ACTS
OF THE
LEGISLATURE
OF
WEST VIRGINIA

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

Volume I
Chapters 1 - 144
FOREWORD

These volumes contain the Acts of the Second Regular Session and the First and Second Extraordinary Sessions of the 82\textsuperscript{nd} Legislature, 2016.

Second Regular Session, 2016

The Second Regular Session of the 82\textsuperscript{nd} Legislature convened on January 13, 2016. The Constitutional sixty-day limit on the duration of the session was midnight, March 12, 2016. The Governor issued a proclamation on March 9, 2016 extending the session for a period not to exceed three days for the purpose of considering the Budget, and the Legislature adjourned \textit{sine die} on March 15, 2016.

Bills totaling 1,896 were introduced in the two houses during the session (1,191 House, 453 of which were carryover bills from the 2015 Regular Session, and 705 Senate). The Legislature passed 276 bills, 138 House and 138 Senate.

The Governor vetoed twenty-seven bills (\textbf{Com. Sub. for H. B. 2110}, Relating generally to the tax treatment of manufacturing entities; \textbf{H. B. 2796}, Providing paid leave for certain state officers and employees during a declared state of emergency; \textbf{H. B. 4005}, Repealing prevailing hourly rate of wages requirements; \textbf{Com. Sub. for H. B. 4007}, Relating generally to appointment of attorneys to assist the Attorney General; \textbf{Com. Sub. for H. B. 4014}, Preventing the State Board of Education from implementing common core academic standards and assessments; \textbf{Com. Sub. for H. B. 4080}, Department of Veterans’ Assistance, rule relating to VA headstones or markers; \textbf{Com. Sub. for H. B. 4145}, Relating to carry or use of a handgun or deadly weapon; \textbf{Com. Sub. for H. B. 4168}, Creating a special motor vehicle collector license plate; \textbf{Com. Sub. for H. B. 4171}, Relating to the public school calendar; \textbf{H. B. 4246}, Changing the Martinsburg Public Library to the Martinsburg-Berkeley County Public Library; \textbf{Com. Sub. for H. B. 4307}, Clarifying that a firearm may be carried for self-

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supplementary appropriation to the Division of Environmental Protection – Protect Our Water Fund; **H. B. 4155**, Making a supplementary appropriation to the Department of Health and Human Resources, Division of Health – West Virginia Birth-to-Three Fund, and the Department of Health and Human Resources, Division of Human Services - Medical Services Trust Fund; **S. B. 427**, Transferring funds from State Excess Lottery Fund to Department of Revenue. Com. Sub. for H. B. 4040, originally styled as Chapter 135, was enrolled and signed by the Governor in an incorrect form, and therefore, omitted from the Acts of the Legislature, leaving a total of 254 bills, 124 House and 130 Senate, which became law.

There were 196 Concurrent Resolutions introduced during the session, 125 House and 71 Senate, of which 35 House and 46 Senate were adopted. 40 House Joint Resolutions and 14 Senate Joint Resolutions were introduced, none of which were adopted by the Legislature. The House introduced 18 House Resolutions, and the Senate introduced 73 Senate Resolutions, of which 17 House and 73 Senate were adopted.
First Extraordinary Session, 2016

The Proclamation, as amended, calling the Legislature into Extraordinary Session on May 16, 2016, contained fifteen items for consideration.

The Legislature introduced 42 bills during the Extraordinary Session, 25 House Bills and 17 Senate Bills. One concurrent resolution was adopted, H. C. R. 1, Providing for an adjournment of the Legislature until June 12, 2016, and for reconvening prior thereto by the Speaker of the House of Delegates and the President of the Senate. In accordance with H. C. R. 1, the Speaker and the President called the Legislature back into session on June 11, 2016. During the First Extraordinary session, the House adopted 1 House Resolution, and the Senate adopted 4 Senate Resolutions. The Legislature passed 13 bills, 6 House and 7 Senate.

The Governor vetoed one bill, (Com. Sub. for H. B. 101, Budget Bill, making appropriations of public money out of the treasury in accordance with section fifty-one, article six of the Constitution), leaving a total of 12 bills, 5 House and 7 Senate (including S. B. 1013, Budget Bill), which became law.

The Legislature adjourned the First Extraordinary Session sine die on June 14, 2016.
Second Extraordinary Session, 2016

The Proclamation calling the Legislature into Extraordinary Session on September 18, 2016, contained two items for consideration.

The Legislature passed, and the Governor approved 1 House bill.

The House of Delegates adjourned sine die on September 19, 2016, and the Senate adjourned sine die, ending the Second Extraordinary Session, on September 20, 2016.

STEPHEN J. HARRISON  
Clerk of the House and  
Keeper of the Rolls.
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REGULAR SESSION, 2016

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Clerk – Stephen J. Harrison, Cross Lanes
Sergeant-at-Arms – Marshall Clay, Fayetteville
Doorkeeper – Frank Larese, Belle

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<td>Carol Miller (R)</td>
<td>Huntington</td>
<td>Small Business Owner/Property Management.</td>
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<td>Jim Morgan (D)</td>
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<td>Doug Reynolds (D)</td>
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<td>Matthew Rohrbach (R)</td>
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[XXXVI]
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<th>District</th>
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<tr>
<td>Eighteenth</td>
<td>Kelli Sobonya (R)</td>
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<td>Kenneth Paul Hicks (D)</td>
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<td>Don C. Perdue (D)</td>
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<td>Phyllis White (D)</td>
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<td>Educator/Principal</td>
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<td>Michel Moffatt (R)</td>
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<td>Joshua Nelson (R)</td>
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<td>Rupert Phillips, Jr. (D)</td>
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<td>Thorpe</td>
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<td>Tom Fast (R)</td>
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<td>Kayla Kessinger (R)</td>
<td>Mount Hope</td>
<td>Director of Human</td>
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<td>Brent Boggs (D)</td>
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<td>John B. McCuskey (R)</td>
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<td>Eric Nelson (R)</td>
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<tr>
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<td>Patrick Lane (R)</td>
<td>Cross Lanes</td>
<td>Attorney/Entrepreneur</td>
<td>77th - 82nd</td>
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MEMBERS OF THE HOUSE OF DELEGATES - Continued

<table>
<thead>
<tr>
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<tbody>
<tr>
<td>Thirty-ninth.</td>
<td>Ron Walters (R).</td>
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<td>Insurance Executive/President</td>
<td>71st, 73rd, 75th, 82nd</td>
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<tr>
<td></td>
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<td>Jordan Hill (R).</td>
<td>Mt. Nebo</td>
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<td>George &quot;Boogie&quot; Ambler (R), Fort Springs</td>
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<td>Ray Canterbury (R).</td>
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<td>Denene L. Campbell (D), Elkins</td>
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<td>Dana L. Lynch (D), Webster Springs</td>
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<td>Danny Wagner (R), Philippi</td>
<td>79th - 82nd</td>
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<td>Tim Miley (D), Clarksburg</td>
<td>77th - 82nd</td>
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<td>Theresa Waxman (R), Bridgeport</td>
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<td>Amy Summers (R), Flemington</td>
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<td>Mike Caputo (D), Fairmont</td>
<td>UMWA, District 31</td>
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<td>Linda Longstreth (D), Fairmont</td>
<td>Vice-President</td>
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<td>Tim Manchin (D), Fairmont</td>
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<td>Barbara Evans Fleischauer (D), Morgantown</td>
<td>Attorney/Small</td>
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<td>Cindy Frich (R), Morgantown</td>
<td>Business Owner</td>
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<td>Brian Kurcaba (R), Morgantown</td>
<td>72nd - 75th; 78th - 82nd</td>
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<td>William Flanigan (R), Morgantown</td>
<td>73rd - 82nd</td>
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<td>Joe Statler (R), Core</td>
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<td>Steven Shaffer (D), Tunnelton</td>
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<td>Randy E. Smith (R), Terra Alta</td>
<td>81st - 82nd</td>
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<td>Allen V. Evans (R), Petersburg</td>
<td>Poultry Producer/Farmer. 70th - 82nd</td>
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<td>Isaac Sponaugle (D), Franklin</td>
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<td>Gary G. Howell (R), Keyser</td>
<td>Small Business Owner. 80th - 82nd</td>
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[XXXVIII]
MEMBERS OF THE HOUSE OF DELEGATES - Continued

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<td>Ruth Rowan (R)............ Points...........</td>
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<td>Daryl E. Cowles (R)......... Berkeley Springs.</td>
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<td>Saira Blair (R)............. Martinsburg.</td>
<td>Student...............</td>
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<td>Larry W. Faircloth (R)..... Inwood.........</td>
<td>Small Business Consulting.</td>
<td>81st - 82nd</td>
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<td>Walter E. Duke (R).......... Martinsburg.</td>
<td>Retired Educator........</td>
<td>76th- 80th; 82nd</td>
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<td>Public Relations/Former Educator.</td>
<td>67th - 82nd</td>
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<td>Michael “Mike” Folk (R).... Martinsburg.</td>
<td>Airline Pilot/Farmer...</td>
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<td>Eric L. Householder (R).... Martinsburg.</td>
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<td>Jill Upson (R)............... Charles Town.</td>
<td>Former Retail Manager/Student...</td>
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<td>Paul Espinosa (R).......... Charles Town.</td>
<td>General Manager, Frontier Communications.</td>
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<td>Stephen Skinner (D)......... Shepherdstown...</td>
<td>Attorney...............</td>
<td>81st - 82nd</td>
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[XXXIX]
MEMBERS OF THE SENATE

