of the
close of the business day preceding January 1, 2004, and upon
which the tax levied by this section has not been paid. For the
purposes of this section, "close of the business day" means the
time at which the last transaction has occurred for that day. The
floorstocks tax is payable by the person in possession of the
motor fuel on January 1, 2004. The amount of the floorstocks tax
on motor fuel is equal to the sum of the tax rate specified in
subsection (a) of this section multiplied by the gallons in storage
as of the close of the business day preceding January 1, 2004.

(1) Persons in possession of taxable motor fuel in storage
outside the bulk transfer/terminal system as of the close of the
business day preceding January 1, 2004, shall:

(A) Take an inventory at the close of the business day
preceding January 1, 2004, to determine the gallons in storage
for purposes of determining the floorstocks tax;

(B) Report no later than January 31, 2004, the gallons on
forms provided by the commissioner; and

(C) Remit the tax levied under this section no later than June
1, 2004.

(2) In the event the tax due is paid to the commissioner on or
before January 31, 2004, the person remitting the tax may deduct
from their remittance five percent of the tax liability due.

(3) In the event the tax due is paid to the commissioner after
June 1, 2004, the person remitting the tax shall pay, in addition
to the tax, a penalty in the amount of five percent of the tax
liability due.
In determining the amount of floorstocks tax due under this section, the amount of motor fuel in dead storage may be excluded. There are two methods for calculating the amount of motor fuel in dead storage:

(A) If the tank has a capacity of less than ten thousand gallons, the amount of motor fuel in dead storage is two hundred gallons and if the tank has a capacity of ten thousand gallons or more, the amount of motor fuel in dead storage is four hundred gallons; or

(B) Use the manufacturer’s conversion table for the tank after measuring the number of inches between the bottom of the tank and the bottom of the mouth of the drainpipe: Provided, That the distance between the bottom of the tank and the bottom of the mouth of the draw pipe is presumed to be six inches.

(d) Every licensee who, on the effective date of any rate change, has in inventory any motor fuel upon which the tax or any portion thereof has been previously paid shall take a physical inventory and file a report thereof with the commissioner, in the format as required by the commissioner, within thirty days after the effective date of the rate change, and shall pay to the commissioner at the time of filing the report any additional tax due under the increased rate.

(e) The Tax Commissioner shall determine by January 1, 2014, the gasoline gallon equivalent for each alternative fuel by filing a notice of the gasoline gallon equivalent in the State Register and by other means that the Tax Commissioner considers reasonable. The Tax Commissioner may redetermine the gasoline gallon equivalent for each alternative fuel by filing a notice of the gasoline gallon equivalent in the State Register at least thirty days in advance of January 1 for the next succeeding tax year. For purposes of this notice, the Tax Commissioner may adopt or incorporate by reference provisions of the National
§11-14C-6a. Point of imposition of motor fuels tax on alternative fuel.

(a) The tax levied pursuant to section five of this article is imposed on alternative fuel without regard to whether it is sold, transported or distributed within the bulk transfer/terminal system or outside of the bulk transfer/terminal system.

(b) The tax levied pursuant to section five of this article is imposed on alternative fuel that is not otherwise taxed at the point of imposition prescribed under section six of this article at the following points of imposition in the following order:

(1) At the time alternative fuel is withdrawn from the storage facility including alternative-fuel home refueling infrastructures and alternative-fuel commercial refueling infrastructures;

(2) If not taxed at the point of imposition described in subdivision (1) of this subsection, then at the time alternative fuel is sold for use in a highway vehicle;

(3) If not taxed at the point of imposition described in subdivision (1) or at the point of imposition described in subdivision (2) of this subsection, then at the time alternative fuel is used in a highway vehicle.

§11-14C-9. Exemptions from tax; claiming refunds of tax.

(a) Per se exemptions from flat rate component of tax. – Sales of motor fuel to the following, or as otherwise stated in this
subsection, are exempt per se from the flat rate of the tax levied by section five of this article and the flat rate may not be paid at the rack:

(1) All motor fuel exported from this state to any other state or nation: Provided, That the supplier collects and remits to the destination state or nation the appropriate amount of tax due on the motor fuel transported to that state or nation. This exemption does not apply to motor fuel which is transported and delivered outside this state in the motor fuel supply tank of a highway vehicle;

(2) Sales of aviation fuel;

(3) Sales of dyed special fuel; and

(4) Sales of propane unless sold for use in a motor vehicle.

(b) Per se exemptions from variable component of tax. — Sales of motor fuel to the following are exempt per se from the variable component of the tax levied by section five of this article and the variable component may not be paid at the rack:

All motor fuel exported from this state to any other state or nation: Provided, That the supplier collects and remits to the destination state or nation the appropriate amount of tax due on the motor fuel transported to that state or nation. This exemption does not apply to motor fuel which is transported and delivered outside this state in the motor fuel supply tank of a highway vehicle.

(c) Refundable exemptions from flat rate component of tax. — A person having a right or claim to any of the following exemptions from the flat rate component of the tax levied by section five of this article shall first pay the tax levied by this article and then apply to the Tax Commissioner for a refund:
(1) The United States or agency thereof: Provided, That if the United States government, or agency or instrumentality thereof, does not pay the seller the tax imposed by section five of this article on a purchase of motor fuel, the person selling tax previously paid motor fuel to the United States government, or its agencies or instrumentalities, may claim a refund of the flat rate component of tax imposed by section five of this article on those sales;

(2) A county government or unit or agency thereof;

(3) A municipal government or any agency thereof;

(4) A county board of education;

(5) An urban mass transportation authority created pursuant to the provisions of article twenty-seven, chapter eight of this code;

(6) A municipal, county, state or federal civil defense or emergency service program pursuant to a government contract for use in conjunction therewith or to a person who is required to maintain an inventory of motor fuel for the purpose of the program: Provided, That motor fueling facilities used for these purposes are not capable of fueling motor vehicles and the person in charge of the program has in his or her possession a letter of authority from the Tax Commissioner certifying his or her right to the exemption. In order for this exemption to apply, motor fuel sold under this subdivision and subdivisions (1) through (5), inclusive, of this subsection shall be used in vehicles or equipment owned and operated by the respective government entity or government agency or authority;

(7) All invoiced gallons of motor fuel purchased by a licensed exporter and subsequently exported from this state to any other state or nation: Provided, That the exporter has paid the applicable motor fuel tax to the destination state or nation
prior to claiming this refund or the exporter has reported to the
destination state or nation that the motor fuel was sold in a
transaction not subject to tax in that state or nation. A refund
may not be granted on motor fuel which is transported and
delivered outside this state in the motor fuel supply tank of a
highway vehicle;

(8) All gallons of motor fuel used and consumed in
stationary off-highway turbine engines;

(9) All gallons of fuel used for heating any public or private
dwelling, building or other premises;

(10) All gallons of fuel used for boilers;

(11) All gallons of motor fuel used as a dry cleaning solvent
or commercial or industrial solvent;

(12) All gallons of motor fuel used as lubricants, ingredients
or components of a manufactured product or compound;

(13) All gallons of motor fuel sold for use or used as a motor
fuel for commercial watercraft;

(14) All gallons of motor fuel sold for use or consumed in
railroad diesel locomotives;

(15) All gallons of motor fuel purchased in quantities of
twenty-five gallons or more for use as a motor fuel for internal
combustion engines not operated upon highways of this state;

(16) All gallons of motor fuel purchased in quantities of
twenty-five gallons or more and used to power a power take-off
unit on a motor vehicle. When a motor vehicle with auxiliary
equipment uses motor fuel and there is no auxiliary motor for the
equipment or separate tank for a motor, the person claiming the
refund may present to the Tax Commissioner a statement of his
or her claim and is allowed a refund for motor fuel used in operating a power take-off unit on a cement mixer truck or garbage truck equal to twenty-five percent of the tax levied by this article paid on all motor fuel used in such a truck;

(17) Motor fuel used by a person regularly operating a vehicle under a certificate of public convenience and necessity or under a contract carrier permit for transportation of persons when purchased in an amount of twenty-five gallons or more: Provided, That the amount refunded is equal to $0.6 per gallon: Provided, however, That the gallons of motor fuel have been consumed in the operation of urban and suburban bus lines and the majority of passengers use the bus for traveling a distance not exceeding forty miles, measured one way, on the same day between their places of abode and their places of work, shopping areas or schools; and

(18) All gallons of motor fuel that are not otherwise exempt under subdivisions (1) through (6), inclusive, of this subsection and that are purchased and used by any bona fide volunteer fire department, nonprofit ambulance service or emergency rescue service that has been certified by the municipality or county wherein the bona fide volunteer fire department, nonprofit ambulance service or emergency rescue service is located.

(d) Refundable exemptions from variable rate component of tax. -- Any of the following persons may claim an exemption from the variable rate component of the tax levied by section five of this article on the purchase and use of motor fuel by first paying the tax levied by this article and then applying to the Tax Commissioner for a refund.

(1) The United States or agency thereof: Provided. That if the United States government, or agency or instrumentality thereof, does not pay the seller the tax imposed by section five of this article on any purchase of motor fuel, the person selling
tax previously paid motor fuel to the United States government, or its agencies or instrumentalities, may claim a refund of the variable rate of tax imposed by section five of this article on those sales.

(2) This state and its institutions;

(3) A county government or unit or agency thereof;

(4) A municipal government or agency thereof;

(5) A county board of education;

(6) An urban mass transportation authority created pursuant to the provisions of article twenty-seven, chapter eight of this code;

(7) A municipal, county, state or federal civil defense or emergency service program pursuant to a government contract for use in conjunction therewith, or to a person who is required to maintain an inventory of motor fuel for the purpose of the program: Provided, That fueling facilities used for these purposes are not capable of fueling motor vehicles and the person in charge of the program has in his or her possession a letter of authority from the Tax Commissioner certifying his or her right to the exemption;

(8) A bona fide volunteer fire department, nonprofit ambulance service or emergency rescue service that has been certified by the municipality or county where the bona fide volunteer fire department, nonprofit ambulance service or emergency rescue service is located; or

(9) All invoiced gallons of motor fuel purchased by a licensed exporter and subsequently exported from this state to any other state or nation: Provided, That the exporter has paid the applicable motor fuel tax to the destination state or nation.
prior to claiming this refund. A refund may not be granted on motor fuel which is transported and delivered outside this state in the motor fuel supply tank of a highway vehicle.

(e) The provision in subdivision (9), subsection (a), section nine, article fifteen of this chapter that exempts as a sale for resale those sales of gasoline and special fuel by a distributor or importer to another distributor does not apply to sales of motor fuel under this article.

PART 3. MOTOR FUEL LICENSING.

§11-14C-10. Persons required to be licensed.

(a) A person shall obtain the appropriate license or licenses issued by the commissioner before conducting the activities of:

(1) A supplier which includes a refiner;

(2) A permissive supplier;

(3) A importer;

(4) A exporter;

(5) A terminal operator;

(6) A blender;

(7) A motor fuel transporter;

(8) A distributor;

(9) A producer/manufacturer;

(10) An alternative-fuel bulk end user;

(11) A provider of alternative fuel; or
14  (12) A retailer of alternative fuel.

15  (b) A person who is engaged in more than one activity for which a license is required shall have a separate license for each activity, except as otherwise determined by the commissioner.

§11-14C-13. Bond requirements.

1  (a) Along with an application for a license required by section eleven of this article, either a cash bond or a continuous surety bond in the amount or amounts specified in this section shall be filed. If a person has filed applications for licenses for more than one activity, the commissioner may combine the amount of the cash bond or continuous surety bond required for each licensed activity into one amount that shall be no less than the largest amount required for any of those activities for which the license applications are filed. If a continuous surety bond is filed, an annual notice of renewal shall be filed thereafter. If the continuous surety bond includes the requirements that the commissioner is to be notified of cancellation at least sixty days prior to the continuous surety bond being canceled, an annual notice of renewal is not required. The bond, whether a cash bond or a continuous surety bond, is conditioned upon compliance with the requirements of this article, payable to this state and in the form required by the commissioner. The amount of the bond is as follows:

19   (1) For a supplier license, the amount shall be a minimum of $100,000 or an amount equal to three months' tax liability, whichever is greater, but shall not exceed $2 million: When required by the commissioner to file a cash bond or a continuous surety bond in an additional amount, the licensee shall comply with the commissioner's notification within thirty days after receiving that notification;

26   (2) For a permissive supplier license, the amount shall be a minimum of $100,000 or an amount equal to three months' tax
liability, whichever is greater, but shall not exceed $2 million. When required by the commissioner to file a cash bond or a continuous surety bond in an additional amount, the licensee shall comply with the commissioner’s notification within thirty days after receiving that notification;

(3) For a terminal operator license, the amount shall be a minimum of $100,000 or an amount equal to three months’ tax liability, whichever is greater, but shall not exceed $2 million. When required by the commissioner to file a cash bond or a continuous surety bond in an additional amount, the licensee shall comply with the commissioner’s notification within thirty days after receiving that notification;

(4) For an importer license for a person, other than a supplier, that imports by transport vehicle or another means of transfer outside the bulk transfer/terminal system motor fuel removed from a terminal located in another state in which: (A) The state from which the motor fuel is imported does not require the seller of the motor fuel to collect a motor fuel excise tax on the removal either at that state’s rate or the rate of the destination state; and (B) the seller of the motor fuel is not a permissive supplier, the amount shall be a minimum of $100,000 or an amount equal to three months’ tax liability, whichever is greater, but shall not exceed $2 million. When required by the commissioner to file a cash bond or a continuous surety bond in an additional amount, the licensee shall comply with the commissioner’s notification within thirty days after receiving that notification;

(5) For an importer license for a person that imports by transport vehicle or another means outside the bulk transfer/terminal system motor fuel removed from a terminal located in another state in which: (A) The state from which the motor fuel is imported requires the seller of the motor fuel to collect a motor fuel excise tax on the removal either at that
state's rate or the rate of the destination state; or (B) the seller of the motor fuel is a permissive supplier, the amount shall be a minimum of $2,000 or an amount equal to three months' tax liability, whichever is greater, but shall not exceed $300,000.

When required by the commissioner to file a cash bond or a continuous surety bond in an additional amount, the licensee shall comply with the commissioner's notification within thirty days after receiving that notification;

(6) For a license as both a distributor and an importer as described in subdivision (4) of this subsection, the amount shall be a minimum of $100,000 or an amount equal to three months' tax liability, whichever is greater, but shall not exceed $2 million. When required by the commissioner to file a cash bond or a continuous surety bond in an additional amount, the licensee shall comply with the commissioner's notification within thirty days after receiving that notification;

(7) For a license as both a distributor and an importer as described in subdivision (5) of this subsection, the amount shall be a minimum of $2,000 or an amount equal to three months' tax liability, whichever is greater, but shall not exceed $300,000. When required by the commissioner to file a cash bond or a continuous surety bond in an additional amount, the licensee shall comply with the commissioner's notification within thirty days after receiving that notification;

(8) For an exporter license, the amount shall be a minimum of $2,000 or an amount equal to three months' tax liability, whichever is greater, but shall not exceed $300,000. When required by the commissioner to file a cash bond or a continuous surety bond in an additional amount, the licensee shall comply with the commissioner's notification within thirty days after receiving that notification;

(9) For a blender license, the amount shall be a minimum of $2,000 or an amount equal to three months' tax liability,
whichever is greater, but shall not exceed $300,000. When required by the commissioner to file a cash bond or a continuous surety bond in an additional amount, the licensee shall comply with the commissioner's notification within thirty days after receiving that notification;

(10) For a distributor license, the amount shall be a minimum of $2,000 or an amount equal to three months' tax liability, whichever is greater, but shall not exceed $300,000. When required by the commissioner to file a cash bond or a continuous surety bond in an additional amount, the licensee shall comply with the commissioner's notification within thirty days after receiving that notification;

(11) For a motor fuel transporter license, there is no bond;

(12) For a producer/manufacturer license, there is no bond. If the taxpayer fails to file a return or remit tax due under this article, the commissioner may require a cash bond or a continuous surety bond in an amount to be determined by the commissioner. When required by the commissioner to file a cash bond or a continuous surety bond, the licensee shall comply with the commissioner's notification within thirty days after receiving that notification;

(13) For an alternative-fuel bulk end user, a provider of alternative fuel and a retailer of alternative fuel, there is no bond. If the taxpayer fails to file a return or remit tax due under this article, the commissioner may require a cash bond or a continuous surety bond in an amount to be determined by the commissioner. When required by the commissioner to file a cash bond or a continuous surety bond, the licensee shall comply with the commissioner's notification within thirty days after receiving that notification; and

(14) An applicant for a licensed activity listed under subdivisions (1) through (10), inclusive, of this subsection may,
in lieu of posting either the cash bond or continuous surety bond required by this subsection, provide proof of financial responsibility acceptable to the commissioner. The proof of financial responsibility must demonstrate the absence of circumstances indicating risk with the collection of taxes from the applicant. The following constitutes proof of financial responsibility:

(A) Proof of $5 million net worth constitutes evidence of financial responsibility in lieu of posting the required bond;

(B) Proof of $2,500,000 net worth constitutes financial responsibility in lieu of posting fifty percent of the required bond; and

(C) Proof of $1,250,000 net worth constitutes financial responsibility in lieu of posting twenty-five percent of the required bond. Net worth is calculated on a business, not individual basis.

(15) In lieu of providing either cash bond, a continuance surety bond or proof of financial responsibility acceptable to the commissioner, an applicant for a licensed activity listed under this subsection that has established with the State Tax Division a good filing record that is accurate, complete and timely for the preceding eighteen months shall be granted a waiver of the requirement to file either a cash bond or continuance surety bond. When a licensee that has been granted a waiver of the requirement to file a bond violates a provision of this article, the licensee shall file the applicable bond as stated in this subsection.

(16) A licensee who disagrees with the commissioner's decision requiring new or additional security may seek a hearing by filing a petition with the Office of Tax Appeals in accordance with the provisions of section nine, article ten-a of this chapter.
The hearing shall be provided within thirty days after receipt by the Office of Tax Appeals of the petition.

(b) The surety must be authorized under article nineteen, chapter thirty-three of this code to engage in business of transacting surety insurance within this state. The cash bond and the continuous surety bond are conditioned upon faithful compliance with the provisions of this article, including the filing of the returns and payment of all tax prescribed by this article. The cash bond and the continuous surety bond shall be approved by the commissioner as to sufficiency and form and shall indemnify the state against loss arising from the failure of the taxpayer to pay, for any cause whatever, the motor fuel excise tax levied by this article.

(c) Surety on a continuous surety bond furnished hereunder is relieved, released and discharged from all liability accruing on the bond after the expiration of sixty days from the date the surety shall have lodged, by certified mail, with the commissioner, a written request to be discharged. Discharge from the continuous surety bond does not relieve, release or discharge the surety from liability already accrued or which will accrue before the expiration of the sixty-day period. Whenever a surety seeks discharge as herein provided, it is the duty of the principal of the bond to supply the commissioner with another continuous surety bond or a cash bond prior to the expiration of the original bond. Failure to provide a new continuous surety bond or a cash bond shall result in the commissioner canceling each license and registration previously issued to the person.

(d) A taxpayer that has furnished a cash bond hereunder is relieved, released and discharged from all liability accruing on the cash bond after the expiration of sixty days from the date the taxpayer shall have lodged, by certified mail, with the commissioner, a written request to be discharged and the amount of the cash bond refunded. The commissioner may retain all or
part of the cash bond until the commissioner performs an audit
of the taxpayer’s business or three years, whichever first occurs.
Discharge from the cash bond shall not relieve, release or
discharge the taxpayer from liability already accrued or which
will accrue before the expiration of the sixty-day period.
Whenever a taxpayer seeks discharge as herein provided, it is the
duty of the taxpayer to provide the commissioner with another
cash bond or a continuous surety bond prior to the expiration of
the original cash bond. Failure to provide either a new cash bond
or a continuous surety bond shall result in the commissioner
canceling each license and registration previously issued to the
taxpayer.

PART 4. PAYMENT AND REPORTING OF TAX ON MOTOR FUEL.

§11-14C-19. When tax return and payment are due.

(a) The tax levied by this article shall be paid by each
taxpayer on or before the last day of the calendar month by
check, bank draft or money order payable to the commissioner
for the amount of tax due, if any, for the preceding month. The
commissioner may require all or certain taxpayers to file tax
returns and payments electronically. The return required by the
commissioner shall accompany the payment of tax. If no tax is
due, the return required by the commissioner shall be completed
and filed before the last day of the calendar month for the
preceding month.

(b) The following shall file a monthly return as required by
this section:

(1) A terminal operator;

(2) A supplier;

(3) An importer;
(4) A blender;

(5) A person incurring liability under section eight of this article for the backup tax on motor fuel;

(6) A permissive supplier;

(7) A motor fuel transporter;

(8) An exporter; and

(9) A producer/manufacturer.

(c) For the calendar years beginning on or after January 1, 2014, the tax levied by this article on alternative fuel that is subject to tax at the point of imposition prescribed in section six-a of this article shall be paid by the alternative-fuel bulk end user, provider of alternative fuel or retailer of alternative fuel on or before January 31 of every year, unless determined by the Tax Commissioner that payment must be made more frequently, by check, bank draft or money order payable to the Tax Commissioner for the amount of tax due. The Tax Commissioner may require all or certain taxpayers to file tax returns and payments electronically. The return required by the Tax Commissioner shall accompany the payment of tax. If no tax is due, the return required by the Tax Commissioner shall be completed and filed on or before January 31.

ARTICLE 15. CONSUMER SALES AND SERVICE TAX.


(a) General. — All sales of motor fuel and alternative fuel subject to the flat rate of the tax imposed by section five, article fourteen-c of this chapter, are subject to the tax imposed by this article and comprises the variable component of the tax imposed by section five, article fourteen-c of this chapter and is collected
and remitted at the time the tax imposed by said section is
remitted. Sales of motor fuel and alternative fuel upon which the
tax imposed by this article has been paid is not again taxed under
the provisions of this article. This section means that all gallons
of motor fuel and equivalent gallons of alternative fuel sold and
delivered or delivered in this state are taxed one time.

(b) Measure of tax. – The measure of tax imposed by this
article is as follows:

On sales of motor fuel, the average wholesale price as
defined and determined in section five, article fourteen-c of this
chapter. For purposes of maintaining revenue for highways, and
recognizing that the tax imposed by this article is generally
imposed on gross proceeds from sales to ultimate consumers,
whereas the tax on motor fuel herein is imposed on the average
wholesale price of the motor fuel; in no case, for the purposes of
taxation under this article, may the average wholesale price be
determined to be less than $.97 per gallon of motor fuel for all
gallons of motor fuel sold during the reporting period,
notwithstanding any provision of this article to the contrary. On
and after January 1, 2010, for the purpose of taxation under this
article, in no case may the average wholesale price be
determined to be less than $2.34 per gallon of motor fuel for all
gallons of motor fuel sold during the reporting period
notwithstanding any provision of this article to the contrary. Any
limitation on the average wholesale price of motor fuel contained
in this subsection shall not be applicable to alternative fuel.

(2) On sales of alternative fuel, the average wholesale price
as defined and determined in section five, article fourteen-c of
this chapter.

(c) Definitions. – For purposes of this article, the terms
“gasoline” and “special fuel” and “alternative fuel” are defined
as provided in section two, article fourteen-c of this chapter.
Other terms used in this section have the same meaning as when used in a similar context in said article.

(d) Tax return and tax due. –

(1) The tax imposed by this article on sales of motor fuel shall be paid by each taxpayer on or before the last day of the calendar month by check, bank draft, certified check or money order payable to the Tax Commissioner for the amount of tax due for the preceding month notwithstanding any provision of this article to the contrary. The commissioner may require all or certain taxpayers to file tax returns and payments electronically. The return required by the commissioner shall accompany the payment of tax. If no tax is due, the return required by the commissioner shall be completed and filed on or before the last day of the month.

(2) The tax due under this article comprising the variable component of the tax due under article fourteen-c of this chapter on alternative fuel, is due and shall be collected and remitted at the time the tax imposed by section five, article fourteen-c of this chapter is due, collected and remitted.

(e) Compliance. – To facilitate ease of administration and compliance by taxpayers, the Tax Commissioner shall require persons liable for the tax imposed by this article on sales of motor fuel to file a combined return and make a combined payment of the tax due under this article on sales of motor fuel and the tax due under article fourteen-c of this chapter on motor fuel. In order to encourage use of a combined return each month and the making of a single payment each month for both taxes, the due date of the return and tax due under article fourteen-c of this chapter is the last day of each month notwithstanding any provision in said article to the contrary. The Tax Commissioner may prescribe reporting and payment requirements for tax due under this article on alternative fuel which accommodate the due
dates and requirements prescribed in this article and article
fourteen-c of this chapter, either under a separate return and
payment or a combined return and payment, within the
discretion of the Tax Commissioner.

(f) Dedication of tax. — All tax collected under the provisions
of this section, after deducting the amount of refunds lawfully
paid, shall be deposited in the road fund in the State Treasurer’s
office and used only for the purpose of construction,
reconstruction, maintenance and repair of highways and payment
of principal and interest on state bonds issued for highway
purposes. Notwithstanding any provision to the contrary, tax
collected on the sale of aviation fuel after deducting the amount
of refunds lawfully paid shall be deposited in the State
Treasurer’s office and transferred to the State Aeronautical
Commission to be used for the purpose of matching federal
funds available for the reconstruction, maintenance and repair of
public airports and airport runways.

(g) Construction. — This section does not tax a sale of motor
fuel which this state is prohibited from taxing under the
constitution of this state or the constitution or laws of the United
States.

(h) Effective date. — The provisions of this section take effect
on January 1, 2004. The provisions of this section enacted during
the 2007 legislative session take effect on January 1, 2008. The
provisions of this section enacted during the 2013 regular
legislative session take effect on January 1, 2014.

ARTICLE 15A. USE TAX.


(a) Imposition of tax. —

(1) On deliveries in this state, — Effective January 1, 2004,
motor fuel furnished or delivered within this state which is
subject to the flat rate of the tax imposed by section five, article fourteen-c of this chapter is subject to the tax imposed by this article which comprises the variable component of the tax imposed by section five, article fourteen-c, and shall be collected and remitted at the time the tax imposed by section five, article fourteen-c is remitted. The amount of tax due under this article shall not be less than five percent of the average wholesale price of motor fuel as determined in accordance with said section five, article fourteen-c.

(2) On purchases out-of-state subject to motor fuel tax. — Effective January 1, 2004, an excise tax is imposed on the importation into this state of motor fuel purchased outside this state when the purchase is subject to the flat rate of the tax imposed by section five, article fourteen-c of this chapter. The rate of the tax due under this article shall not be less than five percent of the average wholesale price of the motor fuel, as determined in accordance with said section five, article fourteen-c. The motor fuel subject to the tax imposed by this article comprises the variable component of the tax imposed by section five, article fourteen-c, and shall be collected and remitted by the seller at the time the seller remits the tax imposed by the said section five, article fourteen-c.

(3) On other purchases out-of-state. — An excise tax is imposed on the use or consumption in this state of motor fuel purchased outside this state at the rate of five percent of the average wholesale price of the motor fuel, as determined in accordance with section five, article fourteen-c of this chapter. Motor fuel contained in the fuel supply tank of a motor vehicle that is not a motor carrier is not taxable except that motor fuel imported in the fuel supply tank or auxiliary tank of construction equipment, mining equipment, track maintenance equipment or other similar equipment, is taxed in the same manner as that in the fuel supply tank of a motor carrier.
(4) **On use of alternative fuel.** – Effective January 1, 2014, an excise tax is imposed on alternative fuel used within this state which is subject to the flat rate of the tax imposed by section five, article fourteen-c of this chapter. Alternative fuel is subject to the tax imposed by this article and comprises the variable component of the tax imposed by the section five, article fourteen-c of this chapter and shall be collected and remitted at the time the tax imposed by section five, article fourteen-c of this chapter is remitted. The amount of tax due under this article shall not be less than five percent of the average wholesale price of alternative fuel as determined in accordance with section five, article fourteen-c of this chapter.

(b) **Definitions.** – For purposes of this article, the terms “gasoline” and “special fuel” are defined as provided in section two, article fourteen-c of this chapter. Other terms used in this section have the same meaning as when used in a similar context in article fourteen-c of this chapter.

(c) **Computation of tax due from motor carriers.** – Every person who operates or causes to be operated a motor carrier in this state shall pay the tax imposed by this section on the average wholesale price of all gallons or equivalent gallons of motor fuel used in the operation of a motor carrier within this state, under the following rules:

(1) The total amount of motor fuel used in the operation of the motor carrier within this state is that proportion of the total amount of motor fuel used in a motor carrier’s operations within and without this state, that the total number of miles traveled within this state bears to the total number of miles traveled within and without this state.

(2) A motor carrier shall first determine the gross amount of tax due under this section on the average wholesale value, determined under section five, article fourteen-c of this chapter,
of motor fuel used in the operation of the motor carrier within this state during the preceding quarter, as if all gasoline and special fuel had been purchased outside this state.

(3) Next, the taxpayer shall determine the total tax paid under article fifteen of this chapter on all motor fuel purchased in this state for use in the operation of the motor carrier.

(4) The difference between (2) and (3) is the amount of tax due under this article when (2) is greater than (3), or the amount to be refunded or credited to the motor carrier when (3) is greater than (2), which refund or credit is allowed in the same manner and under the same conditions as a refund or credit is allowed for the tax imposed by article fourteen-a of this chapter.

(d) Return and payment of tax. — Tax due under this article on the uses or consumption in this state of motor fuel shall be paid by each taxpayer on or before January 25, April 25, July 25 and October 25 of each year, notwithstanding any provision of this article to the contrary, by check, bank draft, certified check or money order, payable to the Tax Commissioner, for the amount of tax due for the preceding quarter. The tax due under this article comprising the variable component of the tax due under article fourteen-c of this chapter is due on the last day of the month. Every taxpayer shall make and file with his or her remittance, a return showing the information the Tax Commissioner requires. The tax due under this article comprising the variable component of the tax due under article fourteen-c of this chapter on alternative fuel, is due and shall be collected and remitted at the time the tax imposed by section five, article fourteen-c of this chapter is due, collected and remitted.

(e) Compliance. — To facilitate ease of administration and compliance by taxpayers, the Tax Commissioner shall require motor carriers liable for the taxes imposed by this article on the
use of motor fuel in the operation of motor carriers within this state, and the tax imposed by article fourteen-a of this chapter on such gallons of motor fuel, to file a combined return and make a combined payment of the tax due under this article and article fourteen-a of this chapter on the fuel. In order to encourage use of a combined return and the making of a single payment each quarter for both taxes, the due date of the return and tax due under article fourteen-a of this chapter is the last day of January, April, July and October of each calendar year: Provided, That the Tax Commissioner may prescribe reporting and payment requirements for tax due under this article on alternative fuel which accommodate the due dates and requirements prescribed in this article and article fourteen-c of this chapter, either under a separate return and payment or a combined return and payment, within the discretion of the Tax Commissioner.

(f) Dedication of tax to highways. – Tax collected under the provisions of this section, after deducting the amount of refunds lawfully paid, shall be deposited in the Road Fund in the State Treasurer’s office and used only for the purpose of construction, reconstruction, maintenance and repair of highways and payment of principal and interest on state bonds issued for highway purposes.

(g) Construction. – The tax imposed by this article on the use of motor fuel in this state does not tax motor fuel which the state is prohibited from taxing under the Constitution of this state or the Constitution or laws of the United States.

(h) Effective date. – The provisions of this section take effect January 1, 2004. The provisions of this section enacted during the 2013 legislative session take effect on January 1, 2014.
CHAPTER 193

(Com. Sub. for H. B. 2754 - By Mr. Speaker, (Mr. Thompson) and Delegate Armstead)
[By Request of the Executive]

[Passed April 13, 2013; in effect ninety days from passage.]
[Approved by the Governor on April 30, 2013.]

AN ACT to amend and reenact §11-15A-1 of the Code of West Virginia, 1931, as amended, relating to expanding the definition of a "retailer engaging in business in this state" for purposes of sales and use taxes to include any retailer that is related to, or part of a unitary business with, a person, entity or business that is a subsidiary of the retailer, or is related to, or unitary with, the retailer as a related entity, a related member or part of a unitary business that meets one of four certain additional criteria; providing illustrative examples of the term "service" for purposes of the expanded definition; and providing effective date for the change of definition.

Be it enacted by the Legislature of West Virginia:

That §11-15A-1 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 15A. USE TAX.


1 (a) General. — When used in this article and article fifteen of this chapter, terms defined in subsection (b) of this section have the meanings ascribed to them in this section, except in those instances where a different meaning is provided in this
article or the context in which the word is used clearly indicates that a different meaning is intended by the Legislature:

(b)(1) "Business" means any activity engaged in by any person, or caused to be engaged in by any person, with the object of direct or indirect economic gain, benefit or advantage, and includes any purposeful revenue generating activity in this state;

(2) "Consumer" means any person purchasing tangible personal property, custom software or a taxable service from a retailer as defined in paragraph (7) of this subsection or from a seller as defined in section two, article fifteen-b of this chapter;

(3) "Lease" includes rental, hire and license;

(4) "Person" includes any individual, firm, partnership, joint venture, joint stock company, association, public or private corporation, limited liability company, limited liability partnership, cooperative, estate, trust, business trust, receiver, executor, administrator, any other fiduciary, any representative appointed by order of any court or otherwise acting on behalf of others, or any other group or combination acting as a unit, and the plural as well as the singular number;

(5) "Purchase" means any transfer, exchange or barter, conditional or otherwise, in any manner or by any means whatsoever, for a consideration;

(6) "Purchase price" means the measure subject to the tax imposed by this article and has the same meaning as sales price;

(7) "Retailer" means and includes every person engaging in the business of selling, leasing or renting tangible personal property or custom software or furnishing a taxable service for use within the meaning of this article, or in the business of selling, at auction, tangible personal property or custom software owned by the person or others for use in this state: Provided,
That when in the opinion of the Tax Commissioner it is
necessary for the efficient administration of this article to regard
any salespersons, representatives, truckers, peddlers or
canvassers as the agents of the dealers, distributors, supervisors,
employees or persons under whom they operate or from whom
they obtain the tangible personal property sold by them,
irrespective of whether they are making sales on their own
behalf or on behalf of the dealers, distributors, supervisors,
employers or persons, the Tax Commissioner may so regard
them and may regard the dealers, distributors, supervisors,
employers, or persons as retailers for purposes of this article;

(8) "Retailer engaging in business in this state" or any like
term, unless otherwise limited by federal statute, means and
includes, but is not limited to:

(A) Any retailer having or maintaining, occupying or using,
within this state, directly or by a subsidiary, an office,
distribution house, sales house, warehouse, or other place of
business, or any agent (by whatever name called) operating
within this state under the authority of the retailer or its
subsidiary, irrespective of whether the place of business or agent
is located here permanently or temporarily, or whether the
retailer or subsidiary is admitted to do business within this state
pursuant to article fifteen, chapter thirty-one-d of this code or
article fourteen, chapter thirty-one-e of this code; or

(B) On and after January 1, 2014, any retailer that is related
to, or part of a unitary business with, a person, entity or business
that, without regard to whether the retailer is admitted to do
business in this state pursuant to article fifteen, chapter thirty-
one-d of this code or article fourteen, chapter thirty-one-e of this
code, is a subsidiary of the retailer, or is related to, or unitary
with, the retailer as a related entity, a related member or part of
a unitary business, all as defined in article twenty four, section
three-a of this chapter;
(i) That, pursuant to an agreement with or in cooperation with the related retailer, maintains an office, distribution house, sales house, warehouse or other place of business in this state;

(ii) That performs services in this state in connection with tangible personal property or services sold by the retailer, or any related entity, related member or part of the unitary business;

(iii) That, by any agent, or representative (by whatever name called), or employee, performs services in this state in connection with tangible personal property or services sold by the retailer, or any related entity, related member or part of the unitary business; or

(iv) That directly, or through or by an agent, representative or employee located in, or present in, this state, solicits business in this state for or on behalf of the retailer, or any related entity, related member or part of the unitary business.

(C) For purposes of paragraph (B) of this subdivision, the term "service" means and includes, but is not limited to, customer support services, help desk services, call center services, repair services, engineering services, installation service, assembly service, delivery service by means other than common carrier or the United States Postal Service, technical assistance services, the service of investigating, handling or otherwise assisting in resolving customer issues or complaints while in this state, the service of operating a mail order business or telephone, Internet or other remote order business from facilities located within this state, the service of operating a website or Internet-based business from a location within the state, or any other service.

(9) "Sale" means any transaction resulting in the purchase or lease of tangible personal property, custom software or a taxable service from a retailer;
(10) "Seller" means a retailer, and includes every person selling or leasing tangible personal property or custom software or furnishing a taxable service in a transaction that is subject to the tax imposed by this article;

(11) "Streamlined sales and use tax agreement" or "agreement," when used in this article, has the same meaning as when used in article fifteen-b of this chapter, except when the context in which the word agreement is used clearly indicates that a different meaning is intended by the Legislature;

(12) "Tangible personal property" means personal property that can be seen, weighed, measured, felt, or touched, or that is in any manner perceptible to the senses. "Tangible personal property" includes, but is not limited to, electricity, water, gas, and prewritten computer software;

(13) "Tax commissioner" or "commissioner" means the State Tax Commissioner, or his or her delegate. The term "delegate" in the phrase "or his or her delegate," when used in reference to the Tax Commissioner, means any officer or employee of the State Tax Division duly authorized by the Tax Commissioner directly, or indirectly by one or more redelegations of authority, to perform the functions mentioned or described in this article or rules promulgated for this article;

(14) "Taxpayer" includes any person within the meaning of this section, who is subject to a tax imposed by this article, whether acting for himself or herself or as a fiduciary; and

(15) "Use" means and includes:

(A) The exercise by any person of any right or power over tangible personal property or custom software incident to the ownership, possession or enjoyment of the property, or by any transaction in which possession of or the exercise of any right or power over tangible personal property, custom software or the
result of a taxable service is acquired for a consideration, including any lease, rental or conditional sale of tangible personal property or custom software; or

(B) The use or enjoyment in this state of the result of a taxable service. As used in this subdivision, "enjoyment" includes a purchaser's right to direct the disposition of the property or the use of the taxable service, whether or not the purchaser has possession of the property.

The term "use" does not include the keeping, retaining or exercising any right or power over tangible personal property, custom software or the result of a taxable service for the purpose of subsequently transporting it outside the state for use thereafter solely outside this state.

(c) Additional definitions. — Other terms used in this article are defined in articles fifteen and fifteen-b of this chapter, which definitions are incorporated by reference into article fifteen-a. Additionally, other sections of this article may define terms primarily used in the section in which the term is defined.

CHAPTER 194

(H. B. 2516 - By Mr. Speaker, (Mr. Thompson) and Delegate Armstead) [By Request of the Executive]

[Passed April 12, 2013; in effect from passage.] [Approved by the Governor on April 30, 2013.]

AN ACT to amend and reenact §11-21-9 of the Code of West Virginia, 1931, as amended, relating to updating the meaning of federal adjusted gross income and certain other terms used in the West
Virginia Personal Income Tax Act so the definitions conform with the Internal Revenue Code's definitions; and specifying effective dates.

Be it enacted by the Legislature of West Virginia:

That §11-21-9 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 21. PERSONAL INCOME TAX.


(a) Any term used in this article has the same meaning as when used in a comparable context in the laws of the United States relating to income taxes, unless a different meaning is clearly required. Any reference in this article to the laws of the United States means the provisions of the Internal Revenue Code of 1986, as amended, and any other provisions of the laws of the United States that relate to the determination of income for federal income tax purposes. All amendments made to the laws of the United States after January 1, 2012, but prior to January 3, 2013, shall be given effect in determining the taxes imposed by this article to the same extent those changes are allowed for federal income tax purposes, whether the changes are retroactive or prospective, but no amendment to the laws of the United States made on or after January 3, 2013, shall be given any effect.

(b) Medical savings accounts. — The term "taxable trust" does not include a medical savings account established pursuant to section twenty, article fifteen, chapter thirty-three of this code or section fifteen, article sixteen of said chapter. Employer contributions to a medical savings account established pursuant to said sections are not wages for purposes of withholding under section seventy-one of this article.

(c) Surtax. — The term "surtax" means the twenty percent additional tax imposed on taxable withdrawals from a medical
savings account under section twenty, article fifteen, chapter thirty-three of this code and the twenty percent additional tax imposed on taxable withdrawals from a medical savings account under section fifteen, article sixteen of said chapter which are collected by the Tax Commissioner as tax collected under this article.

(d) Effective date. — The amendments to this section enacted in the year 2013 are retroactive to the extent allowable under federal income tax law. With respect to taxable years that began prior to January 1, 2014, the law in effect for each of those years shall be fully preserved as to that year, except as provided in this section.

(e) For purposes of the refundable credit allowed to a low income senior citizen for property tax paid on his or her homestead in this state, the term “laws of the United States” as used in subsection (a) of this section means and includes the term “low income” as defined in subsection (b), section twenty-one of this article and as reflected in the poverty guidelines updated periodically in the federal register by the U.S. Department of Health and Human Services under the authority of 42 U.S.C. §9902(2).

CHAPTER 195

(S. B. 183 - By Senators Kessler, (Mr. President) and M. Hall) [By Request of the Executive]

[Passed April 9, 2013; in effect from passage.] [Approved by the Governor on April 19, 2013.]

AN ACT to amend and reenact §11-24-3 of the Code of West Virginia, 1931, as amended, relating to updating the meaning of “federal taxable income” and certain other terms used in the West Virginia
Corporation Net Income Tax Act so the definitions conform with the Internal Revenue Code's definitions; and specifying effective dates.

Be it enacted by the Legislature of West Virginia:

That §11-24-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 24. CORPORATION NET INCOME TAX.

§11-24-3. Meaning of terms; general rule.

(a) Any term used in this article has the same meaning as when used in a comparable context in the laws of the United States relating to federal income taxes, unless a different meaning is clearly required by the context or by definition in this article. Any reference in this article to the laws of the United States means the provisions of the Internal Revenue Code of 1986, as amended, and any other provisions of the laws of the United States that relate to the determination of income for federal income tax purposes. All amendments made to the laws of the United States after January 1, 2012, but prior to January 3, 2013, shall be given effect in determining the taxes imposed by this article to the same extent those changes are allowed for federal income tax purposes, whether the changes are retroactive or prospective, but no amendment to the laws of the United States made on or after January 3, 2013, shall be given any effect.

(b) The term "Internal Revenue Code of 1986" means the Internal Revenue Code of the United States enacted by the federal Tax Reform Act of 1986 and includes the provisions of law formerly known as the Internal Revenue Code of 1954, as amended, and in effect when the federal Tax Reform Act of 1986 was enacted that were not amended or repealed by the federal Tax Reform Act of 1986. Except when inappropriate, any reference in any law, executive order or other document:
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(1) To the Internal Revenue Code of 1954 includes a reference to the Internal Revenue Code of 1986; and

(2) To the Internal Revenue Code of 1986 includes a reference to the provisions of law formerly known as the Internal Revenue Code of 1954.

(c) Effective date. - The amendments to this section enacted in the year 2013 are retroactive to the extent allowable under federal income tax law. With respect to taxable years that began prior to January 1, 2014, the law in effect for each of those years shall be fully preserved as to that year, except as provided in this section.

CHAPTER 196

(Com. Sub. for H. B. 2519 - By Mr. Speaker, (Mr. Thompson) and Delegate Armstead)

[Passed April 12, 2013; in effect from passage.]
[Approved by the Governor on April 30, 2013.]

AN ACT to amend and reenact §11-24-43a of the Code of West Virginia, 1931, as amended; to amend and reenact §31-15A-16 of said code; and to amend and reenact §33-20F-4 of said code, all relating to reallocation and repatriation of certain funds to the General Revenue Fund; eliminating the required payments into the Special Railroad and Intermodal Enhancement Fund for fiscal year 2014; reducing the amount deposited annually to the credit of the West Virginia Infrastructure General Obligation Debt Service Fund, subject to certain limitations, conditions and constraints; eliminating provisions regarding a loan from the Tobacco Settlement Medical Trust Fund to the Physician’s Mutual Insurance Company; eliminating the requirement that certain taxes
imposed upon medical malpractice insurance premiums to be paid into the Revenue Shortfall Reserve Fund; and specifying effective dates.

Be it enacted by the Legislature of West Virginia:

That §11-24-43a of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §31-15A-16 of said code be amended and reenacted; and that §33-20F-4 of said code be amended and reenacted, all to read as follows:

CHAPTER 11. TAXATION.

ARTICLE 24. CORPORATION NET INCOME TAX.

§11-24-43a. Dedication of tax proceeds to railways.

1 (a) Beginning January 1, 2008, there is dedicated an annual amount of up to $4,300,000 from annual collections of the tax imposed by this article for the purpose of construction, reconstruction, maintenance and repair of railways, the construction of railway-related structures and payment of principal and interest on state bonds issued for railway purposes, as approved by the West Virginia Public Port Authority.

8 (b) For purposes of administering the deposits required by this subdivision, after December 31, 2007, from the taxes imposed by this section and paid to the Tax Commissioner in each quarter of the year, after deducting the amount of any refunds lawfully paid and any administrative costs authorized by this code, the Tax Commissioner shall pay into the Special Railroad and Intermodal Enhancement Fund provided in section seven-a, article sixteen-b, chapter seventeen of this code an amount equal to at least $1,075,000. In any quarter where the collections are less than the amount required to be paid into the Special Railroad and Intermodal Enhancement Fund, or where
19. The total amount paid in any year will be less than $4,300,000;
20. the difference shall be paid from amounts available from
21. collections in succeeding quarters until paid in full.
22. Notwithstanding any provision of this section to the contrary, the
23. total amount to be deposited into the Special Railroad and
24. Intermodal Enhancement Fund for 2013 may not exceed
25. $2,150,000: Provided, That no deposits shall be made into the
26. Special Railroad and Intermodal Enhancement Fund during the
27. fiscal year 2014.

CHAPTER 31. CORPORATIONS.

ARTICLE 15A. WEST VIRGINIA INFRASTRUCTURE AND
JOBS DEVELOPMENT COUNCIL.


1. (a) There shall be dedicated an annual amount from the
2. collections of the tax collected pursuant to article thirteen-a,
3. chapter eleven of this code for the construction, extension,
4. expansion, rehabilitation, repair and improvement of water
5. supply and sewage treatment systems and for the acquisition,
6. preparation, construction and improvement of sites for economic
7. development in this state as provided in this article.

8. (b) Notwithstanding any other provision of this code to the
9. contrary, beginning on July 1, 1995, the first $16 million of the
tax collected pursuant to article thirteen-a, chapter eleven of this
code shall be deposited to the credit of the West Virginia
Infrastructure General Obligation Debt Service Fund created
pursuant to section three, article fifteen-b of this chapter:
Provided, That beginning on July 1, 1998, the first $24 million
of the tax annually collected pursuant to article thirteen-a of this
code shall be deposited to the credit of the West Virginia
Infrastructure General Obligation Debt Service Fund created
pursuant to section three, article fifteen-b of this chapter:
Provided, however; That subject to the conditions, limitations, exclusions and constraints prescribed by subsection (c) of this section, beginning on July 1, 2013, the amount deposited under this subsection to the credit of the West Virginia Infrastructure General Obligation Debt Service Fund created pursuant to section three, article fifteen-b of this chapter shall be the first $23 million of the tax annually collected pursuant to article thirteen-a, chapter eleven of this code.

(c) Notwithstanding any provision of subsection (b) of this section to the contrary: (1) None of the collections from the tax imposed pursuant to section six, article thirteen-a, chapter eleven of this code shall be so dedicated or deposited; and (2) the portion of the tax imposed by article thirteen-a, chapter eleven and dedicated for purposes of Medicaid and the Division of Forestry pursuant to section twenty-a of said article thirteen-a shall remain dedicated for the purposes set forth in that section twenty-a.

(d) On or before May 1 of each year, commencing May 1, 1995, the council, by resolution, shall certify to the Treasurer and the Water Development Authority the principal and interest coverage ratio and amount for the following fiscal year on any infrastructure general obligation bonds issued pursuant to the provisions of article fifteen-b of this chapter.

CHAPTER 33. INSURANCE.

ARTICLE 20F. PHYSICIANS' MUTUAL INSURANCE COMPANY.

§33-20F-4. Authorization for creation of company; requirements and limitations.

(a) Subject to the provisions of this article, a physicians' mutual insurance company may be created as a domestic,
private, nonstock, nonprofit corporation. As an incentive for its creation, the company may be eligible for funds from the Legislature in accordance with the provisions of section seven of this article. The company must remain for the duration of its existence a domestic mutual insurance company owned by its policyholders and may not be converted into a stock corporation, a for-profit corporation or any other entity not owned by its policyholders. The company may not declare any dividend to its policyholders; sell, assign or transfer substantial assets of the company; or write coverage outside this state, except for counties adjoining this state, until after any and all debts owed by the company to the state have been fully paid.

(b) For the duration of its existence, the company is not and may not be considered a department, unit, agency, or instrumentality of the state for any purpose. All debts, claims, obligations, and liabilities of the company, whenever incurred, shall be the debts, claims, obligations, and liabilities of the company only and not of the state or of any department, unit, agency, instrumentality, officer or employee of the state.

(c) The moneys of the company are not and may not be considered part of the General Revenue Fund of the state. The debts, claims, obligations, and liabilities of the company are not and may not be considered a debt of the state or a pledge of the credit of the state.

(d) The company is not subject to provisions of article nine-a, chapter six of this code or the provisions of article one, chapter twenty-nine-b of this code.

(e) All premiums collected by the company are subject to the premium taxes, additional premium taxes, additional fire and casualty insurance premium taxes and surcharges contained in sections fourteen, fourteen-a, fourteen-d and thirty-three, article three of this chapter.
AN ACT to amend and reenact §11-27-38 of the Code of West Virginia, 1931, as amended, relating generally to health care provider taxes; modifying the expiration date for tax rate on eligible acute care hospitals; changing the tax rate on eligible acute care hospitals; and providing for disbursement of any funds remaining in the Eligible Acute Care Provider Enhancement Account.

Be it enacted by the Legislature of West Virginia:

That §11-27-38 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 27. HEALTH CARE PROVIDER TAXES.

§11-27-38. Contingent increase of tax rate on certain eligible acute care hospitals.

(a) In addition to the rate of the tax imposed by sections nine and fifteen of this article on providers of inpatient and outpatient hospital services, there shall be imposed on certain eligible acute care hospitals an additional tax of forty-five one hundredths of one percent on the gross receipts received or receivable by
eligible acute care hospitals that provide inpatient or outpatient hospital services in this state through a Medicaid upper payment limit program. For purposes of this section, the term “eligible acute care hospital” means any inpatient or outpatient hospital conducting business in this state that is not: (1) A state-owned or -designated facility; (2) a nonstate, but government-owned facility such as a county or city hospital; (3) a critical access hospital, designated as a critical access hospital after meeting all federal eligibility criteria; (4) a licensed free-standing psychiatric or medical rehabilitation hospital; or (5) a licensed long-term acute care hospital.