REGULAR SESSION, 2016

OFFICERS

_President_ – William P. Cole, III, Bluefield
_Clerk_ – Clark S. Barnes, French Creek
_Sergeant-at-Arms_ – Howard L. Wellman, Bluefield
_Doorkeeper_ – Jeffrey L. Branham, Cross Lanes

<table>
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<tbody>
<tr>
<td>First</td>
<td>Ryan Ferns (R)</td>
<td>Wheeling</td>
<td>Physical Therapist</td>
<td>82nd</td>
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<td>Jack Yost (D)</td>
<td>Wellsburg</td>
<td>Retired</td>
<td>(House 76th - 78th); 79th - 82nd</td>
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<td>Jeffrey V. Kessler (D)</td>
<td>Glen Dale</td>
<td>Attorney</td>
<td>Appt. 11/1997, 73rd; 74th - 82nd</td>
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<td>Kent Leonhardt (R)</td>
<td>Fairview</td>
<td>Retired USMC/farmer</td>
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<td>Third</td>
<td>Donna J. Boley (R)</td>
<td>St. Marys</td>
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<td>Appt. 5/14/1985, 67th; 68th - 82nd</td>
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<td>Bob Ashley (R)</td>
<td>Spencer</td>
<td>Insurance Agent</td>
<td>67th - 73rd; 75th - 82nd</td>
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<td>Fourth</td>
<td>Mitch B. Carmichael (R)</td>
<td>Ripley</td>
<td>Director of Commercial Sales</td>
<td>(House 75th - 80th); 82nd</td>
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<td>Mike Hall (R)</td>
<td>Winfield</td>
<td>Businessman</td>
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<td>Mark R. Maynard (R)</td>
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<td>Chapmanville</td>
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<td>Ron Stollings (D)</td>
<td>Madison</td>
<td>Physician</td>
<td>78th - 82nd</td>
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<td>Eighth</td>
<td>Ed Gaunch (R)</td>
<td>Charleston</td>
<td>Retired</td>
<td>82nd</td>
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<td>Chris Walters (R)</td>
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<td>Robert L. Karnes (R)</td>
<td>Tallmansville</td>
<td>Information and Technology Field Services</td>
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<tr>
<td>Twelfth</td>
<td>Douglas Facemire (D)</td>
<td>Sutton</td>
<td>Grocery Chain Owner</td>
<td>79th - 82nd</td>
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<td>Mike Romano (D)</td>
<td>Clarksburg</td>
<td>Attorney/CPA</td>
<td>82nd</td>
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<td>Thirteenth</td>
<td>Robert D. Beach (D)</td>
<td>Morgantown</td>
<td>Executive Director of College Foundation</td>
<td>(House, Appt. 5/1998, 73rd; 74th - 79th; 80th - 82nd)</td>
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<td>Roman W. Prezioso, Jr. (D)</td>
<td>Fairmont</td>
<td>Administrator</td>
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<td>Kingwood</td>
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<td>78th - 82nd</td>
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<td>Bob Williams (D)</td>
<td>Grafton</td>
<td>Real Estate Appraiser</td>
<td>79th - 82nd</td>
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<td>Craig P. Blair (R)</td>
<td>Martinsburg</td>
<td>Small Business Owner/President</td>
<td>(House 76th - 79th); 82nd</td>
</tr>
<tr>
<td></td>
<td>Charles S. Trump IV (R)</td>
<td>Berkeley Springs</td>
<td>Attorney</td>
<td>(House 71st - 78th); 81st - 82nd</td>
</tr>
<tr>
<td>Sixteenth</td>
<td>Herb Snyder (D)</td>
<td>Shenandoah Junction</td>
<td>Director, Environmental Chemistry</td>
<td>73rd - 76th; 79th - 82nd</td>
</tr>
<tr>
<td></td>
<td>John R. Unger II (D)</td>
<td>Martinsburg</td>
<td>Pastor</td>
<td>74th - 82nd</td>
</tr>
<tr>
<td>Seventeenth</td>
<td>Corey Palumbo (D)</td>
<td>Charleston</td>
<td>Attorney</td>
<td>(House 76th - 78th); 79th - 82nd</td>
</tr>
<tr>
<td></td>
<td>Tom Takubo (R)</td>
<td>Charleston</td>
<td>Physician</td>
<td>82nd</td>
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HOUSE OF DELEGATES COMMITTEES

COMMITTEES OF THE HOUSE OF DELEGATES
Regular Session, 2016

STANDING

AGRICULTURE AND NATURAL RESOURCES

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

BANKING AND INSURANCE

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

EDUCATION

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

[XLII]
HOUSE OF DELEGATES COMMITTEES

ENERGY

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

FINANCE

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

GOVERNMENT ORGANIZATION

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

HEALTH AND HUMAN RESOURCES

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

[XLIII]
HOUSE OF DELEGATES COMMITTEES

INDUSTRY AND LABOR

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

INTERSTATE COOPERATION

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

JUDICIARY

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

PENSIONS AND RETIREMENT

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

POLITICAL SUBDIVISIONS

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

[XLIV]
HOUSE OF DELEGATES COMMITTEES

ROADS AND TRANSPORTATION

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

RULES

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

PREVENTION AND TREATMENT OF SUBSTANCE ABUSE

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

SENIOR CITIZEN ISSUES

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

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HOUSE OF DELEGATES COMMITTEES

SMALL BUSINESS, ENTREPRENEURSHIP AND ECONOMIC DEVELOPMENT

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

VETERANS’ AFFAIRS AND HOMELAND SECURITY

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

ENROLLED BILLS

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

[XLVI]
SENATE COMMITTEES

COMMITTEES OF THE SENATE
Regular Session, 2016

STANDING

AGRICULTURE AND RURAL DEVELOPMENT

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

BANKING AND INSURANCE

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

CONFIRMATIONS

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

ECONOMIC DEVELOPMENT

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

EDUCATION

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

[XLVII]
SENATE COMMITTEES

ENERGY, INDUSTRY AND MINING

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

ENROLLED BILLS

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

FINANCE

Senators Hall (Chair), Walters (Vice Chair), Blair, Boley, Boso, Carmichael, Mullins, Sypolt, Takubo, Facemire, Kessler, Laird, Plymale, Prezioso, Stollings, Unger and Yost.

GOVERNMENT ORGANIZATION

Senators Blair (Chair), Walters (Vice Chair), Boso, Ferns, Gaunch, Leonhardt, Maynard, Mullins, Facemire, Miller, Palumbo, Snyder, Williams and Yost.

HEALTH AND HUMAN RESOURCES

Senators Ferns (Chair), Takubo (Vice Chair), Ashley, Karnes, Leonhardt, Trump, Walters, Laird, Palumbo, Plymale, Prezioso, Stollings and Unger.

INTERSTATE COOPERATION

Senators Gaunch (Chair), Karnes (Vice Chair), Boso, Maynard, Kirkendoll, Palumbo and Unger.

[XLVIII]
SENATE COMMITTEES

JUDICIARY

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

LABOR

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

MILITARY

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

NATURAL RESOURCES

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

PENSIONS

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

RULES

Senators Cole (Chair), Blair, Carmichael, Hall, Sypolt, Trump, Kessler, Plymale, Prezioso, Stollings and Williams.
SENATE COMMITTEES

TRANSPORTATION AND INFRASTRUCTURE

Senators Walters (Chair), Leonhardt (Vice Chair), Boley, Gaunch, Mullins, Beach, Kirkendoll, Plymale and Woelfel.
AN ACT to amend and reenact §55-2-15 of the Code of West Virginia, 1931, as amended, relating generally to limitations on civil actions accruing to persons under legal disability; and establishing the limitation on actions against the perpetrator of sexual assault or sexual abuse upon a minor to be four years upon reaching the age of majority or four year upon discovery of the sexual assault or sexual abuse, whichever is longer.

Be it enacted by the Legislature of West Virginia:

That §55-2-15 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2. LIMITATION OF ACTIONS AND SUITS.

§55-2-15. Special and general savings as to persons under disability.

1 (a) A personal action for damages resulting from sexual assault or sexual abuse of a person who was an infant at the time of the act or acts alleged, shall be brought against the perpetrator of the sexual assault or abuse within four years after reaching the
age of majority or within four years after discovery of the sexual assault or sexual abuse, whichever is longer.

(b) If any person to whom the right accrues to bring any personal action other than an action described in subsection (a) of this section, suit or scire facias, or any bill to repeal a grant, shall be, at the time the same accrues, an infant or insane, the same may be brought within the like number of years after his or her becoming of full age or sane that is allowed to a person having no such impediment to bring the same after the right accrues, or after such acknowledgment as is mentioned in section eight of this article, except that it shall in no case be brought after twenty years from the time when the right accrues.

CHAPTER 2

(S. B. 29 - By Senator Palumbo)

[Passed March 7, 2016; in effect ninety days from passage.]
[Approved by the Governor on March 23, 2016.]

AN ACT to amend and reenact §55-2-21 of the Code of West Virginia, 1931, as amended, relating generally to tolling statute of limitations in certain cases; limiting circumstances within which statute of limitations is tolled for institution of third-party complaints associated with pending civil actions; providing alternative periods when statute of limitations on third-party complaints is tolled; defining “third-party complaint”; and clarifying that this section does not limit doctrine of equitable tolling or discovery rule.

Be it enacted by the Legislature of West Virginia:

That §55-2-21 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:
ARTICLE 2. LIMITATION OF ACTIONS AND SUITS.

§55-2-21. Statutes of limitation tolled on claims assertible in civil actions when actions commence.

(a) After a civil action is commenced, the running of any statute of limitation is tolled for, and only for, the pendency of that civil action as to any claim that has been or may be asserted in the civil action by counterclaim, whether compulsory or permissive, or cross-claim: Provided, That if a permissive counterclaim would be barred but for the provisions of this section, the permissive counterclaim may be asserted only in the action tolling the statute of limitations under this section. This section shall be deemed to toll the running of any statute of limitation with respect to any claim for which the statute of limitation has not expired on the effective date of this section, but only for so long as the action tolling the statute of limitations is pending.

(b) Any defendant who desires to file a third-party complaint shall have one hundred eighty days from the date of service of process of the original complaint, or the time remaining on the applicable statute of limitations, whichever is longer, to bring any third-party complaint against any non-party person or entity: Provided, That any new party brought into litigation by a third-party complaint shall be afforded, from the date of service of process of the third-party complaint, an additional 180-day period, or the remaining statute of limitations period, whichever is longer, to file any third-party complaint of its own, and any applicable statute of limitation shall be tolled during this time period.

(c) For purposes of this section, the term “third-party complaint” means a claim brought by a defendant against any person or entity that was not originally a party to the underlying
29 civil action, where the new claim is made a part of the
30 underlying civil action.
31 (d) This section tolls the running of any statute of limitation
32 with respect to any claim for which the statute of limitation has
33 not expired on the effective date of this section, but only for so
34 long as the action tolling the statute of limitations is pending.
35 This section does not limit the ability of a court to use the
36 doctrine of equitable tolling or the discovery rule to toll the
37 statute of limitations in any action, including any third-party
38 complaint that would otherwise be subject to subsection (b) of
39 this section.

CHAPTER 3

(Com. Sub. for S. B. 7 - By Senators Leonhardt, Carmichael,
Ashley, Stollings, Trump and Blair)

[Passed February 24, 2016; in effect ninety days from passage.]
[Approved by the Governor on March 2, 2016.]

AN ACT to amend and reenact §55-7-13d of the Code of West
Virginia, 1931, as amended; and to amend and reenact §55-7B-5
of said code, all relating to comparative fault; providing one
hundred eighty days after service of process for defendant to give
notice of nonparties wholly or partially at fault; providing that a
plaintiff’s recovery only be reduced in proportion to the percentage
of fault assigned to settling parties or nonparties and not the
amount of any settlement taking place before the verdict; providing
when plaintiff’s criminal conduct bars recovery; prohibiting
recovery in civil actions when damages are suffered as a result of
the commission, attempted commission, or immediate flight from
the commission or attempted commission of a felony; requiring
commission, attempted commission, or immediate flight from the commission or attempted commission of a felony be proximate cause of injury; providing that the burden of proof for establishing a criminal conduct defense is upon the person asserting such defense; providing that a court shall dismiss an action upon determination that, as a matter of law, the felonious conduct upon which there was a conviction, guilty plea or plea of no contest was a proximate cause of injury; defining damages; providing for stay of civil action in which criminal conduct defense is asserted during pendency, including appeals, of criminal action; establishing that the 2016 amendments apply to all causes of action accruing on or after the effective date of those amendments; prohibiting civil action under Medical Professional Liability Act related to prescription or dispensation of controlled substances when person’s damages are a proximate result of the commission of a felony, a violent crime that is a misdemeanor, or violation of any law related to controlled substances; and providing exception if health care provider that prescribes or dispenses controlled substances in violation of law proximately causing injury.

Be it enacted by the Legislature of West Virginia:

That §55-7-13d of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §55-7B-5 of said code be amended and reenacted, all to read as follows:

ARTICLE  7. ACTIONS FOR INJURIES.

§55-7-13d. Determination of fault; imputed fault; when plaintiff’s criminal conduct bars recovery; burden of proof; damages; stay of action; limitations; applicability; severability.

1 (a) Determination of fault of parties and nonparties. —

2 (1) In assessing percentages of fault, the trier of fact shall consider the fault of all persons who contributed to the alleged
(2) Fault of a nonparty shall be considered if the plaintiff entered into a settlement agreement with the nonparty or if a defending party gives notice no later than one hundred eighty days after service of process upon said defendant that a nonparty was wholly or partially at fault. Notice shall be filed with the court and served upon all parties to the action designating the nonparty and setting forth the nonparty’s name and last known address, or the best identification of the nonparty which is possible under the circumstances, together with a brief statement of the basis for believing such nonparty to be at fault;

(3) In all instances where a nonparty is assessed a percentage of fault, any recovery by a plaintiff shall be reduced in proportion to the percentage of fault chargeable to such nonparty. Where a plaintiff has settled with a party or nonparty before verdict, that plaintiff’s recovery will be reduced in proportion to the percentage of fault assigned to the settling party or nonparty, rather than by the amount of the nonparty’s or party’s settlement;

(4) Nothing in this section is meant to eliminate or diminish any defenses or immunities, which exist as of the effective date of this section, except as expressly noted herein;

(5) Assessments of percentages of fault for nonparties are used only as a vehicle for accurately determining the fault of named parties. Where fault is assessed against nonparties, findings of such fault do not subject any nonparty to liability in that or any other action, or may not be introduced as evidence of liability or for any other purpose in any other action; and

(6) In all actions involving fault of more than one person, unless otherwise agreed by all parties to the action, the court shall instruct the jury to answer special interrogatories or, if there is no jury, shall make findings, indicating the percentage of
the total fault that is allocated to each party and nonparty pursuant to this article. For this purpose, the court may determine that two or more persons are to be treated as a single person.

(b) **Imputed fault.** — Nothing in this section may be construed as precluding a person from being held liable for the portion of comparative fault assessed against another person who was acting as an agent or servant of such person, or if the fault of the other person is otherwise imputed or attributed to such person by statute or common law. In any action where any party seeks to impute fault to another, the court shall instruct the jury to answer special interrogatories or, if there is no jury, shall make findings, on the issue of imputed fault.

(c) **When plaintiff’s criminal conduct bars recovery.** — In any civil action, a person or person’s legal representative who asserts a claim for damages may not recover if:

(1) Such damages arise out of the person’s commission, attempted commission, or immediate flight from the commission or attempted commission of a felony; and

(2) That the person’s damages were suffered as a proximate result of the commission, attempted commission, or immediate flight from the commission or attempted commission of a felony.

(d) **Burden of proof.** — The burden of alleging and proving comparative fault shall be upon the person who seeks to establish such fault. The burden of alleging and proving the defense set forth in subsection (c) of this section shall be upon the person who seeks to assert such defense: **Provided,** That in any civil action in which a person has been convicted or pleaded guilty or no contest to a felony, the claim shall be dismissed if the court determines as a matter of law that the person’s damages were suffered as a proximate result of the felonious conduct to which the person pleaded guilty or no contest, or upon which the person was convicted.
(e) **Damages.** — For purposes of this section, “damages” includes all damages which may be recoverable for personal injury, death, or loss of or damage to property, including those recoverable in a wrongful death action.

(f) **Stay of action.** — Any civil action in which the defense set forth in subsection (c) of this section is asserted shall be stayed by the court on the motion of the defendant during the pendency of any criminal action which forms the basis of the defense, including appeals, unless the court finds that a conviction in the criminal action would not constitute a valid defense under said subsection.

(g) **Limitations.** — Nothing in this section creates a cause of action. Nothing in this section alters, in any way, the immunity of any person as established by statute or common law.

(h) **Applicability.** — This section applies to all causes of action arising or accruing on or after the effective date of its enactment. The amendments to this section enacted during the 2016 regular session of the Legislature shall apply to all causes of action accruing on or after the effective date of those amendments.

(i) **Severability.** — The provisions of this section are severable from one another, so that if any provision of this section is held void, the remaining provisions of this section shall remain valid.

ARTICLE 7B. MEDICAL PROFESSIONAL LIABILITY.

§55-7B-5. Health care actions; complaint; specific amount of damages not to be stated; limitation on bad faith claims; filing of first party bad faith claims; when plaintiff’s criminal conduct bars recovery.

(a) In any medical professional liability action against a health care provider no specific dollar amount or figure may be included in the complaint, but the complaint may include a
statement reciting that the minimum jurisdictional amount established for filing the action is satisfied. However, any party defendant may at any time request a written statement setting forth the nature and amount of damages being sought. The request shall be served upon the plaintiff who shall serve a responsive statement as to the damages sought within thirty days thereafter. If no response is served within the thirty days, the party defendant requesting the statement may petition the court in which the action is pending to order the plaintiff to serve a responsive statement.

(b) Notwithstanding any other provision of law, absent privity of contract, no plaintiff who files a medical professional liability action against a health care provider may file an independent cause of action against any insurer of the health care provider alleging the insurer has violated the provisions of subdivision (9), section four, article eleven, chapter thirty-three of this code. Insofar as the provisions of section three of said article prohibit the conduct defined in subdivision (9), section four of said article, no plaintiff who files a medical professional liability action against a health care provider may file an independent cause of action against any insurer of the health care provider alleging the insurer has violated the provisions of section three of said article.