(b) The taxes imposed by this section may not be imposed or collected until all of the following have occurred: (1) A state plan amendment is developed by the Bureau of Medical Services, as authorized by the Secretary of the Department of Health and Human Resources; (2) the state plan amendment is reviewed by the Medical Fund Services Advisory Council; (3) a comment period of not less than thirty days for public comment on the state plan amendment shall have passed; and (4) the state plan amendment is approved by the Centers for Medicare and Medicaid Services. The state plan amendment shall include all of the following: (1) The provisions of the proposed upper payment limit program or programs; (2) a state maintenance of effort to maintain adequate Medicaid funding; and (3) a provision that any other state Medicaid program will not negatively impact the hospital upper payment limit payments. The taxes imposed and collected may be imposed and collected beginning on the earliest date permissible under applicable federal law under the upper payment limit program, as determined by the West Virginia Secretary of Health and Human Resources.

(c) There is hereby created a special revenue account in the State Treasury, designated the Medicaid State Share Fund. The amount of taxes collected under this section, including any interest, additions to tax and penalties collected under article ten
of this chapter, less the amount of allowable refunds, the amount of any interest payable with respect to such refunds, and costs of administration and collection, shall be deposited into the Special Revenue Fund and shall not revert to general revenue. The Tax Commissioner shall establish and maintain a separate account and accounting for the funds collected under this section, in an account to be designated as the Eligible Acute Care Provider Enhancement Account. The amounts collected shall be deposited, within fifteen days after receipt by the Tax Commissioner, into the Eligible Acute Care Provider Enhancement Account. Disbursements from the Eligible Acute Care Provider Enhancement Account within the Medicaid State Share Fund may only be used as set forth in this section.

(d) The imposition and collection of taxes imposed by this section shall be suspended immediately upon the occurrence of any of the following: (1) The effective date of any action by Congress that would disqualify the taxes imposed by this section from counting towards state Medicaid funds available to be used to determine the federal financial participation; (2) the effective date of any decision, enactment or other determination by the Legislature or by any court, officer, department, agency of office of state or federal government that has the effect of disqualifying the tax from counting towards state Medicaid funds available to be used to determine federal financial participation for Medicaid matching funds, or creating for any reason a failure of the state to use the assessment of the Medicaid program as described in this section; and (3) the effective date of an appropriation for any state fiscal year for hospital payments under the state Medicaid program that is less than the amount appropriate for state fiscal year ending June 30, 2011. Fifty percent of any funds remaining in the Eligible Acute Care Provider Enhancement Account as of June 30, 2013, shall be transferred to the West Virginia Medical Services Fund. This transfer shall occur no later than September 30, 2013. These funds shall be used during state fiscal year 2014 at the discretion of the Bureau of Medical Services. The remaining fifty percent of any funds in the Eligible Acute Care
Provider Enhancement Account as of June 30, 2013, shall remain in the Eligible Acute Care Provider Enhancement Account, and shall be used in state fiscal year 2014. If the program expires on June 30, 2014, as set forth in subsection (f), fifty percent of any funds remaining as of June 30, 2015, shall be transferred on that date to the West Virginia Medical Services Fund. This transfer shall occur only after state fiscal year 2014 fourth quarter tax collections and program payments. The remaining fifty percent of the funds shall be distributed to the eligible acute care providers no later than June 30, 2015. The distribution of funds to the eligible acute care providers shall be made in the same proportion as the taxes paid by the eligible acute care providers into the Eligible Acute Care Provider Enhancement Fund during state fiscal year 2014.

(e) The provisions of this section are retroactive and shall become effective on the first day of the quarter in which the state plan amendment is submitted.

(f) The tax imposed by this section shall expire on and after June 30, 2014, unless otherwise extended by the Legislature.

CHAPTER 198

(H. B. 2847 - By Delegates Boggs, Swartzmiller, Ferro, Caputo and D. Poling)
[By Request of the Auditor]

[Passed April 13, 2013; in effect ninety days from passage.]
[Approved by the Governor on April 30, 2013.]

AN ACT to amend and reenact §11A-1-7 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §11A-1-7a, all relating to the
collection of delinquent real property and personal property taxes by county sheriffs.

Be it enacted by the Legislature of West Virginia:

That §11A-1-7 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto a new section, designated §11A-1-7a, all to read as follows:

ARTICLE 1. ACCRUAL AND COLLECTION OF TAXES.

§11A-1-7. No collection of current real property taxes until delinquent real property taxes are paid.

The sheriff, in preparing his or her real property tax receipts for any current year shall examine and compare them with the delinquent list for the preceding year in his or her hands, and if any tract is found to be delinquent for the preceding year, he or she shall note the fact on his or her current receipts and shall decline to receive current taxes on any land where it appears to his or her office that a prior year's real property taxes are unpaid. Acceptance of current taxes through oversight does not relieve the owner of any land of the liability to pay prior taxes and penalties imposed for nonpayment.

§11A-1-7a. No collection of current personal property taxes until delinquent personal property taxes are paid.

The sheriff, in preparing his or her personal property receipts for any current year shall examine and compare them with the delinquent list for the preceding year in his or her hands, and if payment for any personal property is found to be delinquent for the preceding year, he or she shall note the fact on his or her current receipts and shall decline to receive current taxes on any personal property where it appears to his or her office that a prior year’s personal property taxes are unpaid. Acceptance of current taxes through oversight does not relieve the owner of any personal property of the liability to pay prior taxes and penalties imposed for nonpayment.
AN ACT to amend and reenact §11A-3-18, §11A-3-22, §11A-3-27, §11A-3-28 and §11A-3-55 of the Code of the West Virginia, 1931, as amended, all relating generally to the sale of tax liens and nonentered, escheated and waste and unappropriated lands; providing the process for requesting a refund after forfeiture of rights to a tax deed; clarifying deadlines for receipt of tax deeds and refunds related to failure to meet deadlines; modifying the requirements for petitioning to compel execution of a deed by the State Auditor; removing the provisions allowing judgment against the State Auditor for costs in the case of failure or refusal to execute a deed without reasonable cause; and providing for service of notice when mail is not deliverable to an address at the physical location of the property.

Be it enacted by the Legislature of West Virginia:

That §11A-3-18, §11A-3-22, §11A-3-27, §11A-3-28 and §11A-3-55 of the Code of the West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 3. SALE OF TAX LIENS AND NONENTERED, ESCHATE AND WASTE AND UNAPPROPRIATED LANDS.

§11A-3-18. Limitations on tax certificates.

1. (a) No lien upon real property evidenced by a tax certificate of sale issued by a sheriff on account of any delinquent property
(b) All rights of a purchaser to the property, to a lien on the property, or to any other interest in the property, including, but not limited to any right to a tax deed, shall be considered forfeited and expired and no tax deed is to be issued on any tax sale evidenced by a tax certificate of sale where the certificate has ceased to be a lien pursuant to the provisions of this section and application for the tax deed, pursuant to the provisions of section twenty-seven of this article, is not pending at the time of the expiration of the limitation period provided in this section.

(c) Whenever a lien evidenced by a tax certificate of sale has expired by reason of the provisions of this section, the State Auditor shall immediately issue and record a certificate of cancellation describing the real estate included in the certificate of purchase or tax certificate and giving the date of cancellation and the State Auditor shall also make proper entries in his or her records. The State Auditor shall also present a copy of every certificate of cancellation to the sheriff who shall enter it in the sheriff's records and the certificate and the record are prima facie evidence of the cancellation of the certificate of sale and of the release of the lien of the certificate on the lands described in the certificate. Failure to record the certificate of cancellation does not extend the lien evidenced by the certificate of sale. The sheriff and State Auditor are not entitled to any fees for the issuing of the certificate of cancellation nor for the entries in their books made under the provisions of this subsection.

(d) Whenever a purchaser has complied with the notice requirements provided in section nineteen of this article, but has failed to request a deed within the eighteen month deadline provided in this section, thereby forfeiting all rights to a tax deed, the purchaser may recover the amounts paid in excess of the taxes owed and expenses incurred by the State Auditor in the
processing of the tax lien if, within thirty days of the expiration
of the lien, upon a showing of compliance with the provisons of
section nineteen of this article, the purchaser files with the State
Auditor a request in writing for the refund. A purchaser who fails
to file the request within the thirty day period forfeits all rights
to the refund.

§11A-3-22. Service of notice.

(a) As soon as the State Auditor has prepared the notice
provided in section twenty-one of this article, he or she shall
cause it to be served upon all persons named on the list
generated by the purchaser pursuant to the provisions of section
nineteen of this article.

(b) The notice shall be served upon all persons residing or
found in the state in the manner provided for serving process
commencing a civil action or by certified mail, return receipt
requested. The notice shall be served on or before the thirtieth
day following the request for the notice.

(c) If a person entitled to notice is a nonresident of this state,
whose address is known to the purchaser, he or she shall be
served at that address by certified mail, return receipt requested.

(d) If the address of a person entitled to notice, whether a
resident or nonresident of this state, is unknown to the purchaser
and cannot be discovered by due diligence on the part of the
purchaser, the notice shall be served by publication as a Class
III-0 legal advertisement in compliance with the provisions of
article three, chapter fifty-nine of this code and the publication
area for the publication shall be the county in which the real
estate is located. If service by publication is necessary,
publication shall be commenced when personal service is
required as set forth in this section and a copy of the notice shall
at the same time be sent by certified mail, return receipt
requested, to the last known address of the person to be served.
The return of service of the notice and the affidavit of
publication, if any, shall be in the manner provided for process
generally and shall be filed and preserved by the State Auditor
in his or her office, together with any return receipts for notices
sent by certified mail.

In addition to the other notice requirements set forth in this
section, if the real property subject to the tax lien was classified
as Class II property at the time of the assessment, at the same
time the State Auditor issues the required notices by certified
mail, the State Auditor shall forward a copy of the notice sent to
the delinquent taxpayer by first class mail, addressed to
“Occupant”, to the physical mailing address for the subject
property. The physical mailing address for the subject property
shall be supplied by the purchaser of the tax lien pursuant to the
provisions of section nineteen of this article. Where the mail is
not deliverable to an address at the physical location of the
subject property, the copy of the notice shall be sent to any other
mailing address that exists to which the notice would be
delivered to an occupant of the subject property.

§11A-3-27. Deed to purchaser; record.

(a) If the real estate described in the notice is not redeemed
within the time specified in the notice, then from April 1 of the
second year following the sheriff’s sale until the expiration of
the lien evidenced by a tax certificate of sale as provided in
section eighteen of this article, the State Auditor or his or her
deputy shall upon request of the purchaser make and deliver to
the clerk of the county commission, a quitclaim deed for the real
estate. The purchaser’s right to a tax deed shall be forfeited if the
deed is not requested within the eighteen month period set forth
in section eighteen of this article. The deed shall provide in form
or effect as follows:

This deed made this ______ day of __________, 20 ____,
by and between _____________________, State Auditor, West
Virginia, (or by and between ______________, a commissioner
appointed by the circuit court of __________ County, West Virginia) grantor, and ____________, purchaser, (or ____________, heir, devisee or assignee of ____________, purchaser), grantee, witnesseth, that:

Whereas, In pursuance of the statutes in such case made and provided, ____________, Sheriff of __________ County, (or ____________, deputy for __________, Sheriff of __________ County), (or ____________, collector of __________ County), did, in the month of __________, in the year 20 __, sell the tax lien(s) on real estate, hereinafter mentioned and described, for the taxes delinquent thereon for the year (or years) 20 __, and ____________, (here insert name of purchaser) for the sum of $__________, that being the amount of purchase money paid to the sheriff, did become the purchaser of the tax lien(s) on such real estate (or on _______ acres, part of the tract or land, or on an undivided __________ interest in such real estate) which was returned delinquent in the name of ____________; and

Whereas, The State Auditor has caused the notice to redeem to be served on all persons required by law to be served therewith; and

Whereas, The tax lien(s) on the real estate so purchased has not been redeemed in the manner provided by law and the time for redemption set in such notice has expired;

Now, therefore, the grantor, for and in consideration of the premises and in pursuance of the statutes, doth grant unto ____________, grantee, his or her heirs and assigns forever, the real estate on which the tax lien(s) so purchased existed, situate in the county of ____________, bounded and described as follows: _____________.

Witness the following signature: ____________
(b) The State Auditor may not execute and deliver a deed more than sixty days after the person entitled to the deed delivers the same and requests the execution of the deed, except when directed to do so under section twenty-eight of this article.

(c) For the execution of the deed and for all the recording required by this section, a fee of $50 and the recording and transfer tax expenses shall be charged, to be paid by the grantee upon delivery of the deed. The deed, when duly acknowledged or proven, shall be recorded by the clerk of the county commission in the deed book in the clerk’s office, together with any assignment from the purchaser, if one was made, the notice to redeem, the return of service of the notice, the affidavit of publication, if the notice was served by publication, and any return receipts for notices sent by certified mail.

(d) The State Auditor shall appoint employees of his or her office to act as his or her designee to effect the purposes of this section.

§11A-3-28. Compelling service of notice or execution of deed.

(a) If the State Auditor fails or refuses to prepare and serve the notice to redeem as required in sections twenty-one and twenty-two of this article, the person requesting the notice may, at any time within two weeks after discovery of the failure or refusal, but in no event later than sixty days following the date the person requested that notice be prepared and served, apply by petition to the circuit court of the county for an order compelling the State Auditor to prepare and serve the notice or appointing a commissioner to do so. If the person requesting the notice fails to make application within the time allowed, he or she shall lose his or her right to the notice, but his or her rights against the State Auditor under the provisions of section sixty-seven of this article shall not be affected. Notice given pursuant to an order of
the court or judge shall be as valid for all purposes as if given
within the time required by section twenty-two of this article.

(b) If the State Auditor fails or refuses to execute the deed as
required in section twenty-seven of this article to a purchaser
who has requested the deed within the period required by said
section twenty-seven, the person requesting the deed may, at any
time after such failure or refusal, but not more than six months
after his or her right to the deed accrued, upon proof that the
purchaser requested the deed within the period required by said
section twenty-seven, apply by petition to the circuit court of the
county for an order compelling the State Auditor to execute the
deed or appointing a commissioner to do so. If the person
requesting the deed fails to prove compliance with the
limitations period set forth in section twenty-seven of this article
or fails to make an application within the time allowed, he or she
shall lose his or her right to the deed. Any deed executed
pursuant to an order of the court or judge shall have the same
force and effect as if executed and delivered by the State Auditor
within the time specified in section twenty-seven of this article.

(c) Ten days' written notice of every application must be
given to the State Auditor. If, upon the hearing of the
application, the court or judge is of the opinion that the applicant
is not entitled to the notice or deed requested, the petition shall
be dismissed at his or her costs; but if the court or judge is of the
opinion that he or she is entitled to the notice or deed, then, upon
his or her deposit with the clerk of the circuit court of a sum
sufficient to cover the costs of preparing and serving the notice,
unless a deposit has already been made with the State Auditor,
an order shall be made by the court or judge directing the State
Auditor to prepare and serve the notice or execute the deed, or
appointing a commissioner for the purpose, as the court or judge
shall determine.

(d) Any commissioner appointed under the provisions of this
section shall be subject to the same liabilities as are provided for
the State Auditor. For the preparation of the notice to redeem, he
or she shall be entitled to the same fee as is provided for the
State Auditor. For the execution of the deed, he or she shall also
be entitled to a fee of $50 and the recording and transfer
expenses, to be paid by the grantee upon delivery of the deed.

§ 11A-3-55. Service of notice.

As soon as the deputy commissioner has prepared the notice
provided for in section fifty-four of this article, he shall cause it
to be served upon all persons named on the list generated by the
purchaser pursuant to the provisions of section fifty-two of this
article. Such notice shall be mailed and, if necessary, published
at least thirty days prior to the first day a deed may be issued
following the deputy commissioner’s sale.

The notice shall be served upon all such persons residing or
found in the state in the manner provided for serving process
commencing a civil action or by certified mail, return receipt
requested. The notice shall be served on or before the thirtieth
day following the request for such notice.

If any person entitled to notice is a nonresident of this state,
whose address is known to the purchaser, he shall be served at
such address by certified mail, return receipt requested.

If the address of any person entitled to notice, whether a
resident or nonresident of this state, is unknown to the purchaser
and cannot be discovered by due diligence on the part of the
purchaser, the notice shall be served by publication as a Class
III-0 legal advertisement in compliance with the provisions of
article three, chapter fifty-nine of this code, and the publication
area for such publication shall be the county in which such real
estate is located. If service by publication is necessary,
publication shall be commenced when personal service is
required as set forth above, and a copy of the notice shall at the
same time be sent by certified mail, return receipt requested, to
the last known address of the person to be served. The return of
28 service of such notice, and the affidavit of publication, if any,
29 shall be in the manner provided for process generally and shall
30 be filed and preserved by the auditor in his office, together with
31 any return receipts for notices sent by certified mail.
32 In addition to the other notice requirements set forth in this
33 section, if the real property subject to the tax lien was classified
34 as Class II property at the time of the assessment, at the same
35 time the deputy commissioner issues the required notices by
36 certified mail, the deputy commissioner shall forward a copy of
37 the notice sent to the delinquent taxpayer by first class mail,
38 addressed to "Occupant", to the physical mailing address for the
39 subject property. The physical mailing address for the subject
40 property shall be supplied by the purchaser of the property,
41 pursuant to the provisions of section fifty-two of this article.
42 Where the mail is not deliverable to an address at the physical
43 location of the subject property, the copy of the notice shall be
44 sent to any other mailing address that exists to which the notice
45 would be delivered to an occupant of the subject property.

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CHAPTER 200

(Com. Sub. for S. B. 630 - By Senator Unger)

[Passed April 13, 2013; in effect from passage.]
[Approved by the Governor on May 3, 2013.]

AN ACT to amend and reenact §5A-6-4a of the Code of West
Virginia, 1931, as amended, relating to duties of the Chief
Technology Officer with regard to security of government
information; adding the Division of Protective Services and the
West Virginia Intelligence Fusion Center to the list of agencies
exempted from the control of the Chief Technology Officer; and
adding the Treasurer to the list of officers whose responsibilities cannot be infringed upon by the Chief Technology Officer.

Be it enacted by the Legislature of West Virginia:

That §5A-6-4a of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 6. OFFICE OF TECHNOLOGY.

§5A-6-4a. Duties of the Chief Technology Officer relating to security of government information.

(a) To ensure the security of state government information and the data communications infrastructure from unauthorized uses, intrusions or other security threats, the Chief Technology Officer is authorized to develop policies, procedures, standards and legislative rules. At a minimum, these policies, procedures and standards shall identify and require the adoption of practices to safeguard information systems, data and communications infrastructures, as well as define the scope and regularity of security audits and which bodies are authorized to conduct security audits. The audits may include reviews of physical security practices.

(b) (1) The Chief Technology Officer shall at least annually perform security audits of all executive branch agencies regarding the protection of government databases and data communications.

(2) Security audits may include, but are not limited to, on-site audits as well as reviews of all written security procedures and documented practices.

(c) The Chief Technology Officer may contract with a private firm or firms that specialize in conducting these audits.
(d) All public bodies subject to the audits required by this section shall fully cooperate with the entity designated to perform the audit.

(e) The Chief Technology Officer may direct specific remediation actions to mitigate findings of insufficient administrative, technical and physical controls necessary to protect state government information or data communication infrastructures.

(f) The Chief Technology Officer shall propose rules for legislative approval in accordance with the provisions of chapter twenty-nine-a of this code to minimize vulnerability to threats and to regularly assess security risks, determine appropriate security measures and perform security audits of government information systems and data communications infrastructures.

(g) To ensure compliance with confidentiality restrictions and other security guidelines applicable to state law-enforcement agencies, emergency response personnel and emergency management operations, the provisions of this section do not apply to the West Virginia State Police, the Division of Protective Services, the West Virginia Intelligence Fusion Center or the Division of Homeland Security and Emergency Management.

(h) The provisions of this section do not infringe upon the responsibilities assigned to the state Comptroller, the Treasurer, the Auditor or the Legislative Auditor, or other statutory requirements.

(i) In consultation with the Adjutant General, Chairman of the Public Service Commission, the Superintendent of the State Police and the Director of the Division of Homeland Security and Emergency Management, the Chief Technology Officer is responsible for the development and maintenance of an
CHAPTER 201

(Com. Sub. for H. B. 3003 - By Delegate White)

[Passed April 10, 2013; in effect ninety days from passage.]
[Approved by the Governor on April 22, 2013.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §16-9D-4a, relating generally to facilitating and enforcing compliance with escrow, certification and other requirements imposed on certain tobacco manufacturers that did not participate in the tobacco product manufacturers' Master Settlement Agreement; imposing bonding requirements on certain nonparticipating tobacco product manufacturers; and providing for forfeiture of bond for noncompliance.
Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §16-9D-4a, to read as follows:

ARTICLE 9D. ENFORCEMENT OF STATUTES IMPLEMENTING TOBACCO MASTER SETTLEMENT AGREEMENT.

§16-9D-4a. Listing of nonparticipating manufacturers in the West Virginia Tobacco Directory; bonding requirement for nonparticipating manufacturers newly qualified or posing an elevated risk for noncompliance.

(a) Notwithstanding any other provision of law to the contrary, if a newly qualified nonparticipating manufacturer is to be listed in the directory described in subsection (b), section three of this article, or if the Attorney General reasonably determines that a nonparticipating manufacturer who has filed a certification pursuant to section three of this article poses an elevated risk for noncompliance with its obligations under this article or article nine-b of this chapter, neither the nonparticipating manufacturer nor any of its brand families may be included in the directory unless and until the nonparticipating manufacturer has posted a bond in accordance with this section.

(b) The bond shall be posted by corporate surety located within the United States in an amount equal to the greater of $25,000 or the amount of escrow the manufacturer, in either its current or predecessor form, was required to deposit as a result of its sales in the previous calendar year in West Virginia. The bond shall be written in favor of the State of West Virginia and shall be conditioned on the performance by the nonparticipating manufacturer of all of its duties and obligations under this article and article nine-b of this chapter during the year in which the certification is filed and the next succeeding calendar year.
Duplicate originals of the bond shall be provided to the State Tax Division and the Attorney General.

(c) A nonparticipating manufacturer may be considered to pose an elevated risk for noncompliance with this section if:

(1) The nonparticipating manufacturer or any affiliate thereof has underpaid an escrow obligation with respect to any state that is a signatory to the Master Settlement Agreement at any time during the calendar year or within the three preceding calendar years unless:

(A) The manufacturer did not make underpayment knowingly or recklessly and the manufacturer promptly cured the underpayment within one hundred eighty days' notice of it; or

(B) The underpayment or lack of payment is the subject of a good-faith dispute as documented to the satisfaction of the Attorney General and the underpayment is cured within one hundred eighty days of entry of a final order establishing the amount of the required escrow payment;

(2) Any state that is a signatory to the Master Settlement Agreement has removed the manufacturer or its brands or brand families or an affiliate or any of the affiliate's brands or brand families from the directory for noncompliance with the state law at any time during the calendar year or within the three preceding calendar years; or

(3) Any state that is a signatory to the Master Settlement Agreement has litigation pending against, or an unsatisfied judgment against, the manufacturer or any affiliate thereof for escrow or for penalties, costs, or attorney fees related to noncompliance with state escrow laws.

(d) As used in this section, "newly qualified nonparticipating manufacturer" means a nonparticipating manufacturer that has not previously been listed in the directory in the three preceding
calendar years. The manufacturer may be required to post a bond in accordance with this section for the first three years of their listing, or for such longer time as the Attorney General may require, if the manufacturer has been determined to pose an elevated risk for noncompliance. Any other nonparticipating manufacturer that has been determined to pose an elevated risk for noncompliance shall be required to post a bond in accordance with this section for three years, and shall be required to post a bond for such further period of time as the Attorney General may require, in accordance with this section, if the nonparticipating manufacturer still poses an elevated risk at the end of the three-year period.

(e) The posted bond shall be forfeited to the West Virginia General Revenue Fund in the event that the manufacturer fails to comply with its obligations under this article or article nine-b of this chapter. The amount of the forfeiture shall be equal to the delinquent escrow payments due at the time of forfeiture plus any penalties assessed against the manufacturer based on its failure to fulfill its responsibilities under this article and article nine-b of this chapter.

CHAPTER 202


[Passed April 13, 2013; in effect from passage.]
[Approved by the Governor on May 2, 2013.]