(c) No health care provider may file a cause of action against his or her insurer alleging the insurer has violated the provisions of subdivision (9), section four, article eleven, chapter thirty-three of this code until the jury has rendered a verdict in the underlying medical professional liability action or the case has otherwise been dismissed, resolved or disposed of.

(d) No action related to the prescription or dispensation of controlled substances may be maintained against a health care provider pursuant to this article by or on behalf of a person whose damages arise as a proximate result of a violation of the Uniform Controlled Substances Act, as set forth in chapter sixty-
a of this code, the commission of a felony, a violent crime which is a misdemeanor, or any other state or federal law related to controlled substances: Provided, That an action may be maintained pursuant to this article if the plaintiff alleges and proves by a preponderance of the evidence that the health care provider dispensed or prescribed a controlled substance or substances in violation of state or federal law, and that such prescription or dispensation in violation of state or federal law was a proximate cause of the injury or death.

CHAPTER 4
(S. B. 15 - By Senators Boso and Gaunch)

[Passed February 17, 2016; in effect 90 days from passage.]
[Approved by the Governor on February 25, 2016.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §55-7-30, relating generally to manufacturers and sellers of prescription drugs and medical devices and liability of those entities for alleged inadequate warning or instruction; and adopting the learned intermediary doctrine as defense to civil action based upon inadequate warnings or instructions.

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 §55-7-30, to read as follows:

ARTICLE 7. ACTIONS FOR INJURIES.

§55-7-30. Adequate pharmaceutical warnings; limiting civil liability for manufacturers or sellers who provide warning to a learned intermediary.
(a) A manufacturer or seller of a prescription drug or medical device may not be held liable in a product liability action for a claim based upon inadequate warning or instruction unless the claimant proves, among other elements, that:

1. The manufacturer or seller of a prescription drug or medical device acted unreasonably in failing to provide reasonable instructions or warnings regarding foreseeable risks of harm to prescribing or other health care providers who are in a position to reduce the risks of harm in accordance with the instructions or warnings; and

2. Failure to provide reasonable instructions or warnings was a proximate cause of harm.

(b) It is the intention of the Legislature in enacting this section to adopt and allow the development of a learned intermediary doctrine as a defense in cases based upon claims of inadequate warning or instruction for prescription drugs or medical devices.

CHAPTER 5

(Com. Sub. for S. B. 14 - By Senators Trump, Boso, Ferns, Leonhardt, Takubo and Blair)

[Passed February 22, 2016; in effect 90 days from passage.]
[Approved by the Governor on March 2, 2016.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §55-7I-1, §55-7I-2, §55-7I-3, §55-7I-4, §55-7I-5, §55-7I-6 and §55-7I-7, all relating to providing limits on successor corporation asbestos-related liabilities; setting forth legislative findings and purpose; defining terms; setting forth the applicability of article and certain
exclusions; limiting liability of successor corporations in successor asbestos-related liabilities; providing applicability of limitation in the case of prior merger or consolidation with prior transferor; setting forth guidelines for establishment of fair market value of total gross assets; requiring inclusion of intangible assets in calculation of fair market value; detailing how liability insurance is to be valued; providing for adjustment of fair market value of total gross assets; discontinuing adjustment of fair market value of total gross assets once certain conditions met; excluding liability insurance from annual adjustments; directing liberal construction of act with regard to successors; and setting forth applicability of act to certain claims.

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 §55-7I-1, §55-7I-2, §55-7I-3, §55-7I-4, §55-7I-5, §55-7I-6 and §55-7I-7, all to read as follows:

ARTICLE 7I. SUCCESSOR ASBESTOS-RELATED LIABILITY.

§55-7I-1. Findings and purpose.

1 (a) The West Virginia Legislature finds that:

2 (1) Asbestos-related claims threaten the continued viability of uniquely situated companies that have never manufactured, sold or distributed asbestos or asbestos products and are liable only as successor corporations.

6 (2) The viability of these businesses is threatened due solely to their status as successor corporations by merger or consolidation based on actions taken prior to the May 13, 1968, American Conference of Governmental Industrial Hygienists change in the recommended, longstanding threshold workplace-exposure limit for asbestos.
(3) More than twenty other states have enacted legislation similar to this article to provide limits on asbestos-related liabilities for innocent successors.

(4) The public interest as a whole is best served by providing relief to innocent successors so that they may remain viable.

(b) The purpose of this article is to limit the cumulative recovery by all asbestos claimants from innocent successors.

§55-7I-2. Definitions.

As used in this article:

(1) “Asbestos claim” means any claim, wherever or whenever made, for damages, losses, indemnification, contribution or other relief arising out of, based on, or in any way related to asbestos, including:

(A) Property damage caused by the installation, presence or removal of asbestos;

(B) The health effects of exposure to asbestos, including any claim for:

(i) Personal injury or death;

(ii) Mental or emotional injury;

(iii) Risk of disease or other injury; or

(iv) The costs of medical monitoring or surveillance; and

(C) Any claim made by or on behalf of any person exposed to asbestos, or a representative, spouse, parent, child or other relative of the person.

(2) “Corporation” means a corporation for profit, including:

(A) A domestic corporation organized under the laws of this state; or
(B) A foreign corporation organized under laws other than the laws of this state.

(3) “Successor asbestos-related liabilities” means any liabilities, whether known or unknown, asserted or unasserted, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, or due or to become due, that are related in any way to asbestos claims that were assumed or incurred by a corporation as a result of or in connection with a merger or consolidation, or the plan of merger or consolidation related to the merger or consolidation, with or into another corporation or that are related in any way to asbestos claims based on the exercise of control or the ownership of stock of the corporation before the merger or consolidation. The term includes liabilities that, after the time of the merger or consolidation for which the fair market value of total gross assets is determined under section five of this article, were or are paid or otherwise discharged, or committed to be paid or otherwise discharged, by or on behalf of the corporation, or by a successor of the corporation, or by or on behalf of a transferor, in connection with settlements, judgments or other discharges in this state or another jurisdiction.

(4) “Successor” means a corporation that assumes or incurs, or has assumed or incurred, successor asbestos-related liabilities.

(5) “Transferor” means a corporation from which successor asbestos-related liabilities are or were assumed or incurred.

§55-71-3. Applicability.

(a) The limitations in section four of this article shall apply to a domestic corporation or a foreign corporation that has had a certificate of authority to transact business in this state or has done business in this state and that is a successor which became a successor prior to May 13, 1968, or which is any of that
successor corporation’s successors, but in the latter case only to the extent of the limitation of liability applied under subsection (b), section four of this article and subject also to the limitations found in this article, including those in subsection (b) of this section.

(b) The limitations in section four of this article shall not apply to:

(1) Workers’ compensation benefits paid by or on behalf of an employer to an employee under the provisions of chapter twenty-three of this code or a comparable workers’ compensation law of another jurisdiction;

(2) Any claim against a corporation that does not constitute a successor asbestos-related liability;

(3) An insurance corporation;

(4) Any obligation under the National Labor Relations Act, 29 U. S. C. Section 151, et seq., as amended, or under any collective bargaining agreement;

(5) A successor that, after a merger or consolidation, continued in the business of mining asbestos or in the business of selling or distributing asbestos fibers or in the business of manufacturing, distributing, removing or installing asbestos-containing products which were the same or substantially the same as those products previously manufactured, distributed, removed or installed by the transferor;

(6) A contractual obligation existing as of the effective date of this article that was entered into with claimants or potential claimants or their counsel and which resolves asbestos claims or potential asbestos claims;

(7) Any claim made against the estate of a debtor in a bankruptcy proceeding commenced prior to the effective date of
this article, under the United States Bankruptcy Code, 11 U. S. C. Section 101, et seq., by or against such debtor, or against a bankruptcy trust established under 11 U. S. C. Section 524(g) or similar provision of the United States Code in such a bankruptcy; and

(8) A successor asbestos-related liability arising under common law or statute for premises liability, or a cause of action for premises liability, as applicable, but only if the successor owned or controlled the premise or premises at issue after the merger or consolidation.

§55-7I-4. Limitations on successor asbestos-related liabilities.

(a) Except as further limited in subsection (b) of this section, the cumulative successor asbestos-related liabilities of a corporation are limited to the fair market value of the total gross assets of the transferor determined as of the time of the merger or consolidation. The corporation does not have any responsibility for successor asbestos-related liabilities in excess of this limitation.

(b) If the transferor had assumed or incurred successor asbestos-related liabilities in connection with a prior merger or consolidation with a prior transferor, then the fair market value of the total assets of the prior transferor, determined as of the time of such earlier merger or consolidation, shall be substituted for the limitation set forth in subsection (a) of this section, for purposes of determining the limitation of liability of a corporation.

§55-7I-5. Establishing fair market value of total gross assets.

(a) A corporation may establish the fair market value of total gross assets for the purpose of the limitations under section four of this article through any method reasonable under the circumstances, including:
(1) By reference to the going concern value of the assets or to the purchase price attributable to or paid for the assets in an arms-length transaction; or

(2) In the absence of other readily available information from which the fair market value can be determined, by reference to the value of the assets recorded on a balance sheet.