AN ACT to repeal §12-1-12c of the Code of West Virginia, 1931, as amended; to repeal §12-6B-1, §12-6B-2, §12-6B-3 and §12-6B-4 of said code; to amend and reenact §5-10B-13 of said code; to
amend said code by adding thereto a new section, designated §5-10B-14; to amend and reenact §12-1-3, §12-1-8 and §12-1-11 of said code; to amend and reenact §12-2-2 and §12-2-3 of said code; to amend and reenact §12-3A-3 of said code; to amend said code by adding thereto a new section, designated §12-4-17; to amend and reenact §12-5-4 of said code; to amend and reenact §12-6A-1, §12-6A-2, §12-6A-3, §12-6A-4, §12-6A-5, §12-6A-6 and §12-6A-7 of said code; to amend and reenact §12-6C-7 and §12-6C-9 of said code; to amend and reenact §33-3-14d of said code; and to amend and reenact §36-8-13 of said code, all relating to the State Treasurer's office; authorizing the deferred compensation plan to accept qualified domestic relations orders; authorizing Roth accounts within the deferred compensation plan in accordance with the Internal Revenue Code; authorizing financial institutions to offer products in addition to certificates of deposit; updating references to investing authorities to include the Board of Treasury Investments; raising the amount of eligible deposits from $100,000 to the amount insured by a federal agency; providing requirements to be eligible depositories; providing for conflicts of interest for applicants and employees of the Treasurer’s office in connection with financial institutions; authorizing depositories to submit reports in an electronic format; changing the requirement that deposits are required within 24 hours to one business day; changing the report to the Legislative Auditor for accounts outside the treasury from quarterly to an annual report; authorizing the Treasurer to determine the competitive bidding of banking, investment and related goods and services required for treasury operations; authorizing the Treasurer to develop procedures for storing, retaining and disposing of records for his or her office; ensuring the director of the division of archives and history receives records with historical value; clarifying that the Treasurer is responsible for earnings received on securities, not just interest; consolidating the debt capacity division into the debt management division; providing legislative findings to acknowledge the importance of monitoring the debt of the state
and its spending units; continuing division of debt management as the central information source for debt issued by the state and its spending units; defining debt to include debentures, lease purchases, mortgages, securitizations and other types of obligations with specific amounts owed and payable on demand or on determinable dates; defining debt impact report, moral obligation bond, net tax supported debt and tax supported debt; defining spending unit; eliminating requirement for developing a long-term debt plan; authorizing the division to continuously evaluating debt and debt service requirements of the state and its spending units; authorizing the division to issue a debt impact report if requested by the Governor, Senate President or House of Delegates Speaker and that the report shall not restrict the Governor, Legislature or spending unit; requiring the division to monitor continuing disclosure requirements and post-issuance compliance issues; eliminating requirement that the debt management division provide staff for the debt capacity division; providing for reporting by the division and the spending units; requiring the division to prepare and issue the debt capacity report; authorizing the Treasurer to promulgate the rules in certain circumstances; altering the bond required for the Board of Treasury Investments from $50 million to at least $10 million, as set by the board; updating language pertaining to rating agencies to nationally recognized statistical rating organizations; permitting pools with weighted average maturity or duration of 366 days or more to invest in investment grade corporate debt securities; authorizing investments in money market and other fixed income funds; providing that securities falling out of compliance with the code do not have to be sold if the investment manager and investment consultant recommend retention; satisfying amounts due to and from policemen's and firemen's pension and relief funds and the Teachers Retirement System; authorizing transfer of moneys from the Unclaimed Property Trust Fund for payment to policemen's and firemen's pension and relief funds.
Be it enacted by the Legislature of West Virginia:

That §12-1-12c of the Code of West Virginia, 1931, as amended, be repealed; that §12-6B-1, §12-6B-2, §12-6B-3 and §12-6B-4 of said code be repealed; that §5-10B-13 of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §5-10B-14; that §12-1-3, §12-1-8 and §12-1-11 of said code be amended and reenacted; that §12-2-2 and §12-2-3 of said code be amended and reenacted; that §12-3A-3 of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §12-4-17; that §12-5-4 of said code be amended and reenacted; that §12-6A-1, §12-6A-2, §12-6A-3, §12-6A-4, §12-6A-5, §12-6A-6 and §12-6A-7 of said code be amended and reenacted; that §12-6C-7 and §12-6C-9 of said code be amended and reenacted; that §33-3-14d of said code be amended and reenacted; and that §36-8-13 of said code be amended and reenacted, all to read as follows:

CHAPTER 5. GENERAL POWERS AND AUTHORITY OF THE GOVERNOR, SECRETARY OF STATE AND ATTORNEY GENERAL; BOARD OF PUBLIC WORKS, MISCELLANEOUS AGENCIES, COMMISSIONS, OFFICES, PROGRAMS, ETC.

ARTICLE 10B. GOVERNMENT EMPLOYEES DEFERRED COMPENSATION PLANS.

§5-10B-13. Moneys not subject to legal process; qualified domestic relations orders.

No account, benefit or right, created pursuant to this article, accrued or accruing, is subject to execution, garnishment, attachment, sale to satisfy a judgment or order, the operation of bankruptcy or insolvency laws, or other process of law and shall be unassignable, except that accounts, benefits and contributions under the plan are subject to “qualified domestic relations orders” as that term is defined in Internal Revenue Code §414(p).
§5-10B-14. Roth accounts.

1 The Treasurer or any public employer may authorize
2 Roth accounts within the plan in accordance with the
3 Internal Revenue Code, including, without limitation,
4 conversions, deferrals, rollovers and transfers.

CHAPTER 12. PUBLIC MONEYS AND SECURITIES.

ARTICLE 1. STATE DEPOSITORIES.

§12-1-3. Depositories for interest earning deposits; qualifications.

1 Any state or national bank or any state or federal savings and
2 loan association in this state shall, upon request made to the
3 State Treasurer, be designated as an eligible depository for
4 interest earning deposits of state funds if such bank or state or
5 federal savings and loan association meets the requirements set
6 forth in this chapter. For purposes of this article, the term
7 “interest earning deposits” includes certificates of deposit or
8 other financial institution products. The State Treasurer shall
9 make and apportion such interest earning deposits and shall
10 prescribe the interest rates, terms and conditions of deposits, all
11 in accordance with the provisions of articles six and six-c of this
12 chapter: Provided, That state or federal savings and loan
13 associations insured by an agency of the federal government
14 shall be eligible for such deposits not in excess of the amount
15 insured by any agency of the federal government.

§12-1-8. Conflict of interest.

1 An employee or a person applying for a position with the
2 office of the Treasurer shall disclose to the Treasurer if he or she,
3 or his or her spouse, is an officer, director or employee of a
4 depository or owns greater than two percent of a depository. Any
5 employee of the office of the Treasurer who, or whose spouse,
6 is an officer, director or employee of a depository or owns
7 greater than two percent of a depository may not participate in
§12-1-11. Reports by depositories to Treasurer; discontinuance of depositories.

(a) Each depository of state funds shall at the end of each quarter cause its president or designated officer to report to the Treasurer the amount of state funds on deposit and the report shall be verified by the affidavit of the officer making it. The form and contents of the report shall be prescribed by the Treasurer and may be in an electronic format.

(b) For the failure to file the report, or for other good cause, the Treasurer may discontinue any depository as an eligible depository and cause all state funds to be withdrawn from any depository or depositories discontinued.

(c) When a depository is discontinued, the Treasurer shall immediately notify such depository of its discontinuance, and shall immediately withdraw by current checks or by transfer to another depository or depositories the full amount of the deposits held by any depository discontinued. After discontinuance, it shall be unlawful for the Treasurer to deposit any state funds in any depository discontinued until such time as the depository may be reinstated to eligibility.

ARTICLE 2. PAYMENT AND DEPOSIT OF TAXES AND OTHER AMOUNTS DUE THE STATE OR ANY POLITICAL SUBDIVISION.

§12-2-2. Itemized record of moneys received for deposit; regulations governing deposits; credit to state fund; exceptions.

(a) All officials and employees of the state authorized by statute to accept moneys on behalf of the State of West Virginia shall keep a daily itemized record of moneys received for deposit
in the State Treasury and shall deposit within one business day
with the State Treasurer all moneys received or collected by
them for or on behalf of the state for any purpose whatsoever.
The State Treasurer may grant an exception to the one business
day rule when circumstances make compliance difficult or
expensive. The State Treasurer may review the procedures and
methods used by officials and employees authorized to accept
moneys due the state and change the procedures and methods if
he or she determines it is in the best interest of the state:
Provided. That the state Treasurer may not review or amend the
procedures by which the Department of Revenue accepts moneys
due the state. The State Treasurer shall propose rules for
legislative approval, in accordance with the provisions of article
three, chapter twenty-nine-a of this code governing the
procedure for deposits. The official or employee making deposits
with the state Treasurer shall prepare deposit lists in the manner
and upon report forms prescribed by the state Treasurer in the
state accounting system. The State Treasurer shall review the
deposits in the state accounting system and forward the
information to the State Auditor and to the Secretary of Revenue.

(b) All moneys received by the state from appropriations
made by the Congress of the United States shall be recorded in
special fund accounts, in the State Treasury apart from the
general revenues of the state, and shall be expended in
accordance with the provisions of article eleven, chapter four of
this code. All moneys, other than federal funds, defined in
section two, article eleven, chapter four of this code, shall be
credited to the state fund and treated by the State Auditor and
State Treasurer as part of the general revenue of the state except
the following funds which shall be recorded in separate
accounts:

(1) All funds excluded by the provisions of section six.
(2) All funds derived from the sale of farm and dairy products from farms operated by any spending unit of the state;

(3) All endowment funds, bequests, donations, executive emergency funds and death and disability funds;

(4) All fees and funds collected at state educational institutions for student activities;

(5) All funds derived from collections from dormitories, boardinghouses, cafeterias and road camps;

(6) All moneys received from counties by institutions for the deaf and blind on account of clothing for indigent pupils;

(7) All insurance collected on account of losses by fire and refunds;

(8) All funds derived from bookstores and sales of blank paper and stationery, and collections by the chief inspector of public offices;

(9) All moneys collected and belonging to the capitol building fund, state road fund, state road sinking fund, general school fund, school fund, state fund (moneys belonging to counties, districts and municipalities), state interest and sinking funds, state compensation funds, the fund maintained by the Public Service Commission for the investigation and supervision of applications and all fees, money, interest or funds arising from the sales of all permits and licenses to hunt, trap, fish or otherwise hold or capture fish and wildlife resources and money reimbursed and granted by the federal government for fish and wildlife conservation; and

(10) All moneys collected or received under any act of the Legislature providing that funds collected or received under the act shall be used for specific purposes.
(c) All moneys, except as provided in subdivisions (1) through (9), inclusive, subsection (b) of this section, shall be paid into the State Treasury in the same manner as collections not excepted and recorded in separate accounts for receipt and expenditure for the purposes for which the moneys are authorized to be collected by law: Provided, That amounts collected pursuant to subdivisions (1) through (10), subsection (b) of this section, which are found, from time to time, to exceed funds needed for the purposes set forth in general law may be transferred to other accounts or funds and redesignated for other purposes by appropriation of the Legislature. The gross amount collected in all cases shall be paid into the State Treasury. Commissions, costs and expenses, including, without limitation, amounts charged for use of bank, charge, credit or debit cards, incurred in the collection process shall be paid from the gross amount collected in the same manner as other payments are made from the State Treasury.

(d) The State Treasurer may establish an imprest fund or funds in the office of any state spending unit upon receipt of a proper application. To implement this authority, the State Treasurer shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code. The State Treasurer or his or her designee shall annually audit all imprest funds and prepare a list of the funds showing the location and amount as of fiscal year end, retaining the list as a permanent record of the State Treasurer until the Legislative Auditor has completed an audit of the imprest funds of all agencies and institutions involved.

(e) The State Treasurer may develop and implement a centralized receipts processing center. The State Treasurer may request the transfer of equipment and personnel from appropriate state agencies to the centralized receipts processing center in order to implement the provisions of this section: Provided, That the Governor or appropriate constitutional officer has authority
100 to authorize the transfer of equipment or personnel to the
101 centralized receipts processing center from the respective
102 agency.

§12-2-3. Deposit of moneys not due the State.

(a) All officials and employees of the State authorized to
accept moneys that the State Treasurer determines or that this
code specifies are not funds due the State pursuant to the
provisions of section two of this article shall deposit the moneys,
as soon as practicable, in the manner and in the depository
specified by the State Treasurer. The State Treasurer shall
prescribe the forms and procedures for depositing the moneys.

(b) Notwithstanding any provision of this code to the
contrary, including provisions stating funds collected are not
state funds and provisions authorizing a spending unit to have
one or more accounts outside the Treasury, a spending unit shall
comply with the State Treasurer's procedures for the receipt and
disbursement of moneys not due the state and obtain written
authorization from the State Treasurer before depositing any
moneys in an account outside the Treasury. Upon the State
Treasurer's written revocation of the authorization, the spending
unit shall deposit funds deposited in an account outside the
Treasury into the Treasury in the manner and in the depository
specified by the State Treasurer. The State Treasurer is the final
determining authority as to whether these funds are funds due or
not due the state pursuant to section two of this article.

(c) The State Treasurer shall provide the Legislative Auditor
with an annual report of all accounts authorized under this
section.

ARTICLE 3A. FINANCIAL ELECTRONIC COMMERCE.


(a) The State Auditor and the State Treasurer shall
implement electronic commerce capabilities for each of their
offices to facilitate the performance of their duties under this
code. The State Treasurer shall competitively bid the selection of vendors needed to provide the necessary banking, investment and related goods and services, and the provisions of article one-b, chapter five, and articles three and seven, chapter five-a of this code shall not apply, unless requested by the State Treasurer.

(b) A document or a signature received, issued or used by the Auditor or the Treasurer shall be considered an original and may not be denied legal effect on the ground that it is in electronic form.

(c) The Auditor or Treasurer may, in his or her discretion, require documents filed with or submitted to his or her respective office be filed or submitted in a prescribed electronic format.

(d) The Auditor or Treasurer, in his or her discretion, may waive:

(1) Any requirements for a document filed or submitted in an electronic format; or

(2) Any requirements for the certification, notarization or verification of a document filed or submitted in an electronic format.

(e) The head of each spending unit is responsible for adopting and implementing security procedures to ensure adequate integrity, security, confidentiality and auditability of the business transactions of his or her spending unit when utilizing electronic commerce.

ARTICLE 4. ACCOUNTS, REPORTS AND GENERAL PROVISIONS.

§12-4-17. Retention and disposal of Treasurer's records.

The Treasurer shall develop procedures for the storage, retention and disposal of records filed with, submitted to or
created by the Treasurer’s office. The procedures shall comply with the requirements for state records, as defined in section three, article eight, chapter five-a of this code, and for the reproduction and preservation of essential state records, as defined in section four, article eight, chapter five-a of this code. Preservation duplicates, as defined in section three, article eight, chapter five-a of this code, shall be maintained in an unalterable readable electronic media in accordance with industry standards, reviewed for accuracy and indexed, and shall have the same force and effect as the original records whether the original records are in existence or not. The procedures shall provide for the maintenance of the confidentiality of the records and ensure the director of the division of archives and history receives the records the director identifies as having historic value. The Treasurer shall purchase the equipment and supplies needed for record retention as part of his or her electronic commerce activities: Provided, That this section shall not limit the responsibility of the Treasurer to provide all documents necessary for the State Auditor, the Department of Revenue and the State Tax Department to complete their duties.

ARTICLE 5. PUBLIC SECURITIES.

§12-5-4. Treasurer to keep accounts and make collections.

The Treasurer shall keep an accurate account of all securities received by him or her and collect and account for earnings received and the principal whenever it is due.

ARTICLE 6A. THE DEBT MANAGEMENT ACT


This article shall be known and may be cited as “The Debt Management Act“.

§12-6A-2. Legislative findings and declaration of public necessity.

The Legislature hereby finds and declares that in order to maintain the strong financial management of the state, to meet
the fiscal needs of state government and to facilitate financing
essential capital projects at the lowest possible cost to the
citizens of the state, the state must regularly monitor the amount
of debt issued by the state and its spending units, ensure the state
and its spending units meet all debt service requirements,
monitor the credit rating of the state and analyze the acceptance
of debt issued by the state and its spending units. The Legislature
further finds that in order to meet these important goals, the
Division of Debt Management needs to be continued.

§12-6A-3. Division of Debt Management continued; director.

(a) The Division of Debt Management is continued in the
office of the State Treasurer.

(b) The Division shall serve as a central information source
concerning the incurrence, recording and reporting of debt issued
by the state and its spending units, and shall prepare reports
pertaining to the capacity of the state and its spending units to
issue debt.

(c) The Treasurer shall appoint a director, qualified by
reason of exceptional training and experience in the field of
activities of his or her respective Division, and who shall serve
at the will and pleasure of the Treasurer.

§12-6A-4. Definitions.

For the purpose of this article:

"Debt" means bonds, notes, certificates of participation,
certificate transactions, capital leases, debentures, lease
purchases, mortgages, securitizations and all other forms of
securities and indebtedness obligations evidencing specific
amounts owed and payable on demand or on determinable dates.

"Debt impact report" means a report prepared by the division
which includes information pertaining to a proposed issuance of
debt by the state or its spending units.
“Division” means the Division of Debt Management.

“Moral obligation bond” means a debt obligation for which the state or a spending unit has made a nonbinding covenant to make up any deficiency in debt service.

“Net tax supported debt” means the amount of tax supported debt less any applicable refundings, defeasances, escrow accounts, reserve requirements and sinking funds.

“State” means the State of West Virginia.

“Spending unit” means a state department, agency, board, commission, committee, authority or other entity of the state with the power to issue and secure debt. Spending unit does not include local political subdivisions.

“Tax-supported debt” means: (1) General obligation bonds of the state; (2) moral obligation bonds of the state or a spending unit; (3) capital leases, installment purchases, lease purchases, mortgages, certificates of participation and any other similar debt financing transaction extending beyond one year issued by the state or its spending units; and (4) any other debt issued by the state or a spending unit which is not self-supporting. Debt issued by the West Virginia housing development fund, economic development authority, hospital finance authority, parkway authority, public energy authority, solid waste management board and water development authority, with the exception of debt secured by lottery revenues or secured by a lease with the Secretary of Administration, is not tax-supported debt.


The Division of Debt Management shall perform the following functions and duties:
(1) Continuously evaluate the current and projected debt and debt service requirements of the State and its spending units.

(2) Evaluate cash flow projections relative to proposed and existing revenue bond issues.

(3) Issue a debt impact report if requested by the Governor, the President of the Senate or the Speaker of the House of Delegates. The Division may request any additional information needed to issue a debt impact report. A debt impact report shall in no way restrict the Governor, the Legislature or the spending unit.

(4) Act as liaison with the Legislature on all debt matters, including, but not limited to, new debt issues and the status of debt issued by the State and its spending units.

(5) Assist the State and its spending units regarding the issuance of debt if requested.

(6) Establish reporting requirements for the issuance of debt by the State and its spending units pursuant to the provisions of this article.

(7) Monitor continuing disclosure requirements and post-issuance compliance issues with federal and state tax and securities law, including, without limitation, arbitrage, rebate and remedial measures.

(8) Make and execute contracts and other instruments and pay the reasonable value of services or commodities rendered to the division pursuant to those contracts.

(9) Contract, cooperate or join with any one or more other governments or public agencies, with any political subdivision of the State, or with the United States, to perform any administrative service, activity or undertaking which the
contracting party is authorized by law to perform, charge for
providing services and expend any fees collected.

(10) Do all things necessary or convenient to effectuate the
intent of this article and to carry out its powers and functions.

§12-6A-6. Reporting.

(a) Within fifteen days following the end of each calendar
quarter, each state spending unit shall provide the division and
the Legislative Auditor, in the manner provided by this article
and in such form and detail as the State Treasurer may require,
a report including, but not limited to, the name of the state
spending unit, the amounts and types of debt incurred during the
calendar quarter and outstanding at the end of the calendar
quarter, the cost and expenses of incurring the debt, the maturity
date of each debt, the terms and conditions of the debt, the
current debt service on the debt, the interest rate on the debt, the
source of the proceeds utilized for repayment of the debt, the
amounts of repayment during the calendar quarter, the
repayment schedule and the security for the debt. A state
spending unit having no outstanding debt shall not be required
to provide the quarterly report but shall file an annual report, on
forms established by the Division of Debt Management:
Provided, That the state spending unit shall immediately notify
the Division of Debt Management of any change in the spending
unit’s outstanding debt or financial condition.

(b) Not less than thirty days prior to a proposed offering of
debt by the state or a state spending unit, written notice of the
proposed offering and the terms thereof shall be given to the
Division by the state spending unit in the form as the Division
can require.

(c) Within thirty days after closing on an offering, the
responsible spending unit shall report to the division the
information pertaining to the offering required by the division in the form the division may require.

(d) On or before January 31 and July 31 of each year, the division shall prepare and issue a report of all debt of the State and its spending units and of all proposed debt issuances of which the division has received notice and shall furnish a copy of the report to the Governor, the President of the Senate, the Speaker of the House of Delegates, the members of the Joint Committee on Government and Finance, the Legislative Auditor and upon request to any other legislative committee and any member of the Legislature. The report shall be kept available for inspection by any citizen of the state. The division shall also prepare updated reports of all debt of the state and its spending units as of March 31 and September 30 each year, which shall be available for inspection at the office of the state Treasurer within thirty days of the end of the respective calendar quarter.

(e) On or before January 15 each year, the division shall report to the Governor and to the Legislature on the capacity of the state to issue additional debt. In preparing its annual review and estimate, the division shall, at a minimum, consider:

(1) The amount of net tax supported debt outstanding and debt authorized but not issued during the current and next fiscal year and annually for the following ten fiscal years;

(2) Debt service requirements during the current and next fiscal year and annually for the following ten fiscal years based upon existing outstanding debt, previously authorized but unissued debt and projected bond authorizations;

(3) Any information available from the budget office of the department of revenue in connection with projected revenues and anticipated capital expenditures projected for at least the next five fiscal years;
(4) The amount of debt the state and its spending units may prudently issue;
(5) What is needed to keep West Virginia within an average to low range of nationally recognized debt limits;
(6) The debt ratios rating agencies and analysts use; and
(7) The effect of authorizations of new tax supported debt on each of the considerations in this subsection.


The Treasurer shall propose rules for legislative approval relating to the reporting requirements and duties under this article in accordance with the provisions of article three, chapter twenty-nine-a of this code.

ARTICLE 6C. WEST VIRGINIA BOARD OF TREASURY INVESTMENTS.

§12-6C-7. Management and control of fund; officers; staff; fiduciary or surety bonds for directors; liability of directors.

(a) The management and control of the Consolidated Fund is vested solely in the Board in accordance with the provisions of this article.

(b) The State Treasurer is the chairperson of the Board. The Board shall elect a vice chairperson. Annually, the directors shall elect a secretary to keep a record of the proceedings of the Board and provide any other duties required by the board. The board may elect a person who is not a member of the board as secretary.

(c) The board may use the staff of the State Treasurer, employ personnel and contract with any person or entity needed to perform the tasks related to operating the Consolidated Fund.
(d) The Board shall retain an internal auditor to report directly to the Board and shall fix his or her compensation. As a minimum qualification, the internal auditor shall be a certified public accountant with at least three years’ experience as an auditor. The internal auditor shall develop an internal audit plan, with board approval, for the testing of procedures, internal controls and the security of transactions.

(e) The Board may retain one employee with a chartered financial analyst designation or an employee who is a certified treasury manager.

(f) Each director shall give a separate fiduciary or surety bond from a surety company qualified to do business within this State in a penalty amount of one million dollars for the faithful performance of his or her duties as a director. The Board shall purchase a blanket bond for the faithful performance of its duties in the amount set by the board of at least $10 million. The amount of the blanket bond is in addition to the $1 million individual bond required of each director by the provisions of this section. The Board may require a fiduciary or surety bond from a surety company qualified to do business in this state for any person who has charge of, or access to, any securities, funds or other moneys held by the board and the amount of the fiduciary or surety bond are fixed by the board. The premiums payable on all fiduciary or surety bonds are expenses of the board.

(g) The directors, employees of the Board and employees of the State Treasurer performing work for or on behalf of the Board are not liable personally, either jointly or severally, for any debt or obligation created by the Board: Provided, That the directors and employees of the Board are liable for acts of misfeasance or gross negligence.

(h) The board is exempt from the provisions of article three, chapter five-a, and sections seven and eleven, article three,
chapter twelve of this code. However, the board is subject to the
purchasing policies and procedures of the State Treasurer’s
Office.

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

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

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

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

(1) Preservation of capital;
(2) Risk tolerance;
(3) Credit standards;
(4) Diversification;
(5) Rate of return;
(6) Stability and turnover;
(7) Liquidity;
(8) Reasonable costs and fees;
22 (9) Permissible investments;
23 (10) Maturity ranges;
24 (11) Internal controls;
25 (12) Safekeeping and custody;
26 (13) Valuation methodologies;
27 (14) Calculation of earnings and yields;
28 (15) Performance benchmarks and evaluation; and
29 (16) Reporting.

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

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

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

42 (i) United States Treasury;
43 (ii) Export-Import Bank of the United States;
44 (iii) Farmers Home Administration;
45 (iv) Federal Farm Credit Banks;
(v) Federal Home Loan Banks;
(vi) Federal Home Loan Mortgage Corporation;
(vii) Federal Land Banks;
(viii) Government National Mortgage Association;
(ix) Merchant Marine bonds; and
(x) Tennessee Valley Authority Obligations;
(2) Obligations of the Federal National Mortgage Association;
(3) Commercial paper with one of the two highest commercial paper credit ratings by a nationally recognized statistical rating organization;
(4) Corporate debt rated in one of the six highest rating categories by a nationally recognized statistical rating organization;
(5) Corporate debt rated investment grade by a nationally recognized statistical rating organization for pools with a weighted average maturity or duration of at least three hundred sixty-six days;
(6) State and local government, or any instrumentality or agency thereof, securities with one of the three highest ratings by a nationally recognized statistical rating organization;
(7) Repurchase agreements involving the purchase of United States Treasury securities and repurchase agreements fully collateralized by obligations of the United States government or its agencies or instrumentalities;
(8) Reverse repurchase agreements involving the purchase of United States Treasury securities and reverse repurchase
agreements fully collateralized by obligations of the United States government or its agencies or instrumentalities;

(9) Asset-backed securities rated in the highest category by a nationally recognized statistical rating organization;

(10) Certificates of deposit;

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

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

(f) In addition to the restrictions and conditions contained in this section:

(1) At no time shall more than seventy-five percent of the Consolidated Fund be invested in any bond, note, debenture, commercial paper or other evidence of indebtedness of any private corporation or association;

(2) At no time shall more than five percent of the Consolidated Fund be invested in securities issued by a single private corporation or association; and

(3) At no time shall less than fifteen percent of the Consolidated Fund be invested in any direct obligation of or obligation guaranteed as to the payment of both principal and interest by the United States of America.