(b) Total gross assets include intangible assets.

c) Total gross assets include the aggregate coverage under any applicable liability insurance that was issued to the transferor whose assets are being valued for purposes of this section and which insurance has been collected or is collectible to cover successor asbestos-related liabilities (except compensation for liabilities arising from workers’ exposure to asbestos solely during the course of their employment by the transferor). A settlement of a dispute concerning such insurance coverage entered into by a transferor or successor with the insurers of the transferor 10 years or more before the enactment of this article shall be determinative of the aggregate coverage of such liability insurance to be included in the calculation of the transferor’s total gross assets.

d) The fair market value of total gross assets shall reflect no deduction for any liabilities arising from any asbestos claim.

§55-71-6. Adjustment.

(a) Except as provided in subsections (b), (c) and (d) of this section, the fair market value of total gross assets at the time of the merger or consolidation increases annually at a rate equal to the sum of:

(1) The prime rate as listed in the first edition of the Wall Street Journal published for each calendar year since the merger or consolidation; and

(2) One percent.
(b) The rate found in subsection (a) of this section is not compounded.

(c) The adjustment of the fair market value of total gross assets continues as provided in subsection (a) of this section until the date the adjusted value is exceeded by the cumulative amounts of successor asbestos-related liabilities paid or committed to be paid by or on behalf of the corporation or a predecessor, or by or on behalf of a transferor, after the time of the merger or consolidation for which the fair market value of total gross assets is determined.

(d) No adjustment of the fair market value of total gross assets shall be applied to any liability insurance otherwise included in the definition of total gross assets by subsection (c), section five of this article.

§55-7I-7. Scope of article; application.

(a) This article shall be liberally construed with regard to successors.

(b) This article applies to all asbestos claims filed against a successor on or after the effective date of this article.

CHAPTER 6

(S. B. 387 - By Senator Karnes)

[Passed February 23, 2016; in effect ninety days from passage.]
[Approved by the Governor on March 3, 2016.]
permitting a responsible party to acquire a percentage ownership interest to consume raw milk; setting forth required provisions for shared animal ownership agreements; requiring responsible party to acquire percentage ownership interest in milk-producing animal; requiring payment for percentage ownership for care and boarding of milk-producing animal; providing for receipt of a share of raw milk pursuant to an agreement; requiring written document acknowledging the inherent dangers of consuming raw milk; providing immunity to herd seller for inherent dangers of consuming raw milk; providing no waiver of immunity to herd seller for dangers caused by negligence of herd seller; prohibiting responsible party from distributing, selling or reselling raw milk received pursuant to shared ownership agreement; requiring herd seller to file shared animal ownership agreement with Commissioner of Agriculture; requiring certain additional information be provided by herd seller to Commissioner of Agriculture; requiring herd seller meet animal health requirements established by state veterinarian; requiring parties and physicians to report illnesses related to consumption of raw milk; requiring parties to shared animal ownership agreement and physicians to report illnesses directly related to consuming raw milk; requiring Commissioner of Agriculture contact other parties consuming raw milk from same herd seller upon receipt of report of illness; providing administrative penalties; permitting a person against whom a penalty is imposed to administratively contest that penalty; 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 §19-1-7, to read as follows:

ARTICLE 1. DEPARTMENT OF AGRICULTURE.

§19-1-7. Shared animal ownership agreement to consume raw milk.
(a) Notwithstanding any other provision of the law to the contrary, a responsible party may enter into a written shared animal ownership agreement to consume raw milk in which he or she:

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

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

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

(4) Agrees to sign a written document acknowledging the inherent dangers of consuming raw milk that may contain bacteria, such as Brucella, Campylobacter, Listeria, Salmonella and E. Coli, that has not been pasteurized to remove bacteria and that is particularly dangerous to children, pregnant women and those with compromised immunity. The responsible party then agrees to release the herd seller of liability for the inherent dangers of consuming raw milk but not for those dangers that are caused by negligent acts or omissions of the herd seller; and

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

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

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

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

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

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

e) The Commissioner of Agriculture may impose an administrative penalty not to exceed $100 for a person who violates the provisions of this section. Any penalty imposed under this subsection may be contested by the person against whom it is imposed pursuant to article five, chapter twenty-nine-a of this code.

f) The Commissioner of Agriculture, in consultation with the Department of Health and Human Resources, may propose rules for promulgation in accordance with the provisions of article three, chapter twenty-nine-a of this code in compliance with raw milk dairy industry standards.
AN ACT to amend and reenact §19-2H-11 of the Code of West Virginia, 1931, as amended, relating to captive cervid; establishing a misdemeanor penalty to kill, injure, or take captive cervid; and setting forth fines and restitution.

Be it enacted by the Legislature of West Virginia:

That §19-2H-11 of the Code of West Virginia, 1931, as amended, be amended and reenacted, to read as follows:

ARTICLE 2H. CAPTIVE CERVID FARMING ACT.

§19-2H-11. Prohibited conduct; criminal penalties.

1 (a) A person may not release or permit the release of any captive cervids from a captive cervid farming facility.

3 (b) A person may not cause the entry or introduction of wild cervids into a captive cervid farming facility.

5 (c) An owner may not cease operation of or abandon a captive cervid farming facility without complying with the requirements and rules promulgated under this article.

8 (d) Any person who violates subsection (a) or (b) of this section is guilty of a misdemeanor and, upon conviction thereof,
shall be confined in jail for not more than ninety days, or fined not more than $300, or both fined and confined for a first offense. Any person who violates subsection (a) or (b) of this section for a second or subsequent offense is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not more than one year, or fined not more than $1,000, or both fined and confined.

(e) Any person who intentionally or knowingly violates subsection (a), (b) or (c) of this section is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility not less than one nor more than three years, or fined not more than $1,000, or both fined and imprisoned.

(f) A person may not kill, injure, or take any captive cervid that is the property of another. A person who violates this subsection is guilty of a misdemeanor and, upon conviction thereof, may be fined not more than $500 and pay restitution pursuant to sections four and five, article eleven-a, chapter sixty-one of this code.

CHAPTER 8

(Com. Sub. for S. B. 39 - By Senators Stollings and Gaunch)

[Passed March 8, 2016; in effect 90 days from passage.]
[Approved by the Governor on March 16, 2016.]

AN ACT to amend and reenact §17F-1-1 and §17F-1-9 of the Code of West Virginia, 1931, as amended, all relating to regulation of all-terrain vehicles; clarifying circumstances in which all-terrain vehicles may operate and travel; and defining motorcycles as all-terrain vehicles.
Be it enacted by the Legislature of West Virginia:

That §17F-1-1 and §17F-1-9 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 1. REGULATION OF ALL-TERRAIN VEHICLES.

§17F-1-1. Acts prohibited by operator; penalties for violations.

(a) No all-terrain vehicle may be operated in this state:

(1) On any interstate highway except by public safety personnel responding to emergencies;

(2) On any road or highway with a center line or more than two lanes except for the purpose of crossing the road, street or highway, if:

(A) The crossing is made at an angle of approximately ninety degrees to the direction of the highway and at a place where no obstruction prevents a quick and safe crossing;

(B) The vehicle is brought to a complete stop before crossing the shoulder or main traveled way of the highway;

(C) The operator yields his or her right-of-way to all oncoming traffic that constitutes an immediate potential hazard; and

(D) Both the headlight and taillight are illuminated when the crossing is made if the vehicle is so equipped;

(3) With more than one passenger unless more passengers are allowed under manufacturers’ recommendations;

(4) With a passenger under the age of eighteen, unless the operator has at a minimum a level two intermediate driver’s license or its equivalent or is eighteen years of age or older;
(5) Unless riders under the age of eighteen are wearing size appropriate protective helmets that meet the current performance specifications established by the American National Standards Institute standard, z 90.1, the United States Department of Transportation federal motor vehicle safety standard no. 218 or Snell safety standards for protective headgear for vehicle users;

(6) Anytime from sunset to sunrise without an illuminated headlight or lights and taillights;

(7) Without a manufacturer-installed or equivalent spark arrester and a manufacturer-installed or equivalent muffler in proper working order and properly connected to the vehicle’s exhaust system; or

(8) Unless operating in compliance with the provisions of section two of this article.

(b) An all-terrain vehicle may be operated upon the shoulder, or as far to the right on the pavement as possible when there is not enough shoulder to safely operate, on any road, street or highway referred to in subdivision (2), subsection (a) of this section other than an interstate highway for a distance not to exceed ten miles to travel between a residence or lodging and off-road trails, fields and areas of operation, including stops for food, fuel, supplies and restrooms, if:

(1) The vehicle is operated at speeds of twenty-five miles per hour or less; and

(2) The vehicle is operated at any time from sunset to sunrise the all-terrain vehicle must be equipped with headlights and taillights which must be illuminated.

(c) Operation of an all-terrain vehicle in accordance with subsection (b) shall not constitute operation of a motor vehicle
on a road or highway of this state as contemplated by the provisions of section seven of this article.

(d) Notwithstanding any provision of this chapter to the contrary, a municipality, county or other political subdivision of the state may authorize the operation of all-terrain vehicles on certain specified roads, streets or highways which are marked with centerline pavement markings, other than interstate highways, to allow participation in parades, exhibitions and other special events, in emergencies or for specified purposes.

§17F-1-9. Definition of all-terrain and utility terrain vehicle.

(a) As used in this chapter:

(1) “All-terrain vehicle” or “AATV” means any motor vehicle designed for off-highway use and designed to travel on not less than three low-pressure tires, having a seat or saddle designed to be straddled by the operator and handlebars for steering control and intended by the manufacturer to be used by a single operator or by an operator and no more than one passenger.