(g) Securities purchased in compliance with this article that become noncompliant may be retained upon recommendation of the investment manager of the security and the board investment consultant.
CHAPTER 33. INSURANCE

ARTICLE 3. LICENSING, FEES, AND TAXATION OF INSURANCE.

§33-3-14d. Additional fire and casualty insurance premium tax; allocation of proceeds; effective date.

(a) (1) For the purpose of providing additional revenue for municipal policemen's and firemen's pension and relief funds and the Teachers Retirement System Reserve Fund and for volunteer and part-volunteer fire companies and departments, there is hereby levied and imposed an additional premium tax equal to one percent of taxable premiums for fire insurance and casualty insurance policies. For purposes of this section, casualty insurance does not include insurance on the life of a debtor pursuant to or in connection with a specific loan or other credit transaction or insurance on a debtor to provide indemnity for payments becoming due on a specific loan or other credit transaction while the debtor is disabled as defined in the policy.

(2) All moneys collected from this additional tax shall be received by the commissioner and paid by him or her into a special account in the State Treasury, designated the Municipal Pensions and Protection Fund. Provided, That on or after January 1, 2010, the commissioner shall pay ten percent of the amount collected to the Teachers Retirement System Reserve Fund created in section eighteen, article seven-a, chapter eighteen of this code, twenty-five percent of the amount collected to the Fire Protection Fund created in section thirty-three of this article for allocation by the Treasurer to volunteer and part-volunteer fire companies and departments and sixty-five percent of the amount collected to the Municipal Pensions and Protection Fund: Provided, however, That upon notification by the Municipal Pensions Oversight Board pursuant to the provisions of section eighteen-b, article twenty-two,
chapter eight of this code, on or after January 1, 2010, or as soon
thereafter as the Municipal Pensions Oversight Board is prepared
to receive the funds, sixty-five percent of the amount collected
by the commissioner shall be deposited in the Municipal
Pensions Security Fund created in section eighteen-b, article
twenty-two, chapter eight of this code. The net proceeds of this
tax after appropriation thereof by the Legislature is distributed
in accordance with the provisions of this section, except for
distribution from proceeds pursuant to subsection (d), section
eighteen-a, article twenty-two, chapter eight of this code.

(b) (1) Before the August 1 of each year, the treasurer of
each municipality in which a municipal policemen's or firemen's
pension and relief fund is established shall report to the State
Treasurer the average monthly number of members who worked
at least one hundred hours per month and the average monthly
number of retired members of municipal policemen's or
firemen's pension and relief fund or the Municipal Police
Officers and Firefighters Retirement System during the
preceding fiscal year: Provided, That beginning in the year 2010
and continuing thereafter, the report shall be made to the
oversight board created in section eighteen-a, article twenty-two,
chapter eight of this code. These reports received by the
oversight board shall be provided annually to the State Treasurer
by September 1.

(2) Before September 1 of each calendar year, the State
Treasurer, or the Municipal Pensions Oversight Board, once in
operation, shall allocate and authorize for distribution the
revenues in the Municipal Pensions and Protection Fund which
were collected during the preceding calendar year for the
purposes set forth in this section. Before September 1 of each
calendar year and after the Municipal Pensions Oversight Board
has notified the Treasurer and commissioner pursuant to section
eighteen-b, article twenty-two, chapter eight of this code, the
Municipal Pensions Oversight Board shall allocate and authorize for distribution the revenues in the Municipal Pensions Security Fund which were collected during the preceding calendar year for the purposes set forth in this section. In any year the actuarial report required by section twenty, article twenty-two, chapter eight of this code indicates no actuarial deficiency in the municipal policemen's or firemen's pension and relief fund, no revenues may be allocated from the Municipal Pensions and Protection Fund or the Municipal Pensions Security Fund to that fund. The revenues from the Municipal Pensions and Protection Fund shall then be allocated to all other pension and relief funds which have an actuarial deficiency.

(3) The moneys, and the interest earned thereon, in the Municipal Pensions and Protection Fund allocated to volunteer and part-volunteer fire companies and departments shall be allocated and distributed quarterly to the volunteer fire companies and departments. Before each distribution date, the State Fire Marshal shall report to the State Treasurer the names and addresses of all volunteer and part-volunteer fire companies and departments within the state which meet the eligibility requirements established in section eight-a, article fifteen, chapter eight of this code.

(c) (1) Each municipal pension and relief fund shall have allocated and authorized for distribution a pro rata share of the revenues allocated to municipal policemen's and firemen's pension and relief funds based on the corresponding municipality's average monthly number of police officers and firefighters who worked at least one hundred hours per month during the preceding fiscal year. On and after July 1, 1997, from the growth in any moneys collected pursuant to the tax imposed by this section and interest thereon there shall be allocated and authorized for distribution to each municipal pension and relief fund, a pro rata share of the revenues allocated to municipal
policemen's and firemen's pension and relief funds based on the corresponding municipality's average number of police officers and firefighters who worked at least one hundred hours per month and average monthly number of retired police officers and firefighters. For the purposes of this subsection, the growth in moneys collected from the tax collected pursuant to this section is determined by subtracting the amount of the tax collected during the fiscal year ending June 30, 1996, from the tax collected during the fiscal year for which the allocation is being made and interest thereon. All moneys received by municipal pension and relief funds under this section may be expended only for those purposes described in sections sixteen through twenty-eight, inclusive, article twenty-two, chapter eight of this code.

(2) Each volunteer fire company or department shall receive an equal share of the revenues allocated for volunteer and part-volunteer fire companies and departments.

(3) In addition to the share allocated and distributed in accordance with subdivision (1) of this subsection, each municipal fire department composed of full-time paid members and volunteers and part-volunteer fire companies and departments shall receive a share equal to the share distributed to volunteer fire companies under subdivision (2) of this subsection reduced by an amount equal to the share multiplied by the ratio of the number of full-time paid fire department members who are also members of a municipal firemen's pension and relief fund or the Municipal Police Officers and Firefighters Retirement System to the total number of members of the fire department.

(d) The allocation and distribution of revenues provided for in this section are subject to the provisions of section twenty,
(e) Based upon the findings of an audit by the Treasurer, the Legislature hereby finds and declares that during the period of 1982 through April 27, 2012 allocations from the Municipal Pensions and Protection Fund were miscalculated and errors were made in amounts transferred, resulting in overpayments and underpayments to the relief and pension funds and to the Teachers Retirement System, and that the relief and pension funds and the Teachers Retirement System were not at fault for any of the overpayments and underpayments. The Legislature hereby further finds and declares that any attempt by the Municipal Pension Oversight Board or other entity to recover any of the overpayments would be unjust and create economic hardship for the entities that received overpayments. No entity, including, without limitation, the Municipal Pension Oversight Board, may seek to recover from a relief or pension fund, the Teachers Retirement System or the state any overpayments received from the Municipal Pensions and Protection Fund and the overpayments are not subject to recovery, offset or litigation.

Pursuant to the audit by the Treasurer, the amount of $3,631,846.55 is determined owed to specific relief and pension funds through the period of April 27, 2012. The Treasurer is hereby authorized to transfer the amount of $3,631,846.55 from the Unclaimed Property Trust Fund to the Municipal Pensions and Protection Fund, which is hereby reopened for the sole purpose of the transfer and remittances pursuant to this subsection (e), and to use the amount transferred to remit the amounts due to the pension and relief funds. The payment of the $3,631,846.55 to the pension and relief funds is complete satisfaction of any amounts due, and no entity, including, without limitation, the Municipal Pension Oversight Board and any pension or relief fund, may seek to recover any further amounts.
§36-8-13. Deposit of funds.

(a) The administrator shall record the name and last known address of each person appearing from the holders reports to be entitled to the property and the name and last known address of each insured person or annuitant and beneficiary and with respect to each policy or annuity listed in the report of an insurance company, its number, the name of the company and the amount due.

(b) The Unclaimed Property Fund is continued. The administrator shall deposit all funds received pursuant to this article in the Unclaimed Property Fund, including the proceeds from the sale of abandoned property under section twelve of this article. In addition to paying claims of unclaimed property duly allowed, the administrator may deduct the following expenses from the Unclaimed Property Fund:

(1) Expenses of the sale of abandoned property;

(2) Expenses incurred in returning the property to owners, including without limitation the costs of mailing and publication to locate owners;

(3) Reasonable service charge; and

(4) Expenses incurred in examining records of holders of property and in collecting the property from those holders.

(c) The Unclaimed Property Trust Fund is continued within the State Treasury. The administrator may invest the Unclaimed Property Trust Fund with the West Virginia Board of Treasury Investments and all earnings shall accrue to the fund and are...
available for expenditure in accordance with this article. After
deducting the expenses specified in subsection (b) of this section
and maintaining a sum of money from which to pay claims duly
allowed, the administrator shall transfer the remaining moneys
in the Unclaimed Property Fund to the Unclaimed Property Trust
Fund.

(d)(1) On July 1, 2009, the unclaimed property administrator
shall transfer the amount of $8 million from the Unclaimed
Property Trust Fund to the Prepaid Tuition Trust Escrow Fund.

(2) On or before December 15 of each year, notwithstanding
any provision of this code to the contrary, the administrator shall
transfer the sum of $1 million from the Unclaimed Property
Trust Fund to the Prepaid Tuition Trust Escrow Fund, until the
actuary certifies there are sufficient funds to pay out all
contracts.

(e) On or before June 1, 2007, the unclaimed property
administrator shall transfer the amount of $2 million from the
Unclaimed Property Trust Fund to the Deferred Compensation
Matching Fund for operation of the deferred compensation
matching program for state employees. On or before June 1,
2008, the unclaimed property administrator shall transfer the
amount of $1 million from the Unclaimed Property Trust Fund
to the Deferred Compensation Matching Fund for operation of
the matching program.

(f) On or before June 1, 2013, the unclaimed property
administrator shall transfer the amount of $3,631,846.55 from
the Unclaimed Property Trust Fund to the Municipal Pensions
and Protection Fund for the purpose of satisfying any amounts
due as of April 27, 2012 to policemen’s and firemen’s pension
and relief funds in accordance with section fourteen-d, article
three, chapter thirty-three of this Code.
(g) After transferring any money required by subsections (d) through (f) of this section, the administrator shall transfer moneys remaining in the Unclaimed Property Trust Fund to the General Revenue Fund.

CHAPTER 203

(Com Sub. for S. B. 426 - By Senator Snyder)

[Passed April 13, 2013; in effect ninety days from passage.]
[Approved by the Governor on May 2, 2013.]
statements or other records in secured transactions; increasing fees for responding for requests for information related to secured transactions; and requiring that the increase in fees be deposited in the existing Fund for Civil Legal Services for Low Income Persons.

Be it enacted by the Legislature of West Virginia:

That §46-4A-108 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §46-9-510, §46-9-516, §46-9-521 and §46-9-525 of said code, be amended and reenacted; and that said code be amended by adding thereto a new section, designated §46-9-516a, all to read as follows:

ARTICLE 4A. FUNDS TRANSFERS.


(a) Except as provided in subsection (b) of this section, this article does not apply to a funds transfer any part of which is governed by the Electronic Fund Transfer Act of 1978 (Title XX, Public Law 95-630, 92 Stat. 3728, 15 U. S. C.§1693, et seq.) as amended from time to time.

(b) This article applies to a funds transfer that is a remittance transfer as defined in the Electronic Fund Transfer Act (15 U. S. C.§1693o-1) as amended from time to time, unless the remittance transfer is an electronic fund transfer as defined in the Electronic Fund Transfer Act (15 U. S. C.§1693a) as amended from time to time.

(c) In a funds transfer to which this article applies, in the event of an inconsistency between an applicable provision of this article and an applicable provision of the Electronic Fund Transfer Act, the provision of the Electronic Fund Transfer Act governs to the extent of the inconsistency.
ARTICLE 9. SECURED TRANSACTIONS; SALES OF ACCOUNTS AND CHATEL PAPER.

§46-9-510. Effectiveness of filed record.

(a) Filed record effective if authorized. — A filed record is effective only to the extent that it was filed by a person that may file it under section 9-509.

(b) Authorization by one secured party of record. — A record authorized by one secured party of record does not affect the financing statement with respect to another secured party of record.

(c) Continuation statement not timely filed. — A continuation statement that is not filed within the six-month period prescribed by section 9-515(d) is ineffective.

(d) A filed record ceases to be effective if the filing office terminates the record pursuant to section 9-516(a).

§46-9-516. What constitutes filing; effectiveness of filing.

(a) What constitutes filing. — Except as otherwise provided in subsection (b) of this section, communication of a record to a filing office and tender of the filing fee or acceptance of the record by the filing office constitutes filing.

(b) Refusal to accept record; filing does not occur. — Filing does not occur with respect to a record that a filing office refuses to accept because:

(1) The record is not communicated by a method or medium of communication authorized by the filing office;

(2) An amount equal to or greater than the applicable filing fee is not tendered;

(3) The filing office is unable to index the record because:

(A) In the case of an initial financing statement, the record does not provide a name for the debtor;
(B) In the case of an amendment or information statement, the record:

(i) Does not identify the initial financing statement as required by 9-512 or 9-518, as applicable;

(ii) Identifies an initial financing statement whose effectiveness has lapsed under section 9-515; or

(iii) Identifies an initial financing statement which was terminated pursuant to section 9-516(a);

(C) In the case of an initial financing statement that provides the name of a debtor identified as an individual or an amendment that provides a name of a debtor identified as an individual which was not previously provided in the financing statement to which the record relates, the record does not identify the debtor's surname;

(D) In the case of a record filed or recorded in the filing office described in section 9-501(a)(1), the record does not provide a sufficient description of the real property to which it relates; or

(E) In the case of a record submitted to the filing office described in section 9-501(a)(1), the filing office has reason to believe, from information contained in the record or from the person that communicated the record to the office, that:

(i) If the record indicates that the debtor is a transmitting utility, the debtor does not meet the definition of a transmitting utility as described in section 9-102(a)(81);

(ii) If the record indicates that the transaction relating to the record is a manufactured home transaction, the transaction does not meet the definition of a manufactured home transaction as described in section 9-102(a)(54); or

(iii) If the record indicates that the transaction relating to the record is a public finance transaction, the transaction does not
(4) In the case of an initial financing statement or an amendment, if the filing office believes in good faith that the record was communicated to the filing office in violation of section 9-516a;

(5) In the case of an initial financing statement or an amendment that adds a secured party of record, the record does not provide a name and mailing address for the secured party of record;

(6) In the case of an initial financing statement or an amendment that provides a name of a debtor which was not previously provided in the financing statement to which the amendment relates, the record does not:

(A) Provide a mailing address for the debtor;

(B) Indicate whether the name provided as the name of the debtor is the name of an individual or an organization;

(7) In the case of an assignment reflected in an initial financing statement under section 9-514(a) or an amendment filed under section 9-514(b), the record does not provide a name and mailing address for the assignee; or

(8) In the case of a continuation statement, the record is not filed within the six-month period prescribed by section 9-515(d).

(c) Rules applicable to subsection (b). — For purposes of subsection (b):

(1) A record does not provide information if the filing office is unable to read or decipher the information; and

(2) A record that does not indicate that it is an amendment or identify an initial financing statement to which it relates, as required by section 9-512, 9-514 or 9-518, is an initial financing statement.
(d) Refusal to accept record; record effective as filed record.

- A record that is communicated to the filing office with tender of the filing fee, but which the filing office refuses to accept for a reason other than one set forth in subsection (b) of this section, is effective as a filed record except as against a purchaser of the collateral which gives value in reasonable reliance upon the absence of the record from the files.

§46-9-516a. Filing fraudulent records; civil and criminal penalties; administrative proceedings; immunity from liability.

(a) No person may cause to be communicated to the filing office for filing a false record the person knows or reasonably should know:

(1) Is not authorized or permitted under sections 9-509, 9-708 or 9-808; and

(2) Is filed with the intent to harass or defraud the person identified as debtor in the record or any other person.

(b) Any person who violates subsection (a) of this section shall, for a first offense, be guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $100 nor more than $1000 or, in the discretion of the court, be confined in jail not more than twelve months, or both fined and confined. Any person who violates subsection (a) of this section shall, for a second or subsequent offense, be guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility not less than one nor more than five years.

(c) Any person who violates subsection (a) of this section is liable in a civil action to each injured person for:

(1) The greater of the actual damages caused by the violation or up to $10,000 in lieu of actual damages;

(2) Reasonable attorney fees;
(3) Court costs and other related expenses of bringing an
action including reasonable investigative expenses; and

(4) In the discretion of the court, punitive damages in an
amount determined by the court or jury.

(d) A person identified as a debtor in a filed record the
person believes was caused to be communicated to the filing
office in violation of subsection (a) of this section may, under
penalty of perjury, file with the Secretary of State an affidavit to
that effect. The Secretary of State shall adopt and make available
a form affidavit for use under this section.

(e) Upon receipt of an affidavit filed under this section, or
upon administrative action by the Secretary of State, the
Secretary of State shall communicate to the secured party of
record on the record to which the affidavit or administrative
action relates and to the person who communicated the record to
the filing office, if different and known to the office, a request
for additional documentation supporting the effectiveness of the
record. The Secretary of State shall review all such
documentation received within thirty days after the first request
for additional documentation is sent if the Secretary of State has
a reasonable basis for concluding that the record was
communicated to the filing office in violation of subsection (a)
of this section.

The Secretary of State may initiate an administrative action
under this subsection with regard to a filed record if the
Secretary of State has reason to believe, from information
contained in the record or obtained from the person who
communicated the record to the filing office, that the record was
communicated to the filing office in violation of subsection (a)
of this section. The Secretary of State may give heightened
scrutiny to a record that indicates the debtor is a transmitting
utility or that indicates the transaction to which the record relates
is a manufactured home transaction or a public finance transaction.

(f) The Secretary of State may not charge a fee to file an affidavit under this section and may not return a fee paid for filing a record terminated under this section.

(g) The Secretary of State shall promptly communicate to the secured party of record a notice of the termination of a record under subsection (e) of this section. A secured party of record who believes in good faith that the record was not communicated to the filing office in violation of subsection (a) of this section may file an action to require that the record be reinstated by the filing office. A person who communicated a record to the filing office that the filing office rejected in reliance on section 9-516(b)(4), who believes in good faith that the record was not communicated to the filing office in violation of section 9-516(b)(4), may file an action to require that the record be accepted by the filing office. The jurisdiction for the action is the circuit court of Kanawha County.

(h) If the court determines that a record terminated under this section or rejected in reliance on section 9-516(b)(4) should be reinstated or accepted, the court shall provide a copy of an order to that effect to the Secretary of State. On receipt of an order reinstating a terminated record, the Secretary of State shall refile the record along with a notice indicating that the record was refiled pursuant to this section and its initial filing date. On receipt of an order requiring that a rejected record be accepted, the Secretary of State shall promptly file the record along with a notice indicating that the record was filed pursuant to this section and the date on which it was communicated for filing. A rejected record that is filed pursuant to an order of a court shall have the effect described in section 9-516(d) for a record the filing office refuses to accept for a reason other than one set forth in section 9-516(b).
(i) A terminated record that is refiled under subsection (h) of this section is effective as a filed record from the initial filing date. If the period of effectiveness of a refiled record would have lapsed during the period of termination, the secured party may file a continuation statement within thirty days after the record is refiled and the continuation statement has the same effect as if it had been filed during the six-month period described in section 9-515(d). A refiled record is considered never to have been ineffective against all persons and for all purposes except that it is not effective as against a purchaser of the collateral that gave value in reasonable reliance on the absence of the record from the files.

(j) Neither the filing office nor any of its employees incur liability for the termination or failure to accept a record for filing in the lawful performance of the duties of the office or employee.

(k) This section does not apply to a record communicated to the filing office by a regulated financial institution or by a representative of a regulated financial institution, except that the Secretary of State may request from the secured party of record on the record or from the person that communicated the record to the filing office, if different and known to the office, additional documentation supporting that the record was communicated to the filing office by a regulated financial institution or by a representative of a regulated financial institution. For the purposes of this section the term "regulated financial institution" means a financial institution subject to regulatory oversight or examination by a state or federal agency and includes banks, savings banks, savings associations, building and loan associations, credit unions, consumer finance companies, industrial banks, industrial loan companies, investment funds, installment sellers, mortgage servicers, sales finance companies and leasing companies.
(l) If a record was communicated to the filing office for filing before the effective date of this section, and its communication would have constituted a violation of subsection (a) of this section if it had occurred on or after the effective date of this section:

(i) Subsections (b) and (c) are not applicable; and

(ii) The remaining subsections of this section are applicable.

§46-9-521. Written financing statement and amendment thereto.

(a) Initial financing statement. — A filing office that accepts written records may not refuse to accept a written initial financing statement except for a reason set forth in section 9-516(b): Provided, That the written record must be on the most recent revision of the appropriate form as approved by the International Association of Commercial Administrators.

(b) Amended financing statement. — A filing office that accepts written records may not refuse to accept an amended written record except for a reason set forth in section 9-516(b): Provided, That the written record must be on the most recent revision of the appropriate form as approved by the International Association of Commercial Administrators.

§46-9-525. Fees.

(a) Initial financing statement or other record: general rule. — Except as otherwise provided in subsection (e) of this section, the fee for filing and indexing a record under this part, other than an initial financing statement of the kind described in subsection (b) of this section, is the amount specified in subsection (c) of this section, if applicable, plus:

(1) $20 if the record is communicated in writing and consists of one or two pages; and
(2) $20 if the record is communicated in writing and consists of more than two pages; and

(3) $20 if the record is communicated by another medium authorized by filing-office rule.

(b) Initial financing statement: Public-finance and manufactured housing transactions. -- Except as otherwise provided in subsection (e) of this section, the fee for filing and indexing an initial financing statement of the following kind is the amount specified in subsection (c) of this section, if applicable, plus:

(1) $20 if the financing statement indicates that it is filed in connection with a public-finance transaction;

(2) $20 if the financing statement indicates that it is filed in connection with a manufactured-home transaction.

(c) Number of names. — The number of names required to be indexed does not affect the amount of the fee in subsections (a) and (b) of this section.

(d) Response to information request. — The fee for responding to a request for information from the filing office, including for issuing a certificate showing whether there is on file any financing statement naming a particular debtor, is:

(1) $10 if the request is communicated in writing;

(2) $10 if the request is communicated by another medium authorized by filing-office rule; and

(3) $1 per page for each active lien.

(e) Record of mortgage. — This section does not require a fee with respect to a record of a mortgage which is effective as a financing statement filed as a fixture filing or as a financing statement covering as-extracted collateral or timber to be cut
under section 9-502(c). However, the recording and satisfaction fees that otherwise would be applicable to the record of the mortgage apply.

(f) Deposit of funds. — All fees and moneys collected by the Secretary of State pursuant to the provisions of this article shall be deposited by the Secretary of State as follows: One-half shall be deposited in the special revenue account created by section 59-1-59(c)(4)(B), to provide civil legal services for low income persons, one-fourth shall be deposited in the state fund, general revenue, and one-fourth shall be deposited in the service fees and collections account established by section 59-1-2 for the operation of the office of the Secretary of State. Any balance remaining on June 30, 2001, in the existing special revenue account entitled "uniform commercial code" as established by chapter two hundred four, acts of the Legislature, 1989 regular session, shall be transferred to the service fees and collections account established by section 59-1-2 for the operation of the office of the Secretary of State. The Secretary of State shall dedicate sufficient resources from that fund or other funds to provide the services required in this article, unless otherwise provided by appropriation or other action by the Legislature.

CHAPTER 204

(H. B. 2361 - By Delegates Longstreth and Iaquinta)

[Passed April 9, 2013; in effect ninety days from passage.]
[Approved by the Governor on April 22, 2013.]

AN ACT to amend and reenact §9A-4-2 of the Code of West Virginia, 1931, as amended, relating to including persons who served honorably in the National Guard and Reserves or who were discharged because of a service connected disability in the
Be it enacted by the Legislature of West Virginia:

That §9A-4-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 4. VETERANS EMPLOYMENT TRAINING PRIORITY.

§9A-4-2. Definitions.

(a) "Eligible veteran" means a person who:

(1) Served on active duty and was discharged or released from active duty with an honorable discharge or because of a service connected disability;

(2) As a member of a reserve component under an order to active duty, served on active duty during a period of war or in a campaign or expedition for which a campaign badge or ribbon is authorized and was discharged or released from duty with an honorable discharge; or

(3) Served as a member of a National Guard or Reserve component and completed his or her military obligation and received an honorable discharge from the National Guard or Reserve component or was discharged from the National Guard or Reserve component because of a service connected disability.

(b) "Priority of service" means the right to priority in any employment or training program offered citizens of West Virginia which is funded, in whole or in part, through federal or state moneys.

(c) "Reserve component" means any branch of the military, including any military defense forces.
(d) "Training program" means a program that provides training leading to qualification for employment, or improved skills, or both, funded, in whole or in part, through the workforce investment act or another federal or state act administered through the state and having as its primary purpose workforce development.

(e) "Training provider" means any private or public entity which has been certified by competent authority to provide training funded by federal or state funds appropriated in the budget under the jobs training partnership act or another federal or state act having as its primary purpose workforce development.

CHAPTER 205


[Passed April 13, 2013; in effect ninety days from passage.]
[Approved by the Governor on April 29, 2013.]
selenium standard to EPA administrator; and directing secretary to consult with and solicit research and data from certain groups in developing selenium standard.

Be it enacted by the Legislature of West Virginia:

That §22-11-6 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 11. WATER POLLUTION CONTROL ACT.

§22-11-6. Requirement to comply with standards of water quality and effluent limitations.

1 All persons affected by rules establishing water quality standards and effluent limitations shall promptly comply therewith: Provided, That:

4 (1) Where necessary and proper, the secretary may specify a reasonable time for persons not complying with such standards and limitations to comply therewith, and upon the expiration of any such period of time, the secretary shall revoke or modify any permit previously issued which authorized the discharge of treated or untreated sewage, industrial wastes or other wastes into the waters of this state which result in reduction of the quality of such waters below the standards and limitations established therefor by rules of the board or secretary;

13 (2) Notwithstanding any rule or permit condition to the contrary, and except for any standard imposed under section 307 of the federal Water Pollution Control Act for a toxic pollutant injurious to human health, compliance with a permit issued pursuant to this article shall be deemed compliance for purposes of both this article and sections 301, 302, 306, 307 and 403 of the federal Water Pollution Control Act. Nothing in this section, however, prevents the secretary from modifying, reissuing or revoking a permit during its term. The provisions of this section
addressing compliance with a permit are intended to apply to all
existing and future discharges and permits without the need for
permit modifications. However, should any such modification be
necessary under the terms of this article, then the secretary shall
immediately commence the process to effect such modifications;
and

(3) The Legislature finds that there are concerns within West
Virginia regarding the applicability of the research underlying
the federal selenium criteria to a state such as West Virginia
which has high precipitation rates and free-flowing streams and
that the alleged environmental impacts that were documented in
applicable federal research have not been observed in West
Virginia and, further, that considerable research is required to
determine if selenium is having an impact on West Virginia
streams, to validate or determine the proper testing methods for
selenium and to better understand the chemical reactions related
to selenium mobilization in water.

(4) The Legislature finds that EPA has been contemplating
a revision to the federally recommended criteria for several years
but has yet to issue a revised standard.

(5) Because of the uncertainty regarding the applicability of
the current selenium standard, the secretary is hereby directed to
develop within six months of the effective date of this
subdivision an implementation plan for the current selenium
standard that will include, at minimum, the following:

(A) Implementing the criteria as a threshold standard;

(B) A monitoring plan that will include chemical speciation
of any selenium discharge;

(C) A fish population survey and monitoring plan that will
be implemented at a representative location to assess any
possible impacts from selenium discharges if the threshold
criteria are exceeded; and

(D) The results of the monitoring will be reported to the
department for use in the development of state-specific selenium
criteria.

(6) Within twenty-four months of the effective date of this
subdivision, the secretary shall propose rules for legislative
approval in accordance with the provisions of article three,
chapter twenty-nine of this code which establish a state-specific
selenium standard that protects aquatic life. Concurrent with
proposing a legislative rule, the secretary shall also submit the
proposed standard and supporting documentation to the
Administrator of the Environmental Protection Agency. The
secretary shall also consult with and consider research and data
from the West Virginia Water Research Institute at West
Virginia University, the regulated community, and other
appropriate groups in developing the state-specific selenium
standard.

CHAPTER 206

(S. B. 596 - By Senators Kessler, (Mr. President) and M. Hall)
[By Request of the Executive]

[Passed April 13, 2013; in effect from passage.]
[Approved by the Governor on May 2, 2013.]

AN ACT to amend and reenact §31-15A-17b of the Code of West
Virginia, 1931, as amended, relating to requiring the West Virginia
Infrastructure and Jobs Development Council to direct the Water
Development Authority to make grants to certain eligible certified
Chesapeake Bay and Greenbrier River watershed compliance projects.

Be it enacted by the Legislature of West Virginia:

That §31-15A-17b of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 15A. WEST VIRGINIA INFRASTRUCTURE AND JOBS DEVELOPMENT COUNCIL.

§31-15A-17b. Infrastructure lottery revenue bonds for watershed compliance projects.

(a) (1) The Chesapeake Bay has been identified as an impaired water body due to excessive nutrients entering the bay from various sources in six states, including wastewater facilities in West Virginia. To restore the Chesapeake Bay, the states have agreed to reduce their respective nutrient contributions to the Chesapeake Bay.

(2) The Greenbrier River Watershed in southeastern West Virginia which encompasses approximately 1,646 square miles, the majority of which lies within Pocahontas, Greenbrier, Monroe and Summers counties, has been identified as an impaired water body due to excessive levels of fecal coliform and phosphorus entering the watershed from various sources, including wastewater facilities in West Virginia. To restore the Greenbrier River Watershed, the state agrees to reduce the fecal coliform and phosphorus contributions to the Greenbrier River Watershed.

(b) Notwithstanding any other provision of this code to the contrary, the Water Development Authority may issue, in accordance with the provisions of section seventeen of this article, infrastructure lottery revenue bonds payable from the West Virginia Infrastructure Lottery Revenue Debt Service Fund created by section nine of this article and such other sources as may be legally pledged for such purposes other than the West
Virginia Infrastructure Revenue Debt Service Fund created by section seventeen of this article.

(c) The council shall direct the Water Development Authority to issue bonds in one or more series when it has approved Chesapeake Bay watershed compliance projects and Greenbrier River watershed compliance projects with an authorized permitted flow of four hundred thousand gallons per day or more. The proceeds of the bonds shall be used solely to pay costs of issuance, fund a debt service reserve account, capitalize interest, pay for security instruments necessary to market the bonds and to make grants to governmental instrumentalities of the state for the construction of approved Chesapeake Bay watershed compliance projects and Greenbrier River watershed compliance projects. To the extent funds are available in the West Virginia Infrastructure Lottery Revenue Debt Service Fund that are not needed for debt service, the council may direct the Water Development Authority to make grants to project sponsors for the design or construction of approved Chesapeake Bay watershed compliance projects and Greenbrier River watershed compliance projects: Provided, That the council shall direct the Water Development Authority to provide from moneys in the Lottery Revenue Debt Service Fund not needed to pay debt service in fiscal year 2013 a grant of $6 million to a Chesapeake Bay watershed compliance project which opened bids on December 28, 2011, and further provided that such Chesapeake Bay watershed compliance project shall receive no further grant funding under this section after receipt of the $6 million grant.

(d) No later than June 30, 2012, each publicly owned facility with an authorized permitted flow of four hundred thousand gallons per day or more that is subject to meeting Chesapeake Bay compliance standards or Greenbrier River watershed compliance standards shall submit to the council a ten-year projected capital funding plan for Chesapeake Bay watershed compliance projects or Greenbrier River watershed compliance,
projects, as the case may be, including a general project description, cost estimate and estimated or actual project start date and project completion date, if any. The council shall timely review the submitted capital funding plans and forward approved plans to the Water Development Authority for further processing and implementation pursuant to this article. If the council finds a plan to be incomplete, inadequate or otherwise problematic, it shall return the plan to the applicant with comment on the plan shortcomings. The applicant may then resubmit to council an amended capital funding plan for further consideration pursuant to the terms of this subsection.

(e) Upon approval, each proposed Chesapeake Bay watershed compliance project or Greenbrier River watershed compliance project, or portion of a larger project, which portion is dedicated to compliance with nutrient standards, or fecal coliform and phosphorus standards, established for the protection and restoration of the Chesapeake Bay or the Greenbrier River watershed, as the case may be, shall be eligible for grant funding by funds generated by the infrastructure lottery revenue bonds described in subsection (b) of this section. At the request of the applicant, the remaining percentage of project funding not otherwise funded by grant under the provisions of this article may be reviewed as a standard project funding application.

(f) No later than December 1, 2012, the Water Development Authority shall report to the Joint Committee on Government and Finance the total cost of Chesapeake Bay watershed compliance projects and the Greenbrier River watershed compliance projects and the proposed grant awards for each eligible project. From the proceeds of bonds issued under subsection (b) of this section, the council shall direct the Water Development Authority to make grants to eligible projects ready to proceed to construction and those grant awards shall be proportioned to an equal percentage of total eligible costs among all applicants for each eligible project as certified by the Water
Development Authority in its report to the Joint Committee on Government and Finance dated November 28, 2012: Provided, That the final project, and its financing, is consistent with the scope of the eligible project included in the council’s approval on December 5, 2012.

(g) Eligible projects that have obtained project financing prior to December 31, 2012, may apply to the council for funding under the provisions of this section. These applications shall be processed and considered as all other eligible projects, and a grant funding awarded shall, to the extent allowed by law, be dedicated to prepay all or a portion of debt previously incurred by governmental instrumentalities of the state for required Chesapeake Bay nutrient removal projects or Greenbrier River watershed fecal coliform and phosphorus removal projects, subject to the bond covenants and contractual obligations of the borrowing governmental entity. However, any private portion of funding provided by agreement between a political subdivision and one or more private entities, either by direct capital investment or debt service obligation, shall not be eligible for grant funding under the provisions of this article.

CHAPTER 207

(S. B. 470 - By Senators Miller, Williams, Stollings, Kessler, Mr. President and Beach)

[Passed April 13, 2013; in effect ninety days from passage.]
[Approved by the Governor on May 2, 2013.]

AN ACT to amend and reenact §60-8-3 of the Code of West Virginia, 1931, as amended, relating generally to permitting wineries and farm wineries to sell samples and wine at licensed fairs or festivals on Sunday mornings; and limiting samples to three ounces.
Be it enacted by the Legislature of West Virginia:

That §60-8-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 8. SALE OF WINES.

§60-8-3. Licenses; fees; general restrictions.

(a) No person may engage in business in the capacity of a winery, farm winery, supplier, distributor, retailer, private wine bed and breakfast, private wine restaurant, private wine spa or wine specialty shop without first obtaining a license from the commissioner, nor shall a person continue to engage in any activity after his or her license has expired, been suspended or revoked. No person may be licensed simultaneously as a distributor and a retailer. No person, except for a winery or farm winery, may be licensed simultaneously as a supplier and a retailer. No person may be licensed simultaneously as a supplier and a private wine bed and breakfast, private wine restaurant or a private wine spa. No person may be licensed simultaneously as a distributor and a private wine bed and breakfast, a private wine restaurant or a private wine spa. No person may be licensed simultaneously as a retailer and a private wine bed and breakfast, a private wine restaurant or a private wine spa.

(b) The commissioner shall collect an annual fee for licenses issued under this article, as follows:

(1) One hundred fifty dollars per year for a supplier's license;

(2) Twenty-five hundred dollars per year for a distributor's license and each separate warehouse or other facility from which a distributor sells, transfers or delivers wine shall be separately licensed and there shall be collected with respect to each location the annual license fee of $2,500 as herein provided;
(3) One hundred fifty dollars per year for a retailer’s license;

(4) Two hundred fifty dollars per year for a wine specialty shop license, in addition to any other licensing fees paid by a winery or retailer holding a license, except for the amount of the license fee and the restriction to sales of winery or farm winery wines, a winery or farm winery acting as a wine specialty shop retailer is subject to all other provisions of this article which are applicable to a wine specialty shop retailer as defined in section two of this article;

(5) One hundred fifty dollars per year for a wine tasting license;

(6) One hundred fifty dollars per year for a private wine bed and breakfast license, and each separate bed and breakfast from which a licensee sells wine shall be separately licensed and there shall be collected with respect to each location the annual license fee of $150 as herein provided;

(7) Two hundred fifty dollars per year for a private wine restaurant license, and each separate restaurant from which a licensee sells wine shall be separately licensed and there shall be collected with respect to each location the annual license fee of $250 as herein provided;

(8) One hundred fifty dollars per year for a private wine spa license and each separate private wine spa from which a licensee sells wine shall be separately licensed and there shall be collected with respect to each location the annual license fee of $150 as herein provided;

(9) One hundred fifty dollars per year for a wine sampling license issued for a wine specialty shop under subsection (n) of this section;

(10) No fee shall be charged for a special one-day license under subsection (p) of this section or for a heritage fair and festival license under subsection (q) of this section; and
One hundred fifty dollars per year for a direct shipper's license for a licensee who sells and ships only wine and $250 per year for a direct shipper's license who ships and sells wine, nonfortified dessert wine, port, sherry or Madeira wines.

Three hundred dollars per year for a multicapacity winery or farm winery license which shall enable the holder to operate as a retailer, wine specialty shop, supplier and direct shipper without obtaining an individual license for each capacity.

The license period shall begin on July 1 of each year and end on June 30 of the following year and if granted for a less period, the same shall be computed semiannually in proportion to the remainder of the fiscal year.

No retailer may be licensed as a private club as provided by article seven of this chapter, except as provided by subsection (k) of this section.

No retailer may be licensed as a Class A retail dealer in nonintoxicating beer as provided by article sixteen, chapter eleven of this code: Provided, That a delicatessen, a caterer or party supply store which is a grocery store as defined in section two of this article and which is licensed as a Class A retail dealer in nonintoxicating beer may be a retailer under this article: Provided, however, That any delicatessen, caterer or party supply store licensed in both capacities must maintain average monthly sales exclusive of sales of wine and nonintoxicating beer which exceed the average monthly sales of nonintoxicating beer.

A wine specialty shop under this article may also hold a wine tasting license authorizing the retailer to serve complimentary samples of wine in moderate quantities for tasting. Such wine specialty shop shall organize a wine taster’s club, which has at least fifty duly elected or approved...
dues-paying members in good standing. Such club shall meet on
the wine specialty shop's premises not more than one time per
week and shall either meet at a time when the premises are
closed to the general public, or shall meet in a separate
segregated facility on the premises to which the general public
is not admitted. Attendance at tastings shall be limited to duly
elected or approved dues-paying members and their guests.

(g) A retailer who has more than one place of retail business
shall obtain a license for each separate retail establishment. A
retailer's license may be issued only to the proprietor or owner
of a bona fide grocery store or wine specialty shop.

(h) The commissioner may issue a special license for the
retail sale of wine at any festival or fair which is endorsed or
sponsored by the governing body of a municipality or a county
commission. Such special license shall be issued for a term of no
longer than ten consecutive days and the fee therefor shall be
$250 regardless of the term of the license unless the applicant is
the manufacturer of said wine on a winery or a farm winery as
defined in section five-a, article one of this chapter, in which
event the fee shall be $50 if the event is held on the premises of
the winery or farm winery. The application for the license shall
contain information as the commissioner may reasonably require
and shall be submitted to the commissioner at least thirty days
prior to the first day when wine is to be sold at the festival or
fair. A winery or a farm winery licensed under this subsection
may exhibit, conduct tastings or sell samples, not to exceed a
reasonable serving of three ounces, and may sell wine samples
for consumption on the premises during the operation of a
festival or fair: Provided, That for licensed wineries or farm
wineries at a licensed festival or fair the tastings, samples and
off-premises sales shall occur under the hours of operation as
required in this article, except that on Sunday tastings, samples
and off-premises sales are unlawful between the hours of 2:00 a.
m. and 10:00 a. m. A special license issued other than to a
winery or a farm winery may be issued to a "wine club" as
defined herein below. The festival or fair committee or the
governing body shall designate a person to organize a club under
a name which includes the name of the festival or fair and the
words "wine club". The license shall be issued in the name of the
wine club. A licensee may not commence the sale of wine as
provided in this subsection until the wine club has at least fifty
dues-paying members who have been enrolled and to whom
membership cards have been issued. Thereafter, new members
may be enrolled and issued membership cards at any time during
the period for which the license is issued. A wine club licensed
under the provisions of this subsection may sell wine only to its
members, and in portions not to exceed eight ounces per serving.
The sales shall take place on premises or in an area cordoned or
segregated so as to be closed to the general public, and the
general public shall not be admitted to the premises or area. A
wine club licensee under the provisions of this subsection shall
be authorized to serve complimentary samples of wine in
moderate quantities for tasting.

A license issued under the provisions of this subsection and
the licensee holding the license shall be subject to all other
provisions of this article and the rules and orders of the
commissioner relating to the special license: Provided. That the
commissioner may by rule, regulation or order provide for
certain waivers or exceptions with respect to the provisions,
rules, regulations or orders as the circumstances of each festival
or fair may require, including, without limitation, the right to
revoke or suspend any license issued pursuant to this section
prior to any notice or hearing notwithstanding the provisions of
section twenty-seven and twenty-eight of this article: Provided,
however, That under no circumstances shall the provisions of
subsection (c) or (d), section twenty of this article be waived nor
shall any exception be granted with respect thereto.
A license issued under the provisions of this subsection and the licensee holding the license is not subject to the provisions of subsection (g) of this section.

(i) (A) The commissioner may issue a special license for the retail sale of wine in a professional baseball stadium. A license to sell wine granted pursuant to this subsection entitles the licensee to sell and serve wine, for consumption in a professional baseball stadium. For the purpose of this subsection, "professional baseball stadium" means a facility constructed primarily for the use of a major or minor league baseball franchisee affiliated with the National Association of Professional Baseball Leagues, Inc., or its successor, and used as a major or minor league baseball park. Any special license issued pursuant to this subsection shall be for a term beginning on the date of issuance and ending on the next following June 30, and its fee is $250 regardless of the length of the term of the license. The application for the special license shall contain information as the commissioner may reasonably require and must be submitted to the commissioner at least thirty days prior to the first day when wine is to be sold at the professional baseball stadium. The special license may be issued in the name of the baseball franchisee or the name of the primary food and beverage vendor under contract with the baseball franchisee. These sales must take place within the confines of the professional baseball stadium, provided that the exterior of the area where wine sales may occur are surrounded by a fence or other barrier prohibiting entry except upon the franchisee's express permission, and under the conditions and restrictions established by the franchisee, so that the wine sales area is closed to free and unrestricted entry by the general public.

(B) A license issued under this subsection and the licensee holding the license is subject to all other provisions of this article and the rules and orders of the commissioner relating to the special license: Provided, That the commissioner may by rule or
order grant certain waivers or exceptions to those rules or orders
as the circumstances of each professional baseball stadium may
require, including, without limitation, the right to revoke or
suspend any license issued pursuant to this section prior to any
notice or hearing notwithstanding sections twenty-seven and
twenty-eight of this article: Provided, however, That under no
circumstances may subsection (c) or (d), section twenty of this
article be waived nor shall any exception be granted concerning
those subsections.

(C) The commissioner has the authority to propose rules for
legislative approval in accordance with article three, chapter
twenty-nine-a of this code to implement this subsection.

(j) A license to sell wine granted to a private wine bed and
breakfast, private wine restaurant, private wine spa or a private
club under the provisions of this article entitles the operator to
sell and serve wine, for consumption on the premises of the
licensee, when the sale accompanies the serving of food or a
meal to its members and their guests in accordance with the
provisions of this article: Provided, That a licensed private wine
bed and breakfast, private wine restaurant, private wine spa or a
private club may permit a person over twenty-one years of age
to purchase wine, consume wine and recork or reseal, using a
tamper resistant cork or seal, up to two separate bottles of
unconsumed wine in conjunction with serving of food or a meal
to its members and their guests in accordance with the provisions
of this article and in accordance with regulations promulgated by
the commissioner for the purpose of consumption of said wine
off premises: Provided, however, That for this article, food or a
meal provided by the private licensee means that the total food
purchase, excluding beverage purchases, taxes, gratuity or other
fees is at least $15: Provided further, That a licensed private
wine restaurant or a private club may offer for sale for
consumption off the premises, sealed bottles of wine to its
customers provided that no more than one bottle is sold per each
person over twenty-one years of age, as verified by the private
wine restaurant or private club, for consumption off the
premises. Such licensees are authorized to keep and maintain on
their premises a supply of wine in quantities as may be
appropriate for the conduct of operations thereof. Any sale of
wine so made shall be subject to all restrictions set forth in
section twenty of this article. A private wine restaurant may also
be licensed as a Class A retail dealer in nonintoxicating beer as
provided by article sixteen, chapter eleven of this code.

(k) With respect to subsections (h), (i), (j), (o) and (p) of this
section, the commissioner shall promulgate legislative rules in
accordance with the provisions of chapter twenty-nine-a of this
code with regard to the form of the applications, the suitability
of both the applicant and location of the licensed premises and
other legislative rules deemed necessary to carry the provisions
of the subsections into effect.

(l) The commissioner shall promulgate legislative rules in
accordance with the provisions of chapter twenty-nine-a of this
code to allow restaurants to serve wine with meals, and to sell
wine by the bottle for off-premises consumption as provided in
subsection (j) of this section. Each restaurant so licensed shall be
charged an additional $100 per year fee.

(m) The commissioner shall establish guidelines to permit
wines to be sold in all stores licensed for retail sales.

(n) Wineries and farm wineries may advertise off premises
as provided in section seven, article twenty-two, chapter
seventeen of this code.

(o) A wine specialty shop under this article may also hold a
wine sampling license authorizing the wine specialty shop to
conduct special wine sampling events at a licensed wine
specialty shop location during regular hours of business. The
wine specialty shop may serve up to three complimentary samples of wine, consisting of no more than one ounce each, to any one consumer in one day. Persons serving the complimentary samples must be twenty-one years of age and an authorized representative of the licensed wine specialty shop, winery, farm winery or a representative of a distributor or registered supplier. Distributor and supplier representatives attending wine sampling events must be registered with the commissioner. No licensee, employee or representative may furnish, give or serve complimentary samples of wine to any person less than twenty-one years of age or to a person who is physically incapacitated due to the consumption of alcoholic liquor or the use of drugs. The wine specialty shop shall notify and secure permission from the commissioner for all wine sampling events one month prior to the event. Wine sampling events may not exceed six hours per calendar day. Licensees must purchase all wines used during these events from a licensed farm winery or a licensed distributor.

(p) The commissioner may issue special one-day licenses to duly organized, nonprofit corporations and associations allowing the sale and serving of wine when raising money for athletic, charitable, educational or religious purposes. The license application shall contain information as the commissioner may reasonably require and shall be submitted to the commissioner at least thirty days prior to the event. Wines used during these events may be donated by or purchased from a licensed retailer, a distributor or a farm winery. Under no circumstances may the provision of subsection (c), section twenty of this article be waived nor may any exception be granted with respect thereto.

(q) The commissioner may issue special licenses to heritage fairs and festivals allowing the sale, serving and sampling of wine from a licensed farm winery. The license application shall contain information required by the commissioner and shall be submitted to the commissioner at least thirty days prior to the
event. Wines used during these events may be donated by or purchased from a licensed farm winery. Under no circumstances may the provision of subsection (c), section twenty of this article be waived nor may any exception be granted with respect thereto. The commissioner shall propose rules for legislative approval in accordance with article three, chapter twenty-nine-a of this code to implement the provisions of this subsection.

CHAPTER 208

(Com. Sub. for H. B. 2046 - By Delegates Perry and P. Smith)

[Passed April 13, 2013; in effect ninety days from passage.]
{Approved by the Governor on April 29, 2013.}

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §15-3-10, relating to requiring wireless telecommunications carriers to provide location information to law-enforcement agencies in emergencies; permitting wireless communications carriers to establish protocols for disclosure of location information in an emergency; limiting liability of wireless communications carriers when acting in good faith; requiring wireless telecommunications carriers and resellers to provide emergency contact information; requiring the West Virginia State Police to maintain emergency contact database; and granting rule-making authority.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §15-3-10, to read as follows:
ARTICLE 3. COMMUNICATION SYSTEMS FOR POLICE PURPOSES.

§15-3-10. Disclosure of location information; emergency situations.

(a) Upon request of a law-enforcement agency, a wireless telecommunications carrier or internet account provider shall provide location information concerning the telecommunications device of the user to the requesting law-enforcement agency in order to respond to a call for emergency services or in an emergency situation that involves the risk of death or serious physical harm.

(b) Notwithstanding any other provision of law to the contrary, nothing in this section prohibits a wireless telecommunications carrier or internet account provider from establishing protocols to respond to a law enforcement agency request for location information in an emergency situation or a call for emergency services.

(c) No cause of action shall lie in any court against any wireless telecommunications carrier or internet account provider, its officers, employees, agents or other specified persons for providing location information while acting in good faith and in accordance with the provisions of this section.

(d) (1) All wireless telecommunications carriers or internet account providers registered to do business in the State of West Virginia or submitting to the jurisdiction thereof and all resellers of wireless telecommunications services shall submit their emergency contact information to the West Virginia State Police in order to facilitate requests from a law-enforcement agency for location information in accordance with this section. This contact information must be submitted annually by June 15th or immediately upon any change in contact information.

(2) The State Police shall maintain a database containing emergency contact information for all wireless telecommunications carriers or internet account providers
registered to do business in the State of West Virginia and shall make the information immediately available upon request to all public safety answer points in the state.

(e) The Superintendent of the West Virginia State Police shall prescribe and promulgate reasonable rules to fulfill the requirements of this section no later than July 1, 2014.

(f) This section shall be known and may be cited as the “Kelsey Smith Act”.

CHAPTER 209

(Com. Sub. for H. B. 3069 - By Delegates Miley, Manchin, Hunt, Poore, Sponaugle, Skinner, Ellem and Lane)

[Passed April 13, 2013; in effect ninety days from passage;]{\textit{Approved by the Governor on May 1, 2013.}]

AN ACT to amend and reenact §23-5-16 of the Code of West Virginia, 1931, as amended, relating to providing that attorney fees may be awarded for successful recovery of denied medical benefits in certain workers’ compensation cases; and providing fee limits.

Be it enacted by the Legislature of West Virginia:

That §23-5-16 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 5. REVIEW.

§23-5-16. Fees of attorney for claimant; unlawful charging or receiving of attorney fees.

1 (a) An attorney’s fee in excess of twenty percent of any award granted may not be charged or received by an attorney for
a claimant or dependent. In no case may the fee received by the attorney of the claimant or dependent be in excess of twenty percent of the benefits to be paid during a period of two hundred eight weeks. The interest on disability or dependent benefits as provided in this chapter may not be considered as part of the award in determining the attorney's fee. However, any contract entered into in excess of twenty percent of the benefits to be paid during a period of two hundred eight weeks, as herein provided, is unlawful and unenforceable as contrary to the public policy of this state and any fee charged or received by an attorney in violation thereof is an unlawful practice and renders the attorney subject to disciplinary action.