(2) “Utility-terrain vehicle” means any motor vehicle with four or more low-pressure tires designed for off-highway use having bench or bucket seating for each occupant and a steering wheel for control.

(3) “Motorcycle” means any motor vehicle manufactured with no more than two wheels and having a seat or a saddle for the use of the operator.

(b) As used in this article, “all-terrain vehicles” and “vehicle”, or the plural, mean all-terrain vehicles, utility-terrain vehicles and motorcycles.
AN ACT to amend and reenact §21-10-6 of the Code of West Virginia, 1931, as amended, relating to Division of Labor inspection of amusement rides and amusement attractions.

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

That §21-10-6 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 10. AMUSEMENT RIDES AND AMUSEMENT ATTRACTIONS SAFETY ACT.**

§21-10-6. Permits; application; annual inspection.

1 No operator or owner may knowingly permit the operation of an amusement ride or amusement attraction without a permit issued by the Division. Each year and at least fifteen days before the first time the amusement ride or amusement attraction is made available in this state for public use, an operator or owner shall apply for a permit to the Division on a form furnished by the Division and containing any information the Division may require. The Division shall, within thirty days of the first time in the calendar year the ride or attraction is made available in this state for public use, inspect all amusement rides and amusement attractions. The Division shall inspect all stationary rides and attractions at least once every year. The Division may inspect all mobile amusement rides and amusement attractions each time they are disassembled and reassembled for use in this state. The
Division may conduct inspections at any reasonable time without prior notice: Provided, That in lieu of performing its own inspection, the Division may accept inspection reports from special inspectors certified by the Division.

CHAPTER 10

(H. B. 4150 - By Mr. Speaker (Mr. Armstead) and Delegate Miley)
[By Request of the Executive]
[Passed March 12, 2016; in effect from passage.]


Whereas, The Governor has established the availability of federal funds for expenditure in the fiscal year ending June 30, 2016 which is hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2016, to fund 8723, fiscal year 2016, organization 0506, be
supplemented and amended by increasing an existing item of appropriation as follows:

1 TITLE II – APPROPRIATIONS.

2 Sec. 6. Appropriations of federal funds.

3 DEPARTMENT OF HEALTH AND HUMAN RESOURCES

4 346 - Consolidated Medical Service Fund

5 (WV Code Chapter 16)

6 Fund 8723 FY 2016 Org 0506

7 Approach Funds

8

9

10 1 Personal Services and

11 2 Employee Benefits . . . . . . . 00100 $ 123,540

12 And, That the total appropriation for the fiscal year ending

13 June 30, 2016, to fund 8725, fiscal year 2016, organization 0510,

14 be supplemented and amended by increasing existing items of

15 appropriation as follows:

1 TITLE II – APPROPRIATIONS.

2 Sec. 6. Appropriations of federal funds.

3 DEPARTMENT OF HEALTH AND HUMAN RESOURCES

4 350 - Human Rights Commission

5 (WV Code Chapter 5)
### Title II – Appropriations

#### Sec. 6. Appropriations of federal funds.

**Department of Health and Human Resources**

351 – Division of Human Services

(WV Code Chapters 9, 48 and 49)

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<tr>
<td>4 Current Expenses</td>
<td>13000</td>
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<tr>
<td>5 Medical Services</td>
<td>18900</td>
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AN ACT making a supplementary appropriation of federal funds out of the Treasury from the balance of federal moneys remaining unappropriated for the fiscal year ending June 30, 2016, to the Department of Education, State Board of Education – School Lunch Program, fund 8713, fiscal year 2016, organization 0402, and the Department of Education, State Board of Education – Vocational Division, fund 8714, fiscal year 2016, organization 0402, by supplementing and amending the appropriations for the fiscal year ending June 30, 2016.

Whereas, The Governor has established the availability of federal funds for expenditure in the fiscal year ending June 30, 2016 which is hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2016, to fund 8713, fiscal year 2016, organization 0402, be supplemented and amended by increasing an existing item of appropriation as follows:

1 TITLE II – APPROPRIATIONS.

2 Sec. 6. Appropriations of federal funds.

3 DEPARTMENT OF EDUCATION
And, That the total appropriation for the fiscal year ending June 30, 2016, to fund 8714, fiscal year 2016, organization 0402, be supplemented and amended by increasing an existing item of appropriation as follows:

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<td>500,000</td>
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AN ACT making a supplementary appropriation of public moneys out of the Treasury from the balance of moneys remaining unappropriated for the fiscal year ending June 30, 2016, to the Department of Environmental Protection, Division of Environmental Protection – Protect Our Water Fund, fund 3017, fiscal year 2016, organization 0313, by supplementing and amending the appropriations for the fiscal year ending June 30, 2016.

Whereas, The Governor has established that there now remains an unappropriated balance in the Department of Environmental Protection, Division of Environmental Protection – Protect Our Water Fund, fund 3017, fiscal year 2016, organization 0313, that is available for expenditure during the fiscal year ending June 30, 2016 which is hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2016, to fund 3017, fiscal year 2016, organization 0313, be supplemented and amended by adding a new item of appropriation as follows:

1 TITLE II – APPROPRIATIONS.

2 Sec. 3. Appropriations from other funds.
3 DEPARTMENT OF ENVIRONMENTAL PROTECTION

4 181 – Division of Environmental Protection –
5 Protect Our Water Fund

6 (WV Code Chapter 22)

7 Fund 3017 FY 2016 Org 0313

8 Appropriation Other

9 Funds

10 2 Personal Services and Employee
11 Benefits. . . . . . . . . . . . . . . . . . 00100 $ 218,562

CHAPTER 13

(H. B. 4155 - By Mr. Speaker (Mr. Armstead)
and Delegate Miley)
[By Request of the Executive]

[Passed March 12, 2016; in effect from passage.]

AN ACT making a supplementary appropriation of public moneys out
of the Treasury from the balance of moneys remaining
unappropriated for the fiscal year ending June 30, 2016, to the
Department of Health and Human Resources, Division of Health –
West Virginia Birth-to-Three Fund, fund 5214, fiscal year 2016,
organization 0506, and the Department of Health and Human
Resources, Division of Human Services — Medical Services Trust
Fund, fund 5185, fiscal year 2016, organization 0511; and expiring
funds to the Department of Health and Human Resources, Division
of Human Services — Medical Services Trust Fund, fund 5185,
organization 0511, for the fiscal year ending June 30, 2016.
Whereas, The Governor submitted to the Legislature the Executive Budget Document, dated January 13, 2016, which included a Statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2015, and further included the estimate of revenues for the fiscal year 2016, less net appropriation balances forwarded and regular appropriations for the fiscal year 2016; and

Whereas, The Secretary of the Department of Revenue has submitted a monthly General Revenue Fund Collections Report for the first eight months of fiscal year 2016 as prepared by the State Budget Office; and

Whereas, This report demonstrates that the State of West Virginia has experienced a revenue shortfall of approximately $176 million for the first eight months of fiscal year 2016, as compared to the monthly revenue estimates for the first eight months of the fiscal year 2016; and

Whereas, Current economic and fiscal trends are anticipated to result in projected year-end revenue deficits, including potential significant shortfalls in Severance Tax revenue collections, and shortfalls in Personal Income Tax and Consumers Sales and Use Tax revenue collections; and

Whereas, Projected year-end revenue surpluses in various other General Revenue sources will only offset a small portion of these deficits; and

Whereas, The total projected year-end revenue deficit for the General Revenue Fund is estimated at $354 million; and

Whereas, On October 22, 2015, the Governor issued Executive Order 7-15 which directed a spending reduction for General Revenue appropriations for fiscal year 2016 totaling $93,379,526; and

Whereas, The Legislature agreed to take voluntary action to effect a four percent spending reduction of its General Revenue appropriation for fiscal year 2016 totaling $938,067; and
Whereas, The Governor has established that there now remains an unappropriated balance in the Department of Health and Human Resources, Division of Health – West Virginia Birth-to-Three Fund, fund 5214, fiscal year 2016, organization 0506, and in the Department of Health and Human Resources, Division of Human Services — Medical Services Trust Fund, fund 5185, fiscal year 2016, organization 0511, that is available for expenditure during the fiscal year ending June 30, 2016 which is hereby appropriated by the terms of this supplementary appropriation bill; and

Whereas, The Legislature finds it necessary to expire funds to the balance of the Department of Health and Human Resources, Division of Human Services — Medical Services Trust Fund, fund 5185, organization 0511, to be available during the fiscal year ending June 30, 2016; and

Whereas, The Legislature finds that the account balances in the Attorney General – Consumer Protection Recovery Fund, fund 1509, fiscal year 2016, organization 1500; the Secretary of State, Motor Voter Registration Fund, fund 1606, fiscal year 2016, organization 1600; the Department of Administration, Risk and Insurance Management Board — Premium Tax Savings Fund, fund 2367, fiscal year 2016, organization 0218; the Department of Health and Human Resources, Division of Health – Infectious Medical Waste Program Fund, fund 5117, fiscal year 2016, organization 0506; the Department of Health and Human Resources, Division of Human Services – Medicaid Fraud Control Fund, fund 5141, fiscal year 2016, organization 0511; the Department of Health and Human Resources, Division of Health – Hospital Services Revenue Account Special Fund Capital Improvement, Renovation and Operations, fund 5156, fiscal year 2016, organization 0506; the Department of Health and Human Resources, Division of Health – Tobacco Control Special Fund, fund 5218, fiscal year 2016, organization 0506; the Department of Health and Human Resources, Division of Health — Department of Health and Human Resources Safety and Treatment Fund, fund 5228, fiscal year 2016, organization 0506; the Department of Health and Human Resources, Division of Human Services — Medical Services Trust Fund, fund 5185, fiscal year 2016, organization 0511; that is available for expenditure during the fiscal year ending June 30, 2016 which is hereby appropriated by the terms of this supplementary appropriation bill; and
Resources, West Virginia Health Care Authority - Health Care Cost Review Authority Fund, fund 5375, fiscal year 2016, organization 0507; the Department of Health and Human Resources, Division of Human Services – Marriage Education Fund, fund 5490, fiscal year 2016, organization 0511; Miscellaneous Boards and Commissions — Public Service Commission – Public Service Commission Fund, fund 8623, fiscal year 2016, organization 0926; and the West Virginia Economic Development Authority — Economic Development Project Bridge Loan Fund, fund 9066, fiscal year 2016, organization 0944 exceed that which is necessary for the purposes for which the accounts were established; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2016, to fund 5214, fiscal year 2016, organization 0506, be supplemented and amended by increasing an existing item of appropriation as follows:

1

TITLE II – APPROPRIATIONS.