(b) On a final settlement an attorney may charge a fee not to exceed twenty percent of the total value of the medical and indemnity benefits: Provided, That this attorney's fee, when combined with any fees previously charged or received by the attorney for permanent partial disability or permanent total disability benefits may not exceed twenty percent of an award of benefits to be paid during a period of two hundred eight weeks.

(c) Except attorney's fees and costs recoverable pursuant to subsection (c), section twenty-one, article two-c of this chapter, an attorney's fee for successful recovery of denied medical benefits may be charged or received by an attorney, and paid by the private carrier or self-insured employer, for a claimant or dependent under this section. In no event may attorney's fees and costs be awarded pursuant to both this section and subsection (c), section twenty-one, article two-c of this chapter.

(1) If a claimant successfully prevails in a proceeding relating to a denial of medical benefits brought before the commission, successor to the commission, other private carrier or self-insured employer, whichever is applicable, as a result of utilization review, arbitration, mediation or other proceedings,
or a combination thereof, relating to denial of medical benefits before the Office of Judges, Board of Review or court, there shall additionally be charged against the private carriers or self-insured employers, whichever is applicable, the reasonable costs and reasonable hourly attorney fees of the claimant. Following the successful resolution of the denial in favor of the claimant, a fee petition shall be submitted by the claimant’s attorney to the Insurance Commissioner or his or her successors, arbitrators, mediator, the Office of Judges, the Board of Review, or court, whichever enters a final decision on the issue. An attorney representing a claimant must submit a claim for attorney fees and costs within thirty days following a decision in which the claimant prevails and the order becomes final.

(2) The Insurance Commissioner or his or her successors, arbitrators, mediator, the Office of Judges, the Board of Review, or court shall enter an order within thirty days awarding reasonable attorney fees not to exceed $125 per hour and reasonable costs of the claimant to be paid by the private carriers or self-insured employers, whichever is applicable, which shall be paid as directed. In no event may an award of the claimant’s attorney’s fees under this subsection exceed $500 per litigated medical issue, not to exceed $2,500 in a claim.

(3) In determining the reasonableness of the attorney fees to be awarded, the Insurance Commission, arbitrator, mediator, Office of Judges, Board of Review, or court shall consider the experience of the attorney, the complexity of the issue, the hours expended, and the contingent nature of the fee.
CHAPTER 210

(S. B. 658 - By Senators Stollings and Plymale)

[Passed April 11, 2013; in effect from passage.]
[Approved by the Governor April 29, 2013.]

AN ACT to extend the time for the city council of the city of Madison, Boone County, to meet as a levying body for the purpose of presenting to the voters of the city an election to supplement current funds for the city police department, the city street department, recreation and for general government and for the purpose of paying all costs incurred in the laying of this additional levy from between March 7 and March 28 and the third Tuesday in April until May 31, 2013.

Be it enacted by the Legislature of West Virginia:

THE CITY COUNCIL OF THE CITY OF MADISON MEETING AS A LEVYING BODY EXTENDED.

§1. Extending time for the city council for the city of Madison to meet as a levying body for an election to supplement current funds for the city police department, the city street department, recreation and for general government and for the purpose of paying all costs incurred in the laying of the additional levy.

1 Notwithstanding the provisions of article eight, chapter eleven of the Code of West Virginia, 1931, as amended, the city council of the city of Madison, Boone County, is authorized to extend the time for its meeting as a levying body, setting the levy rate and certifying its actions to the State Auditor and the State Tax Commissioner from between March 7 and March 28 and the
CHAPTER 211

(S. B. 571 - By Senators D. Hall and Green)

[Passed April 5, 2013; in effect from passage.]
[Approved by the Governor on April 17, 2013.]

AN ACT to extend the time for the city council of the city of Oceana, Wyoming County, to meet as a levying body for the purpose of presenting to the voters of the city an election to supplement current funds for the city park and pool operation and for the purpose of paying all costs incurred in the laying of this additional levy from between the seventh and twenty-eighth days of March and the third Tuesday in April until May 31, 2013.

Be it enacted by the Legislature of West Virginia:

THE CITY COUNCIL OF THE CITY OF OCEANA MEETING AS A LEVYING BODY EXTENDED.

§1. Extending time for the city council for the city of Oceana to meet as a levying body for an election to supplement current funds for the city park and pool operation and for the purpose of paying all costs incurred in the laying of the additional levy.
Notwithstanding the provisions of article eight, chapter eleven of the Code of West Virginia, 1931, as amended, the city council of the city of Oceana, Wyoming County, is authorized to extend the time for its meeting as a levying body, setting the levy rate and certifying its actions to the State Auditor and the State Tax Commissioner from between March 7 and March 28 and the third Tuesday in April until May 31, 2013, for the purpose of submitting to the voters of the city of Oceana the question of supplementing current funds for the city park and pool operation and for the purpose of paying all costs incurred in the laying of this additional levy.

CHAPTER 212

(S. B. 561 - By Senators Williams, Unger, Sypolt and Miller)

[Passed April 11, 2013; in effect from passage.] [Approved by the Governor on April 29, 2013.]

AN ACT to establish the Tucker County Cultural District Authority; providing legislative findings; forming the Tucker County Cultural District Authority; providing for appointment of members; providing for organization and bylaws; requiring quarterly meetings; providing for quorum; authorizing proxy voting; providing for parliamentary procedure; providing for certain powers and duties of the board; establishing funding priorities; allowing public and private partnerships; granting certain specific authority to the president of the authority; requiring cooperation of state agencies; and allowing various municipalities, boards, commissions, agencies and others to assist the authority.

Be it enacted by the Legislature of West Virginia:
§1. Legislative Intent.

The Legislature finds and declares that:

1. The many and varied outdoor recreational activities in Tucker County, West Virginia, have long been an important element in a mature tourism industry for this state.

2. The two great state parks at Blackwater Falls and Canaan Valley, the Canaan Valley National Wildlife Refuge, the Blackwater Canyon, the Monongahela National Forest making up fifty percent of land in Tucker County, and the towns of Parsons, Thomas, Davis, Hambleton and Hendricks, are sources of pride to all West Virginians and mainstays of the important tourism industry in this state.

3. Tucker County, West Virginia, is the home to a growing number of artists, artisans and patrons of the performing arts. The burgeoning cultural tourism opportunities offered by the performing arts compliment and enhance the outdoor recreational activities already existing in the area.

4. There is strong community-based support in Tucker County to encourage, develop and enhance the various aspects of the cultural tourism component of the regional economy. Opportunities exist to create, expand and compliment areas of cultural, historical, archeological and industrial heritage and educational interest in Tucker County.

5. The creation of additional employment and investment opportunities for the present and future residents of Tucker County is a desirable goal.

§2. Tucker County Cultural District Authority established.

(a) The Tucker County Cultural District Authority is established.
(b) The Tucker County Cultural District Authority consists of seven members, all of whom must be citizens and residents of Tucker County. One of the members shall be a member of the Tucker County commission, and six members shall be laypersons with a demonstrated interest in cultural tourism in Tucker County, recommended by the Tucker County Commission and appointed by the Governor.

(c) Initial appointments shall be staggered for one year, two years and three years, divided equally or as nearly as possible between these terms. After that, terms of appointment shall be for four years. Lay members may be appointed for successive terms. All members, unless otherwise removed, serve until their terms expire or successors have been appointed. A vacancy caused by the death, resignation or removal of a member prior to the expiration of his or her term shall be filled only for the remainder of the unexpired term.

(d) The authority shall elect from its membership a president, vice president, secretary and treasurer.

(e) The authority shall create bylaws that establish the duties and obligations of the officers and members, including those authorized by this act.

(f) No member of the authority may be paid for being a member, nor may any member be reimbursed for any expense related to his or her membership or travel for meetings.

§3. Meetings.

(a) The authority shall meet at a time and place designated by the president at least quarterly or as otherwise determined by the president. Additional meetings may be held when called by the president or when requested in writing by at least three members of the authority.
(b) Four members present at a meeting of the authority is a quorum.

(c) Each member of the authority is entitled to one vote. A member may assign his or her vote by written proxy.

(d) Robert's Rules of Order is the parliamentary guide for the conduct of all meetings.

§4. General duties and powers.

(a) The Tucker County Cultural District Authority is authorized to:

(1) Plan and execute an ongoing and continuous program for the development and enhancement of artistic, cultural, historical and recreational attractions that will promote culture, education and tourism in Tucker County;

(2) Plan and execute a program for the restoration and development of the Cottrill's Opera House in Thomas, West Virginia, so as to preserve and enhance the building as a significant cultural, historical and educational source of importance in this state;

(3) Complete a comprehensive plan with a cost-benefit analysis for the entire cultural district in Tucker County, including, but not limited to, a large venue indoor/outdoor multiple-use performance hall;

(4) Review all available funding sources and direct the president to apply for any grants, allocations, gifts or other sources of funding that may be used to further the goals of the authority;

(5) Within the limit of available funds, from any source, whether public or private:
(A) Apply the initial public funds received to the completion of the Cottrill's Opera House in Thomas, West Virginia, as the first and foremost priority of the authority;

(B) Award grants and stipends for the encouragement of the arts in the public schools of Tucker County; and

(C) Award grants and stipends to individuals, not-for-profit entities and other cooperatives for projects that further the development of the arts in Tucker County;

(6) Perform other functions and employ individuals as necessary to carry out the goals and purposes of the authority as specified in this act;

(7) Own or operate, individually or in conjunction with another public agency or private person, firm or corporation, facilities and equipment considered necessary or convenient for the implementation of the duties and goals of the authority; and

(8) Report to the Tucker County commission on at least an annual basis, or as requested by the commission, as to the progress of any plan, program or objective of the authority.

(b) The president of the authority, with the advice and written consent or authorization of the authority, is authorized to:

(1) Apply for grants and other endowments in support of the artistic, historical or educational programs in the cultural district and the goals and objectives of the authority;

(2) Receive and disburse funds from governmental and nongovernmental sources in furtherance of the goals and objectives of the authority;

(3) Set up financial accounts as required and submit financial reports quarterly to the authority;
(4) Make and execute contracts as authorized by the authority; and

(5) Perform other duties as authorized by the authority that are consistent with the goals and objectives of the authority.

§5. Cooperation of state agencies.

(a) All state and local governmental personnel and agencies shall cooperate to the fullest extent with the authority to accomplish any plan, project or program developed by the authority. Those agencies shall assist in the effective development of cultural, historical, education and recreational activities in Tucker County that will result in the area becoming a significant area for tourism, culture and education.

(b) Tucker County, the towns of Davis, Hambleton, Hendricks, Parsons and Thomas and any other municipality in the county, and any board, commission, authority, agency or other office created under authority thereof, may, in its discretion, engage in any activity or undertaking designed to assist the authority in the proper and effective development of the goals, plans, programs or projects of the authority consistent with the guidelines provided in this act.
AN ACT expiring funds to the unappropriated surplus balance in the State Fund, General Revenue, for the fiscal year ending June 30, 2013, in the amount of $10,317,860.71 from the Governor’s Office - Civil Contingent Fund, fund 0105, fiscal year 2009, organization 0100, activity 236, and in the amount of $7,459,913 from the Attorney General, Consumer Protection Recovery Fund, fund 1509, fiscal year 2013, organization 1500, and making a supplementary appropriation of public moneys out of the Treasury from the balance of moneys remaining as an unappropriated surplus balance in the State Fund, General Revenue, to the Governor’s Office - Civil Contingent Fund, fund 0105, fiscal year 2013, organization 0100, to the Attorney General, fund 0150, fiscal year 2013, organization 1500, to the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2013, organization 0307, to the Department of Health and Human Resources, Consolidated Medical Service Fund, fund 0525, fiscal year 2013, organization 0506, to the Higher Education Policy Commission - Administration - Control Account, fund 0589, fiscal year 2013, organization 0441, and to the Higher Education Policy Commission - System - Control Account, fund 0586, fiscal year
2013, organization 0442, by supplementing and amending the appropriations for the fiscal year ending June 30, 2013.

WHEREAS, the Governor finds that the account balances in the Governor's Office - Civil Contingent Fund, fund 0105, fiscal year 2009, organization 0100, activity 236, and in the Attorney General, Consumer Protection Recovery Fund, fund 1509, fiscal year 2013, organization 1500, exceed that which is necessary for the purposes for which the accounts were established; and

WHEREAS, The Governor submitted to the Legislature the Executive Budget document, dated February 13, 2013, which included a statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2012, and further included the estimate of revenues for the fiscal year 2013, less net appropriation balances forwarded and regular appropriations for the fiscal year 2013; and

WHEREAS, It appears from the Governor's Executive Budget document, statement of the State Fund, General Revenue, and this legislation, there now remains an unappropriated surplus balance in the State Treasury which is available for appropriation during the fiscal year ending June 30, 2013; therefore

Be it enacted by the Legislature of West Virginia:

That the balance of the funds available for expenditure in the fiscal year ending June 30, 2013, in the Governor's Office - Civil Contingent Fund, fund 0105, fiscal year 2009, organization 0100, activity 236, be decreased by expiring the amount of $10,317,860.71, and in the Attorney General, Consumer Protection Recovery Fund, fund 1509, fiscal year 2013, organization 1500, be decreased by expiring the amount of $7,459,913, all to the unappropriated surplus balance of the State Fund, General Revenue, to be available for appropriation during the fiscal year ending June 30, 2013.

And, That the total appropriation for the fiscal year ending June 30, 2013, to fund 0105, fiscal year 2013, organization 0100, be supplemented and amended by adding a new item of appropriation as follows:
TITLE II — APPROPRIATIONS.

Section 1. Appropriations from General Revenue.

EXECUTIVE

7-Governor's Office -
Civil Contingent Fund

(WV Code Chapter 5)

Fund 0105 FY 2013 Org 0100

<table>
<thead>
<tr>
<th>Activity</th>
<th>General Revenue Fund</th>
</tr>
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<tbody>
<tr>
<td>1b Natural Disasters - Surplus (R)</td>
<td>764 $ 10,317,860</td>
</tr>
</tbody>
</table>

Any federal reimbursements received to remunerate disbursement from this activity or funds transferred from this activity shall be credited back to this activity.

Any unexpended balance remaining in the above appropriation for Natural Disasters - Surplus (fund 0105, activity 764) at the close of the fiscal year 2013 is hereby reappropriated for expenditure during the fiscal year 2014.

And, That the total appropriation for the fiscal year ending June 30, 2013, to fund 0150, fiscal year 2013, organization 1500, be supplemented and amended by increasing existing items and adding new items of appropriation as follows:

TITLE II — APPROPRIATIONS.

Section 1. Appropriations from General Revenue.

EXECUTIVE

15-Attorney General
1972  

APPROPRIATIONS  

(WV Code Chapter 5, 14, 46A and 47)  

Fund 0150 FY 2013 Org 1500  

<table>
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<tr>
<th>Activity</th>
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<tbody>
<tr>
<td>10a</td>
<td>243 $309,000</td>
</tr>
<tr>
<td>11b</td>
<td>250 $115,425</td>
</tr>
<tr>
<td>12b</td>
<td>341 $260,200</td>
</tr>
<tr>
<td>13b</td>
<td>725 $965,020</td>
</tr>
<tr>
<td>14b</td>
<td>779 $210,268</td>
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</tbody>
</table>

Any unexpended balance remaining in the above appropriation for Equipment - Surplus (fund 0150, activity 341), Technology Improvements - Surplus (fund 0150, activity 725), and Operating Expenses - Surplus (fund 0150, activity 779) at the close of the fiscal year 2013 is hereby reappropriated for expenditure during the fiscal year 2014.

And, That the total appropriation for the fiscal year ending June 30, 2013, to fund 256, fiscal year 2013, organization 0307, be supplemented and amended by adding a new item of appropriation as follows:

TITLE II — APPROPRIATIONS.

Section 1. Appropriations from General Revenue.

DEPARTMENT OF COMMERCE

36-West Virginia Development Office

(WV Code Chapter 5B)

Fund 0256 FY 2013 Org 0307
<table>
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<th>Activity</th>
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<tbody>
<tr>
<td>21a</td>
<td></td>
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<tr>
<td>Transfer - Surplus: $1,000,000</td>
<td></td>
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</tbody>
</table>

The above appropriation for Unclassified - Transfer - Surplus (fund 0256, activity 382) shall be transferred to the West Virginia Affordable Housing Trust Fund as established under §31-18D.

And, That the total appropriation for the fiscal year ending June 30, 2013, to fund 0525, fiscal year 2013, organization 0506, be supplemented and amended by increasing an existing item of appropriation as follows:

**TITLE II — APPROPRIATIONS.**

**Section 1. Appropriations from General Revenue.**

**DEPARTMENT OF HEALTH AND HUMAN RESOURCES**

*64-Consolidated Medical Service Fund*

(WV Code Chapter 16)

Fund 0525 FY 2013 Org 0506

<table>
<thead>
<tr>
<th>Activity</th>
<th>General Revenue Fund</th>
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<tbody>
<tr>
<td>6</td>
<td></td>
</tr>
<tr>
<td>Behavioral Health Program - $3,000,000</td>
<td></td>
</tr>
<tr>
<td>6a</td>
<td></td>
</tr>
<tr>
<td>Surplus (R) $3,000,000</td>
<td></td>
</tr>
</tbody>
</table>
Any unexpended balance remaining in the above appropriation for Behavioral Health Program - Surplus (fund 0525, activity 631) at the close of the fiscal year 2013 is hereby reappropriated for expenditure during the fiscal year 2014.

And, That the total appropriation for the fiscal year ending June 30, 2013, to fund 0589, fiscal year 2013, organization 0441, be supplemented and amended by adding a new item of appropriation as follows:

TITLE II — APPROPRIATIONS.

Section 1. Appropriations from General Revenue.

HIGHER EDUCATION

93-Higher Education Policy Commission -
Administration -
Control Account

(WV Code Chapter 18B)

Fund 0589 FY 2013 Org 0441

<table>
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<tr>
<th>Activity</th>
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<tbody>
<tr>
<td>927</td>
<td>$1,000,000</td>
</tr>
</tbody>
</table>

10a Educational Enhancements -

10b Surplus (R) ................. 927 $1,000,000

Any unexpended balance remaining in the above appropriation for Educational Enhancement - Surplus (fund 0589, activity 927) at the close of the fiscal year 2013 is hereby reappropriated for expenditure during the fiscal year 2014.

The above appropriation for Educational Enhancements - Surplus (fund 0589, activity 927) is to be distributed evenly
20 between the West Virginia University School of Pharmacy and
21 the Marshall University School of Pharmacy to provide
22 scholarships to pharmacy students.

23 And, That the total appropriation for the fiscal year ending
24 June 30, 2013, to fund 0586, fiscal year 2013, organization 0442,
25 be supplemented and amended by increasing existing items of
26 appropriation as follows:

1 TITLE II — APPROPRIATIONS.
2 Section 1. Appropriations from General Revenue.

3 HIGHER EDUCATION

4 94-Higher Education Policy Commission -
5 System -
6 Control Account

7 (WV Code Chapter 18B)

8 Fund 0586 FY 2013 Org 0442

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<thead>
<tr>
<th>Activity</th>
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</thead>
<tbody>
<tr>
<td>2a Unclassified - Surplus</td>
<td>097 $250,000</td>
</tr>
<tr>
<td>6 WVU-School of Health Sciences -</td>
<td></td>
</tr>
<tr>
<td>6a Surplus (R)</td>
<td>713 $350,000</td>
</tr>
</tbody>
</table>

15 Any unexpended balance remaining in the above
16 appropriation for WVU-School of Health Sciences - Surplus
17 (fund 0586, activity 713) at the close of the fiscal year 2013 is
18 hereby reappropriated for expenditure during the fiscal year
19 2014.

20 From the above appropriation for Unclassified - Surplus
21 (fund 0586, activity 097) $250,000 is for West Virginia State
22 University Land Grant Match.
The purpose of this bill is to expire funds into the unappropriated surplus balance in the State Fund, General Revenue, and to supplement, amend, increase existing items and add new items of appropriation in the aforesaid accounts for the designated spending units for expenditure during the fiscal year 2013.

CHAPTER 2

(S. B. 1001 - By Senators Kessler, Mr. President and M. Hall)
[By Request of the Executive]

[Passed April 17, 2013; in effect from passage;]
[Approved by the Governor on April 30, 2013.]

AN ACT to amend and reenact §7-22-9 of the Code of West Virginia, 1931, as amended, relating to permitting the Monongalia County Commission to levy a special district excise tax.

Be it enacted by the Legislature of West Virginia:

That §7-22-9 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 22. COUNTY ECONOMIC OPPORTUNITY DEVELOPMENT DISTRICTS.


(a) General. — County commissions have no inherent authority to levy taxes and have only that authority expressly granted to them by the Legislature. The Legislature is specifically extended, and intends by this article, to exercise certain relevant powers expressed in section six-a, article X of the Constitution of this state as follows: (1) The Legislature may
appropriate state funds for use in matching or maximizing
grants-in-aid for public purposes from the United States or any
department, bureau, commission or agency thereof, or any other
source, to any county, municipality or other political subdivision
of the state, under such circumstances and subject to such terms,
conditions and restrictions as the Legislature may prescribe by
law; and (2) the Legislature may impose a state tax or taxes or
dedicate a state tax or taxes or any portion thereof for the benefit
of and use by counties, municipalities or other political
subdivisions of the state for public purposes, the proceeds of any
such imposed or dedicated tax or taxes or portion thereof to be
distributed to such counties, municipalities or other political
subdivisions of the state under such circumstances and subject
to such terms, conditions and restrictions as the Legislature may
prescribe.

Because a special district excise tax would have the effect of
diverting, for a specified period of years, tax dollars which to the
extent, if any, are not essentially incremental to tax dollars
currently paid into the General Revenue Fund of the state, the
Legislature finds that in order to substantially ensure that such
special district excise taxes will not adversely impact the current
level of the General Revenue Fund of the state, it is necessary for
the Legislature to separately consider and act upon each and
every economic development district which is proposed,
including the unique characteristics of location, current condition
and activity of and within the area included in such proposed
economic opportunity development district and that for such
reasons a statute more general in ultimate application is not
feasible for accomplishment of the intention and purpose of the
Legislature in enacting this article. Therefore, no economic
opportunity development district excise tax may be levied by a
county commission until after the Legislature expressly
authorizes the county commission to levy a special district
excise tax on sales of tangible personal property and services
made within district boundaries approved by the Legislature.
(b) **Authorizations.** — The Legislature authorizes the following county commissions to levy special district excise taxes on sales of tangible personal property and services made from business locations in the following economic opportunity development districts:

1. The Ohio county commission may levy a special district excise tax for the benefit of the Fort Henry economic opportunity development project district which comprises three hundred contiguous acres of land;

2. The Harrison county commission may levy a special district excise tax for the benefit of the Charles Pointe Economic Opportunity Development District which comprises four hundred thirty-seven acres of land; and

3. The Monongalia county commission may levy a special district excise tax for the benefit of the University Town Centre economic opportunity district which comprises approximately one thousand four hundred fifty contiguous acres of land.

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**CHAPTER 3**

**(S. B. 1003 - By Senators Kessler, Mr. President and M. Hall)**

[By Request of the Executive]

[Passed April 18, 2013; in effect ninety days from passage.]
[Approved by the Governor on May 3, 2013.]

AN ACT to amend and reenact §50-1-3, §50-1-8, §50-1-9 and §50-1-9a of the Code of West Virginia, 1931, as amended, all relating generally to the magistrate court system; making legislative findings; adjusting the population line upon which
salaries for magistrates and certain magistrate employees are calculated; providing that the Joint Committee on Government and Finance shall request a study from the National Center for State Courts on the weighted case loads, salaries, jurisdiction and apportionment of resources within the magistrate court system; requiring presentation of report and recommendations regarding redistribution of magistrate court personnel and resources by December 1, 2014; requiring the Supreme Court of Appeals of West Virginia to present recommendations to the Legislature regarding allocation and assignment of resources; adjusting certain salaries for certain magistrates and magistrate court employees effective January 1, 2013; equalizing the pay for all magistrates and certain magistrate employees on January 1, 2017; providing for an effective date; and providing that the amendments are retroactive to January 1, 2013.

Be it enacted by the Legislature of West Virginia:

That §50-1-3, §50-1-8, §50-1-9 and §50-1-9a of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 1. COURTS AND OFFICERS.


1 (a) The Legislature finds and declares that:

2 (1) The West Virginia Supreme Court of Appeals has held that a salary system for magistrates which is based upon the population that each magistrate serves does not violate the equal protection clause of the Constitution of the United States;

3 (2) The West Virginia Supreme Court of Appeals has held that a salary system for magistrates which is based upon the population that each magistrate serves does not violate section thirty-nine, article VI of the Constitution of West Virginia;
(3) The Administrative Office of the Supreme Court of Appeals of West Virginia has stated that the utilization of a two-tiered salary schedule for magistrates is no longer an equitable and rational manner by which magistrates should be compensated for work performed;

(4) Organizing the two tiers of the salary schedule into one tier for magistrates serving less than seven thousand three hundred in population and a second tier for magistrates serving seven thousand three hundred or more in population is no longer rational and equitable given current statistical information relating to population and caseload; and

(5) That, by January 1, 2017, all magistrates should be compensated equally.

(b) The salary of each magistrate shall be paid by the state. Magistrates who serve fewer than seven thousand three hundred in population shall be paid annual salaries of $51,125 and magistrates who serve seven thousand three hundred or more in population shall be paid annual salaries of $57,500.

(c) For the purpose of determining the population served by each magistrate, the number of magistrates authorized for each county shall be divided into the population of each county. For the purpose of this article, the population of each county is the population as determined by the last preceding decennial census taken under the authority of the United States government.

(d) Notwithstanding any provision of this code to the contrary, the amendments made to this section during the 2013 First Extraordinary Session are effective upon passage and are retroactive to January 1, 2013.

(e) On or before July 1, 2013, the Joint Committee on Government and Finance shall request a study by the National Center for State Courts, working in conjunction with the
Administrative Office of the Supreme Court of Appeals of West Virginia, to review the weighted case loads in each of the magistrate courts in this state, and present recommendations as to how the present resources and personnel in the magistrate court system could be better apportioned to equitably and timely meet the collective needs of the magistrate court system in West Virginia. Based on the findings and data generated by that study, the National Center for State Courts shall make recommendations as to the equitable redistribution of personnel and resources, by temporary or permanent reassignment, to better meet the needs and weighted loads that are demonstrated to exist in the various magistrate courts in this state. This study shall be presented to the Joint Committee on Government and Finance no later than December 1, 2014, and shall include recommendations and proposed legislation resulting from such study and shall also include a plan to continue the efficient delivery of justice by the magistrate court system and the justification for equalization of pay for all magistrates. As a part of the submitted study, the plan shall consider the reassignment of magistrates or the extension of their duties and jurisdiction to include holding court or delivering services to adjacent counties with higher caseloads, as part of their regular duties, or being on call as needed to serve other needs in other adjacent counties or within the same judicial circuit.

On or before January 15, 2015, the Supreme Court of Appeals of West Virginia shall present its recommendations to the Legislature regarding how to allocate or assign a maximum of one hundred fifty-eight magistrates throughout this state to improve the magistrate process, and more equitably distribute the magistrate court resources to efficiently and effectively meet the needs of the citizens of this state.

(f) Notwithstanding any provision of this code to the contrary, beginning January 1, 2017, all magistrates shall be
compensated equally and the annual salary of all magistrates shall be $57,500.

§50-1-8. Magistrate court clerks; salaries; duties; duties of circuit clerk.

(a) In each county having three or more magistrates the judge of the circuit court or the chief judge of the circuit court, if there is more than one judge of the circuit court, shall appoint a magistrate court clerk. In all other counties the judge may appoint a magistrate court clerk or may by rule require the duties of the magistrate court clerk to be performed by the clerk of the circuit court, in which event the circuit court clerk is entitled to additional compensation in the amount of $2,500 per year. The magistrate court clerk serves at the will and pleasure of the circuit judge.

(b) Magistrate court clerks shall be paid a monthly salary by the state. Magistrate court clerks serving magistrates who serve less than seven thousand three hundred in population shall be paid up to $39,552 per year and magistrate court clerks serving magistrates who serve seven thousand three hundred or more in population shall be paid up to $44,712 per year: Provided, That after the effective date of this section, any general salary increase granted to all state employees, whose salaries are not set by statute, expressed as a percentage increase or an across-the-board increase, may also be granted to magistrate court clerks. For the purpose of determining the population served by each magistrate, the number of magistrates authorized for each county shall be divided into the population of each county. The salary of the magistrate court clerk shall be established by the judge of the circuit court, or the chief judge of the circuit court if there is more than one judge of the circuit court, within the limits set forth in this section.

(c) In addition to other duties that may be imposed by the provisions of this chapter or by the rules of the Supreme Court
of Appeals or the judge of the circuit court or the chief judge of
the circuit court if there is more than one judge of the circuit
court, it is the duty of the magistrate court clerk to establish and
maintain appropriate dockets and records in a centralized system
for the magistrate court, to assist in the preparation of the reports
required of the court and to carry out on behalf of the magistrates
or chief magistrate if a chief magistrate is appointed, the
administrative duties of the court.

(d) The magistrate court clerk, or if there is no magistrate
court clerk in the county, the clerk of the circuit court, may issue
all manner of civil process and require the enforcement of
subpoenas and subpoenas duces tecum in magistrate court.

(e) Notwithstanding any provision of this code to the
contrary, the amendments made to this section during the 2013
First Extraordinary Session are effective upon passage and are
retroactive to January 1, 2013.

(f) Beginning January 1, 2017, the annual salary of all
magistrate court clerks is $44,720. After the effective date of this
section, a general salary increase granted to state employees,
whose salaries are not set by statute, expressed as a percentage
increase or an across-the-board increase, may also be granted to
magistrate court clerks.


(a) In each county there shall be one magistrate assistant for
each magistrate. Each magistrate assistant shall be appointed by
the magistrate under whose authority and supervision and at
whose will and pleasure he or she shall serve. The assistant shall
not be a member of the immediate family of any magistrate and
shall not have been convicted of a felony or any misdemeanor
involving moral turpitude and shall reside in the State of West
Virginia. For the purpose of this section, “immediate family”
means the relationships of mother, father, sister, brother, child or
spouse.
A magistrate assistant shall have the duties, clerical or otherwise, assigned by the magistrate and prescribed by the rules of the Supreme Court of Appeals or the judge of the circuit court or the chief judge of the circuit court if there is more than one judge of the circuit court. In addition to these duties, magistrate assistants shall perform and are accountable to the magistrate court clerks with respect to the following duties:

1. The preparation of summons in civil actions;
2. The assignment of civil actions to the various magistrates;
3. The collection of all costs, fees, fines, forfeitures and penalties which are payable to the court;
4. The submission of moneys, along with an accounting of the moneys, to appropriate authorities as provided by law;
5. The daily disposition of closed files which are to be located in the magistrate clerk’s office;
6. All duties related to the gathering of information and documents necessary for the preparation of administrative reports and documents required by the rules of the Supreme Court of Appeals or the judge of the circuit court or the chief judge of the circuit court if there is more than one judge of the circuit court;
7. All duties relating to the notification, certification and payment of jurors serving pursuant to the terms of this chapter; and
8. All other duties or responsibilities whereby the magistrate assistant is accountable to the magistrate court clerk as determined by the magistrate.
(c) Magistrate assistants shall be paid a monthly salary by
the state. Magistrate assistants serving magistrates who serve
less than seven thousand three hundred in population shall be
paid up to $36,048 per year and magistrate assistants serving
magistrates who serve seven thousand three hundred or more in
population shall be paid up to $39,348 per year: Provided, That
after the effective date of this section, any general salary
increase granted to all state employees, whose salaries are not set
by statute, expressed as a percentage increase or an
across-the-board increase, may also be granted to magistrate
assistants. For the purpose of determining the population served
by each magistrate, the number of magistrates authorized for
each county shall be divided into the population of each county.
The salary of the magistrate assistant shall be established by the
magistrate within the limits set forth in this section.

(d) Notwithstanding any provision of this code to the
contrary, the amendments made to this section during the 2013
First Extraordinary Session are effective upon passage and are
retroactive to January 1, 2013.

(e) Beginning January 1, 2017, the annual salary of all
magistrate assistants is $39,348. After the effective date of this
section, a general salary increase granted to state employees,
whose salaries are not set by statute, expressed as a percentage
increase or an across-the-board increase, may also be granted to
magistrate assistants.

§50-1-9a. Magistrate court deputy clerks; duties; salary.

(a) Whenever required by workload and upon the
recommendation of the judge of the circuit court, or the chief
judge of the circuit court if there is more than one judge of the
circuit court, the Supreme Court of Appeals may, by rule,
provide for the appointment of magistrate court deputy clerks,
not to exceed seventy-two in number. The magistrate court
7 deputy clerks shall be appointed by the judge of the circuit court, 
8 or the chief judge if there is more than one judge of the circuit 
9 court, to serve at his or her will and pleasure under the 
10 immediate supervision of the magistrate court clerk.

11 (b) Magistrate court deputy clerks shall have the duties, 
12 clerical or otherwise, as may be assigned by the magistrate court 
13 clerk and as may be prescribed by the rules of the Supreme Court 
14 of Appeals or the judge of the circuit court or the chief judge if 
15 there is more than one judge of the circuit court. Magistrate court 
16 deputy clerks may also exercise the power and perform the 
17 duties of the magistrate court clerk as may be delegated or 
18 assigned by the magistrate court clerk.

19 (c) A magistrate court deputy clerk may not be an immediate 
20 family member of any magistrate, magistrate court clerk, 
21 magistrate assistant or judge of the circuit court within the same 
22 county, may not have been convicted of a felony or any 
23 misdemeanor involving moral turpitude and must reside in this 
24 state. For purposes of this subsection, "immediate family 
25 member" means a mother, father, sister, brother, child or spouse.

26 (d) Magistrate court deputy clerks shall be paid an annual 
27 salary by the state on the same basis and in the same amounts 
28 established for magistrate assistants in each county, as provided 
29 in section nine of this article.

30 (e) Notwithstanding any provision of this code to the 
31 contrary, the amendments made to section nine of this article 
32 during the 2013 First Extraordinary Session, and the effects of 
33 those amendments on subsection (d) of this section, are effective 
34 upon passage and are retroactive to January 1, 2013.

35 (f) Beginning January 1, 2017, the annual salary of all 
36 magistrate court deputy clerks is $39,348. After the effective
date of this section, a general salary increase granted to state employees, whose salaries are not set by statute, expressed as a percentage increase or an across-the-board increase, may also be granted to magistrate court deputy clerks.

CHAPTER 4

(H. B. 105 - By Mr. Speaker, Mr. Thompson and Delegate Armstead)
[By Request of the Executive]

[Passed April 18, 2013; in effect from passage.]
[Approved by the Governor on May 3, 2013.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §11-10-11c, relating to administration of local sales and use taxes and local excise taxes; granting the Tax Commissioner exclusive responsibility for administering, collecting and enforcing specified local sales and use taxes and excise taxes; specifying jurisdiction and standing before the Office of Tax Appeals; authorizing the Tax Commissioner to propose for promulgation legislative rules to assess a fee for the administration, collection and enforcement of specified local sales and use taxes and excise taxes; providing a special fund for deposit of the certain fees; and specifying an effective date.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §11-10-11c, to read as follows:
ARTICLE 10. TAX PROCEDURE AND ADMINISTRATION ACT.

§11-10-11c. State administration of local sales and use taxes and excise taxes; jurisdiction and standing before the office of tax appeals; rule-making authority.

(a) The Tax Commissioner has exclusive responsibility for administering, collecting and enforcing all local sales and use taxes and excise taxes imposed pursuant to article twenty-two, chapter seven of this code, section five-a, article one, chapter eight of this code, article thirteen-c, chapter eight of this code and article thirty-eight, chapter eight of this code.

(b) Pursuant to, and limited by, the provisions of section eight, article ten-a of this chapter, the Office of Tax Appeals has exclusive and original jurisdiction to hear disputes arising from any local sales and use taxes and excise taxes for which the Tax Commissioner has exclusive administration, enforcement and collection responsibility. No municipality or county has standing before the Office of Tax Appeals in any dispute arising under any local sales and use tax and excise tax upon which the Tax Commissioner has exclusive responsibility for administration, enforcement and collection.

(c) Notwithstanding any other provision of this code to the contrary, the Tax Commissioner may assess a fee, to be established by legislative rule pursuant to the provisions of article three, chapter twenty nine-a of this code, to be retained from collections authorized by section five-a, article one, chapter eight of this code, and section six, article thirteen-c, chapter eight of this code: Provided, That the fee may not exceed five percent of such collections in total including any fee otherwise authorized by this code or any duly enacted ordinance.

(d) Establishment of special revenue account.

(1) There is created in the State Treasury a special revenue revolving fund account known as the "Local Sales Tax and
29 Excise Tax Administration Fund". Expenditures from the fund
30 shall be for the purposes set forth in this section and are not
31 authorized from collections but are to be made only in
32 accordance with appropriation by the Legislature and in
33 accordance with the provisions of article three, chapter twelve of
34 this code: Provided, That for the fiscal year ending June 30,
35 2014, expenditures are authorized from collections rather than
36 pursuant to appropriation by the Legislature. The fund shall
37 consist of:
38
39 (A) Any funds collected pursuant to section (c) of this
40 section; and
41
42 (B) Any funds received on and after July 1, 2013, from fees
43 retained by the Tax Commissioner pursuant to section six, article
44 thirteen-c, chapter eight of this code; and
45
46 (C) Amounts deducted and retained by the Tax
47 Commissioner under subsection (e), section eleven-a of this
48 article; and
49
50 (D) Any future funds appropriated by the Legislature or
51 transferred by any public agency as contemplated or permitted
52 by applicable federal or state law; and
53
54 (E) Any accrued interest or other return on the moneys in the
55 fund.
56
57 (2) On July 1, 2013, all moneys in the Tax Department
58 “Municipal Sales and Use Tax Operations Fund” established
59 under section six, article thirteen-c, chapter eight of this code
60 shall be transferred to the Local Sales Tax and Excise Tax
61 Administration Fund established in this section.
62
63 (3) On July 1, 2013, all moneys in the “Special District
64 Excise Tax Administration Fund” established under section
65 eleven-b of this article shall be transferred to the Local Sales Tax
66 and Excise Tax Administration Fund established in this section.
(4) Amounts deposited in the Local Sales Tax and Excise Tax Administration Fund may be expended by the Tax Commissioner for the general administration, collection and enforcement of all local sales and use taxes and excise taxes imposed pursuant to article twenty-two, chapter seven of this code, section five-a, article one, chapter eight of this code, article thirteen-c, chapter eight of this code and article thirty-eight, chapter eight of this code.

(e) Notwithstanding the provisions of section eleven-b of this article, the Tax Commissioner may prescribe by rule the schedule and manner for deposits of moneys into the Local Sales Tax and Excise Tax Administration Fund and any other administrative and procedural requirements as may be useful or necessary for the management and handling of the fund.

(f) Effective Date - The provisions of this section enacted in 2013 are effective on and after July 1, 2013.

CHAPTER 5

(H. B. 103 - By Mr. Speaker, Mr. Thompson and Delegate Armstead)
[By Request of the Executive]

[Passed April 17, 2013; in effect from passage.]
[Approved by the Governor on May 2, 2013.]

AN ACT to amend and reenact §12-4-14a of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §33-3-33a, all relating to the distribution of state funds to volunteer fire departments under the Volunteer Fire Department Workers' Compensation Subsidy
Program; specifying that the subsidy provided to volunteer fire departments to offset certain workers' compensation premium increases applies to increases attributable to the fire fighting service, rapid response emergency medical service, ambulance service and diving service components of the services provided by volunteer fire departments; establishing the Volunteer Fire Department Workers' Compensation Premium Subsidy Fund and directing that certain moneys be deposited into the fund for the program; requiring the State Fire Marshal, in consultation with the Insurance Commissioner, State Auditor, Secretary of Revenue, and Legislative Auditor, to review, assess and prepare a comprehensive report to the joint committee on government and finance on or before December 31, 2015, of steps that may be taken to meet the needs of volunteer fire departments and companies; expiring §12-4-14a and §33-3-33a of this code on June 30, 2016; and providing for the closure of the fund.

Be it enacted by the Legislature of West Virginia:

That §12-4-14a of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto a new section, designated §33-3-33a, all to read as follows:

CHAPTER 12. PUBLIC MONEYS AND SECURITIES.

ARTICLE 4. ACCOUNTS, REPORTS AND GENERAL PROVISIONS.

§12-4-14a. Workers' Compensation Subsidy for Volunteer Fire Departments; creation of program; Auditor to administer.

1 (a) For the purposes of this section:
2  (1) “Fiscal year” means the fiscal year of the state.
3  (2) “Individual base year premium” means the individual premium that became due and payable by a volunteer fire department after June 30, 2010, but before July 1, 2011.
(3) "Individual premium" means the workers' compensation insurance premium due and payable by a volunteer fire department for fire fighting services, rapid response emergency medical services, ambulance services or diving services provided by the volunteer fire department in each twelve month period beginning on or after July 1, 2011.

(4) "Total base year premium" means the aggregate workers' compensation insurance premium due and payable by all volunteer fire departments for fire fighting services, rapid response emergency medical services, ambulance services or diving services provided by the volunteer fire departments as determined by the Insurance Commissioner after June 30, 2010, but before July 1, 2011.

(5) "Total premium" means the aggregate workers' compensation insurance premium due and payable by all volunteer fire departments for fire fighting services, rapid response emergency medical services, ambulance services or diving services provided by the volunteer fire departments in each twelve month period beginning on or after July 1, 2011.

(b) In recognition of the burden of increasing workers' compensation insurance premiums on volunteer fire departments, the Legislature has determined that additional funding assistance should be made available to eligible departments to pay a portion of those premium increases beginning with invoices due and payable on or after July 1, 2011.

(c) There is hereby established a special program which shall be known as the "Volunteer Fire Department Workers' Compensation Subsidy Program". The program shall be administered by the State Auditor from moneys that may be appropriated and designated for the program by the Legislature pursuant to this section and section thirty-three-a, article three, chapter thirty-three of this code.
(d) The State Auditor shall administer the distribution of moneys appropriated for the Volunteer Fire Department Workers' Compensation Subsidy Program to volunteer fire departments to help defray workers' compensation insurance premium increases.

(1) Volunteer fire departments shall request supplemental funds by submitting to the Auditor the following information:

(A) The previous fiscal year's workers' compensation premium invoices with paid receipts;

(B) The current fiscal year's workers' compensation premium invoices showing the amount due and due date and any applicable paid receipts; and

(C) Any other information the Auditor deems necessary for administering the subsidy on forms and schedules as the Auditor directs. The Auditor is authorized to set up an electronic filing system at his or her discretion for filing of the aforementioned information.

(2) After determining that there is a premium increase and the amount of the premium increase for the volunteer fire department requesting the subsidy, the Auditor shall make disbursements in the manner set forth in subsection (e) of this section subject to the following requirements:

(A) The volunteer fire department must be in good standing with the State Fire Marshal;

(B) The volunteer fire department must be registered with the Auditor's Office in a form and manner prescribed by the Auditor prior to being eligible for consideration of any subsidy, which registration must be completed no fewer than thirty days prior to the due date of the workers' compensation premium;
(C) The volunteer fire department must agree that the subsidy for its workers' compensation insurance premium increase will be paid directly to its insurance carrier by the Auditor and that it will timely pay the balance of the premium due; and

(D) Should a volunteer fire department fail to pay the balance of its workers' compensation insurance premium after a disbursement by the Auditor and that insurance policy is subsequently cancelled, the premium paid by the Auditor shall be returned directly to him or her. If the Auditor does not receive a reimbursement for a cancelled policy, he or she shall seek reimbursement for the subsidy portion of the insurance premium from the State Treasurer when the Treasurer makes the next quarterly payment to the volunteer fire department pursuant to sections thirty-three and fourteen-d, article three, chapter thirty-three of this code.

(e) Beginning with the fiscal year that starts July 1, 2011, and continuing in each fiscal year thereafter, after the Auditor has verified that a volunteer fire department is eligible for a subsidy pursuant to this section, he or she shall pay on behalf of a volunteer fire department its subsidy, which is calculated by:

1. Dividing the total amount of premium subsidy allocated by the Legislature to the Volunteer Fire Department Workers' Compensation Subsidy Program by the total premium minus the total base year premium, which calculation produces the "total shortfall multiplier"; and

2. Multiplying the total shortfall multiplier determined in subdivision (1) of this subsection by the individual premium less the individual base year premium.

3. In no event shall a volunteer fire department receive a workers' compensation premium subsidy greater than one hundred percent of its premium increase.
(f) For fiscal years after July 1, 2011, the Auditor shall consult with the Insurance Commissioner to determine the total amount of workers' compensation premium due by volunteer fire departments for any subsequent fiscal year. The Auditor may determine payment dates based upon information reasonably available for such a determination.

(g) The Auditor may promulgate emergency rules and may propose for promulgation legislative rules, in accordance with the provisions of article three, chapter twenty-nine-a of this code, as are necessary to provide for implementation and enforcement of the provisions of this section.

(h) The volunteer fire departments' workers' compensation premium subsidy program shall undergo a review to assess its effectiveness after three years of operation. The Auditor shall submit a report to the Joint Committee on Government and Finance not later than February 1, 2015, and provide details of the program operation including funds distributed and departments taking advantage of the subsidy.

CHAPTER 33. INSURANCE.

ARTICLE 3. LICENSING, FEES AND TAXATION OF INSURERS.

§33-3-33a. Excess moneys of Fire Protection Fund deposited into Volunteer Fire Department Workers' Compensation Premium Subsidy Fund; other funding; special report from State Fire Marshal by December 15, 2015; termination of program June 30, 2016.

(a) There is hereby established a special fund in the State Treasury known as the "Volunteer Fire Department Workers' Compensation Premium Subsidy Fund." The fund shall be administered by the State Auditor and shall consist of moneys deposited in the fund pursuant to this section, any other funds
appropriated by the Legislature for volunteer fire departments
for the purposes of section fourteen-a, article four, chapter
dozen of this code, and the interest or other earnings on the
moneys in the fund. The State Auditor shall administer the
distribution of moneys of the fund to volunteer fire departments
to help defray workers’ compensation insurance premium
increases pursuant to section fourteen-a, article four, chapter
dozen of this code. Balances in the fund at the end of any fiscal
year shall not expire, but shall be expended for those purposes in
ensuing fiscal years pursuant to appropriation of the Legislature.

(b) Beginning July 1, 2013, and in each fiscal year thereafter
until June 30, 2016, the excess of the aggregate of amounts
collected by the commissioner that are otherwise required under
any provision of this code to be deposited into the Fire
Protection Fund over the aggregate of those amounts deposited
into the Fire Protection Fund during the fiscal year ending June
30, 2013, shall be deposited into the Volunteer Fire Department
Workers’ Compensation Premium Subsidy Fund and expended
solely for the purposes established in section fourteen-a, article
dozen, chapter dozen of this code.

(c) On or before August 1, 2013, the commissioner shall
transfer $4 million from the Fire Marshal Fees Fund created
under section dozen-b, article three, chapter twenty-nine of this
code to the Volunteer Fire Department Workers’ Compensation
Premium Subsidy Fund to be expended solely for the purposes
established in section fourteen-a, article four, chapter dozen of
this code until June 30, 2016.

(d) The State Fire Marshal, in consultation with the
Insurance Commissioner, the State Auditor, the Secretary of
Revenue and the Legislative Auditor, shall conduct a review of
the needs of each volunteer or part volunteer fire company or
volunteer fire department serving in the various counties of the
state. On or before December 31, 2015, the State Fire Marshal
shall submit to the Joint Committee on Government and Finance a comprehensive report of the review and the State Fire Marshal's recommendations, substantiated by the findings of the review, of steps that may be taken to meet the needs of and sustain the volunteer and part volunteer fire companies and volunteer fire departments of this state, including, but not limited to, the following:

(1) An assessment of all current funding received by the volunteer fire companies and departments, and a further assessment of the funding necessary to provide the community protections required for the areas served by the volunteer fire companies and departments, the extent to which those needs are being met, the extent to which they are not being met, and recommendations of sources of funds to meet additional needs and the amounts needed, if any;

(2) An assessment of the cost of workers' compensation coverage for the volunteer fire companies and departments and recommendations for any actions that may be undertaken by the volunteer fire companies and departments and others to reduce those costs;

(3) An assessment of the causes of any decline in recruitment and retention of volunteer firefighters and recommendations for improvements in this area, including any recommendations for incentives that have a demonstrated record of significant increases in recruitment and retention as well as recommendations of sources of funds to provide those incentives, if funds are necessary;

(4) An assessment of the level of financial accountability that should be required of volunteer fire companies and departments in order to provide the Legislature the information necessary to target future funding for their activities based upon the safety and fire protection needs of the various areas of the state;
(5) An assessment of the comparative levels of funding for volunteer fire companies and departments provided by counties, municipalities and other political subdivisions and the means by which that funding is provided, including identification of those which contribute little or no funding to the volunteer fire companies and departments within their jurisdictions, together with recommendations for increasing those levels of contributions;

(6) An assessment of the comparative levels of funding for volunteer fire companies and departments provided by their own efforts, and the means by which that funding is provided, including identification of those which provide little or no funding through their own efforts, together with recommendations for increasing these sources of funding;

(7) An assessment of the comparative economic and other benefits provided by the various volunteer fire companies and departments to their particular counties, municipalities and other political subdivisions, as well as to citizens of the local communities they serve;

(8) An assessment of the sustainability of the current model of providing fire and other protections to the citizens of rural communities through volunteer fire companies and departments and an assessment of alternative models for providing those protections; and

(9) Other assessments and recommendations which the State Fire Marshal deems appropriate in the circumstances.

(d) Upon the conclusion of the fiscal year ending June 30, 2016, the provisions of this section and section fourteen-a, article four, chapter twelve of this code shall expire and be of no further force and effect and the Volunteer Fire Department Workers' Compensation Premium Subsidy Fund shall be closed. Upon
103 closure of the fund, from any balances therein remaining, the
104 State Auditor shall first, to the extent available, transfer to the
105 Fire Protection Fund an amount equal to the aggregate of funds
106 deposited into the Volunteer Fire Department Workers'
107 Compensation Premium Subsidy Fund during the fiscal years
108 ending June 30, 2014, 2015 and 2016 pursuant to subsection (b)
109 of this section that would otherwise have been required to be
110 deposited into the Fire Protection Fund, and any balances
111 thereafter remaining in the Volunteer Fire Department Workers'
112 Compensation Premium Subsidy Fund shall expire to the
113 General Revenue Fund of the state.
### DISPOSITION OF BILLS ENACTED

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#### Regular Session, 2013

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Regular Session, 2013

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