2

Sec. 3. Appropriations from other funds.

3

DEPARTMENT OF HEALTH AND HUMAN RESOURCES

5 206 – Division of Health – West Virginia Birth-to-Three Fund

(WV Code Chapter 16)

8 Fund 5214 FY 2016 Org 0506

9 Appropriation Other Funds

10

11 4 Current Expenses.............. 13000 $ 3,200,000
And, That the total appropriation for the fiscal year ending June 30, 2016, to fund 5185, fiscal year 2016, organization 0511, be supplemented and amended by increasing an existing item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Sec. 3. Appropriations from other funds.

DEPARTMENT OF HEALTH AND HUMAN RESOURCES

213 – Division of Human Services – Medical Services Trust Fund

(WV Code Chapter 9)

Fund 5185 FY 2016 Org 0511

<table>
<thead>
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<th>Appropriation</th>
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</tr>
</thead>
<tbody>
<tr>
<td>Medical Services</td>
<td>18900 $4,000,000</td>
</tr>
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</table>

And, That the balance of the funds available for expenditure in the fiscal year ending June 30, 2016, in the Attorney General – Consumer Protection Recovery Fund, fund 1509, fiscal year 2016, organization 1500, be decreased by expiring the amount of $5,000,000; the Secretary of State, Motor Voter Registration Fund, fund 1606, fiscal year 2016, organization 1600, be decreased by expiring the amount of $500,000; the Department of Administration, Risk and Insurance Management Board — Premium Tax Savings Fund, fund 2367, fiscal year 2016, organization 0218, be decreased by expiring the amount of $2,527,991.87; the Department of Health and Human Resources, Division of Health – Infectious Medical Waste Program Fund, fund 5117, fiscal year 2016, organization 0506, be decreased by
expiring the amount of $500,000; the Department of Health and Human Resources, Division of Human Services, Medicaid Fraud Control Fund, fund 5141, fiscal year 2016, organization 0511, be decreased by expiring the amount of $500,000; the Department of Health and Human Resources, Division of Health – Hospital Services Revenue Account Special Fund Capital Improvement, Renovation and Operations, fund 5156, fiscal year 2016, organization 0506, be decreased by expiring the amount of $4,000,000; the Department of Health and Human Resources, Division of Health – Tobacco Control Special Fund, fund 5218, fiscal year 2016, organization 0506, be decreased by expiring the amount of $50,000; the Department of Health and Human Resources, Division of Health — Department of Health and Human Resources Safety and Treatment Fund, fund 5228, fiscal year 2016, organization 0506, be decreased by expiring the amount of $500,000; the Department of Health and Human Resources, West Virginia Health Care Authority — Health Care Cost Review Authority Fund, fund 5375, fiscal year 2016, organization 0507, be decreased by expiring the amount of $5,000,000; the Department of Health and Human Resources, Division of Human Services – Marriage Education Fund, fund 5490, fiscal year 2016, organization 0511, be decreased by expiring the amount of $50,000; Miscellaneous Boards and Commissions — Public Service Commission – Public Service Commission Fund, fund 8623, fiscal year 2016, organization 0926, be decreased by expiring the amount of $3,000,000 and the West Virginia Economic Development Authority — Economic Development Project Bridge Loan Fund, fund 9066, fiscal year 2016, organization 0944, be decreased by expiring the amount of $1,361,384.62 all to the balance of the Department of Health and Human Resources, Division of Human Services — Medical Services Trust Fund, fund 5185, organization 0511, to be available during the fiscal year ending June 30, 2016.
AN ACT supplementing, amending, and increasing items of the existing appropriations from the State Road Fund to the Department of Transportation, Division of Highways, fund 9017, fiscal year 2016, organization 0803, for the fiscal year ending June 30, 2016.

Whereas, The Governor submitted to the Legislature the Executive Budget Document, dated January 13, 2016, which included a statement of the State Road Fund setting forth therein the cash balances and investments as of July 1, 2015, and further included the estimate of revenues for the fiscal year 2016, less regular appropriations for the fiscal year 2016; and

Whereas, It appears from the statement of the State Road Fund there now remains an unappropriated balance in the State Treasury which is available for appropriation during the fiscal year ending June 30, 2016; therefore

Be it enacted by the Legislature of West Virginia:

That the items of the total appropriations for the fiscal year ending June 30, 2016, to fund 9017, fiscal year 2016, organization 0803, be supplemented and amended by increasing existing items of appropriation as follows:
TITLE II – APPROPRIATIONS.

Sec. 2. Appropriations from State Road Fund.

DEPARTMENT OF TRANSPORTATION

116 – Division of Highways –

(WV Code Chapters 17 and 17C)

Fund 9017 FY 2016 Org 0803

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 AN ACT making a supplementary appropriation of federal funds out of the Treasury from the balance of federal moneys remaining unappropriated for the fiscal year ending June 30, 2016, to the Department of Commerce, WorkForce West Virginia – Workforce Investment Act, fund 8749, fiscal year 2016, organization 0323, by supplementing and amending the appropriations for the fiscal year ending June 30, 2016.

Whereas, The Governor has established the availability of federal funds for expenditure in the fiscal year ending June 30, 2016 which is hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2016, to fund 8749, fiscal year 2016, organization 0323, be supplemented and amended by increasing the existing items of appropriation as follows:

1 TITLE II – APPROPRIATIONS.

2 Sec. 7. Appropriations from federal block grants.

3 DEPARTMENT OF COMMERCE
AN ACT making a supplementary appropriation of federal funds out of the Treasury from the balance of federal moneys remaining unappropriated for the fiscal year ending June 30, 2016, to the Public Service Commission – Motor Carrier Division, fund 8743, fiscal year 2016, organization 0926, by supplementing and amending the appropriations for the fiscal year ending June 30, 2016.

Whereas, The Governor has established the availability of federal funds for expenditure in the fiscal year ending June 30, 2016 which is hereby appropriated by the terms of this supplementary appropriation bill; therefore
Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2016, to fund 8743, fiscal year 2016, organization 0926, be supplemented and amended by increasing an existing item and adding a new item of appropriation as follows:

1 TITLE II – APPROPRIATIONS.

2 Sec. 6. Appropriations of federal funds.

3 MISCELLANEOUS BOARDS AND COMMISSIONS

4 367 - Public Service Commission –
    Motor Carrier Division

5 (WV Code Chapter 24A)

6 Fund 8743 FY 2016 Org 0926

7  

8 Appropriation  Federal Funds

9

10  3 Current Expenses.............. 13000  $ 475,000

11  4a Equipment.................... 07000  1,862,000
AN ACT making a supplementary appropriation of public moneys out of the Treasury from the balance of moneys remaining unappropriated for the fiscal year ending June 30, 2016, to the Department of Revenue, Tax Division – Wine Tax Administration Fund, fund 7087, fiscal year 2016, organization 0702, and the Department of Revenue, Tax Division – Local Sales Tax and Excise Tax Administration Fund, fund 7099, fiscal year 2016, organization 0702, by supplementing and amending the appropriations for the fiscal year ending June 30, 2016.

Whereas, The Governor has established that there now remains an unappropriated balance in the Department of Revenue, Tax Division – Wine Tax Administration Fund, fund 7087, fiscal year 2016, organization 0702, and in the Department of Revenue, Tax Division – Local Sales Tax and Excise Tax Administration Fund, fund 7099, fiscal year 2016, organization 0702, that is available for expenditure during the fiscal year ending June 30, 2016 which is hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2016, to fund 7087, fiscal year 2016, organization 0702, be supplemented and amended by increasing an existing item of appropriation as follows:
TITLE II – APPROPRIATIONS.

Sec. 3. Appropriations from other funds.

DEPARTMENT OF REVENUE

239 – Tax Division –
Wine Tax Administration Fund

(WV Code Chapter 60)

Fund 7087 FY 2016 Org 0702

Appropriation Other Funds
00100 $ 100,000

And, That the total appropriation for the fiscal year ending June 30, 2016, to fund 7099, fiscal year 2016, organization 0702, be supplemented and amended by increasing existing items of appropriation as follows:

TITLE II – APPROPRIATIONS.

Sec. 3. Appropriations from other funds.

DEPARTMENT OF REVENUE

241 – Tax Division –
Local Sales Tax and Excise Tax Administration Fund

(WV Code Chapter 11)

Fund 7099 FY 2016 Org 0702
AN ACT expiring funds to the unappropriated surplus balance in the State Fund, General Revenue, for the fiscal year ending June 30, 2016, in the amount of $659,500 from the Department of Revenue, Insurance Commissioner – Examination Revolving Fund, fund 7150, fiscal year 2016, organization 0704, and in the amount of $26,000,000 from the Department of Revenue, Insurance Commissioner – Insurance Commission Fund, fund 7152, fiscal year 2016, organization 0704.

Whereas, The Governor finds that the account balances in the Department of Revenue, Insurance Commissioner – Examination Revolving Fund, fund 7150, fiscal year 2016, organization 0704, and in the Department of Revenue, Insurance Commissioner – Insurance Commission Fund, fund 7152, fiscal year 2016, organization 0704, 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 January 13, 2016, which included a Statement of the State Fund, General Revenue, setting forth therein the cash
balance as of July 1, 2015, and further included the estimate of revenues for the fiscal year 2016, less net appropriation balances forwarded and regular appropriations for the fiscal year 2016, and further included recommended expirations to the surplus balance of the State Fund, General Revenue; and

Whereas, It appears from the Executive Budget Document, Statement of the State Fund, General Revenue, and this legislation, there now remains an unappropriated surplus balance in the State Treasury which is available for appropriation during the fiscal year ending June 30, 2016; 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, 2016, in the Department of Revenue, Insurance Commission – Examination Revolving Fund, fund 7150, fiscal year 2016, organization 0704, be decreased by expiring the amount of $659,500, and in the Department of Revenue, Insurance Commissioner — Insurance Commission Fund, fund 7152, fiscal year 2016, organization 0704, be decreased by expiring the amount of $26,000,000, all to the unappropriated surplus balance of the State Fund, General Revenue, to be available for appropriation during the fiscal year ending June 30, 2016.

CHAPTER 19

(Com. Sub. for S. B. 342 - By Senators Cole (Mr. President) and Kessler)
[By Request of the Executive]

[Passed February 8, 2016; in effect from passage.]
[Approved by the Governor on February 11, 2016.]

AN ACT supplementing and amending by decreasing the appropriations of public moneys out of the Treasury in the State
Fund, General Revenue, to the Department of Health and Human Resources – Division of Human Services, fund 0403, fiscal year 2016, organization 0511, and to the Bureau of Senior Services, fund 0420, fiscal year 2016, organization 0508, by supplementing, amending and decreasing the appropriations for the fiscal year ending June 30, 2016.

Whereas, The Governor submitted to the Legislature the Executive Budget Document, dated January 13, 2016, which included a Statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2015, and further included the estimate of revenues for the fiscal year 2016, less net appropriation balances forwarded and regular appropriations for the fiscal year 2016; and

Whereas, The Secretary of the Department of Revenue has submitted a monthly General Revenue Fund Collections Report for the first six months of fiscal year 2016 as prepared by the State Budget Office; and

Whereas, This report demonstrates that the State of West Virginia has experienced a revenue shortfall of approximately $158 million for the first six months of fiscal year 2016, as compared to the monthly revenue estimates for the first six months of the fiscal year 2016; and

Whereas, Current economic and fiscal trends will result in projected year-end revenue deficits, including potential significant shortfalls in Severance Tax, and shortfalls in Personal Income Tax and Consumers Sales and Use Tax; and

Whereas, Projected year-end revenue surpluses in various other General Revenue sources will only offset a small portion of these deficits; and

Whereas, The total projected year-end revenue deficit for the General Revenue Fund is estimated at $354 million; and
Whereas, On October 22, 2015, the Governor issued Executive Order 7-15 which directed a spending reduction for General Revenue appropriations for fiscal year 2016 totaling $93,379,526; and

Whereas, The Legislature agreed to take voluntary action to effect a four percent spending reduction of its General Revenue appropriation for fiscal year 2016 totaling $938,067; and

Whereas, There are available cash balances in the Lottery and Excess Lottery funds that can be utilized in order to decrease the appropriations from the State Fund, General Revenue; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2016, to fund 0403, fiscal year 2016, organization 0511, be supplemented and amended by decreasing existing items of appropriation as follows:

1 TITLE II – APPROPRIATIONS.

2 Section 1. Appropriations from General Revenue.

3 66 – Division of Human Services

4 (WV Code Chapters 9, 48 and 49)

5 Fund 0403 FY 2016 Org 0511

6 Appropriation General Revenue Fund

7 8 Medical Services. . . . . . . . . . . . 18900 $ 44,090,000

8 53300 2,215,746

And, That the total appropriation for the fiscal year ending

June 30, 2016, to fund 0420, fiscal year 2016, organization 0508,
be supplemented and amended by decreasing an existing item of appropriation as follows:

**TITLE II – APPROPRIATIONS.**

**Section 1. Appropriations from General Revenue.**

90 – *Bureau of Senior Services*  
(WV Code Chapter 29)

Fund 0420 FY 2016 Org 0508

General  
Appropriation  
Revenue  
Fund

1  Transfer to Division of Human  
2  Services for Health Care  
3  and Title XIX Waiver for  
4  Senior Citizens. ................ 53900 $ 7,594,254

**CHAPTER 20**

(S. B. 357 - By Senators Cole (Mr. President) and Kessler)  
[By Request of the Executive]  
[Passed February 8, 2016; in effect from passage.]  
[Approved by the Governor on February 11, 2016.]

AN ACT making a supplementary appropriation of Lottery Net Profits from the balance of moneys remaining as an unappropriated balance in Lottery Net Profits to the Bureau of Senior Services - Lottery Senior Citizens Fund, fund 5405, fiscal year 2016, organization 0508, by supplementing and amending the appropriations for the fiscal year ending June 30, 2016.
Whereas, The Governor submitted the Executive Budget Document to the Legislature on January 13, 2016, which included a Statement of the Lottery Fund setting forth therein the unappropriated cash balance as of July 1, 2015, and further included the estimate of revenues for the fiscal year 2016, less regular appropriations for fiscal year 2016; and

Whereas, It appears from the Governor’s Statement of the Lottery Fund there now remains an unappropriated balance in the State Treasury which is available for appropriation during the fiscal year ending June 30, 2016; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2016, to fund 5405, fiscal year 2016, organization 0508, be supplemented and amended by increasing an existing item of appropriation as follows:

1 TITLE II – APPROPRIATIONS.

2 Sec. 4. Appropriations from Lottery Net Profits.

3 294 – Bureau of Senior Services –

4 Lottery Senior Citizens Fund

5 (WV Code Chapter 29)

6 Fund 5405 FY 2016 Org 0508

7 Appropriation Lottery Funds

8

9 8 Transfer to Division of Human Services for Health Care and Title XIX Waiver for Senior Citizens. ............ 53900 $ 9,810,000
AN ACT making a supplementary appropriation from the balance of moneys remaining as an unappropriated balance from the State Fund, State Excess Lottery Revenue Fund, to the Department of Health and Human Resources, Division of Human Services, fund 5365, fiscal year 2016, organization 0511, by supplementing and amending the appropriations for the fiscal year ending June 30, 2016.

Whereas, The Governor submitted the Executive Budget Document to the Legislature on January 13, 2016, which included a Statement of the State Excess Lottery Revenue Fund setting forth therein the unappropriated cash balance as of July 1, 2015, and further included the estimate of revenues for the fiscal year 2016, less regular appropriations for fiscal year 2016; and

Whereas, It appears from the Governor’s Statement of the State Excess Lottery Revenue Fund there now remains an unappropriated balance in the State Treasury which is available for appropriation during the fiscal year ending June 30, 2016; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2016, to fund 5365, fiscal year 2016, organization 0511, be supplemented and amended by increasing an existing item of appropriation as follows:
TITLE II – APPROPRIATIONS.

Sec. 5. Appropriations from State Excess Lottery Revenue Fund.

315 – Division of Human Services (WV Code Chapters 9, 48 and 49)

Fund 5365 FY 2016 Org 0511

Medical Services. ............... 18900 $ 10,090,000

CHAPTER 22
(S. B. 364 - By Senators Cole (Mr. President) and Kessler)
[By Request of the Executive]

[Passed February 2, 2016; in effect from passage.]
[Approved by the Governor on February 4, 2016.]

AN ACT expiring funds to the unappropriated balance in the State Fund, General Revenue, for the fiscal year ending June 30, 2016, in the amount of $51,800,000 from the Department of Revenue, Office of the Secretary – Revenue Shortfall Reserve Fund, fund 7005, fiscal year 2016, organization 0701, in the amount of $1,940,500 from the Department of Revenue, Insurance Commissioner – Examination Revolving Fund, fund 7150, fiscal year 2016, organization 0704, and in the amount of $4,800,000 from the Department of Revenue, Insurance Commissioner, WV
Health Insurance Plan Fund, fund 7161, fiscal year 2016, organization 0704.

Whereas, The Governor submitted to the Legislature the Executive Budget Document, dated January 13, 2016, which included a Statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2015, and further included the estimate of revenues for the fiscal year 2016, less net appropriation balances forwarded and regular appropriations for the fiscal year 2016; and

Whereas, The Secretary of the Department of Revenue has submitted a monthly General Revenue Fund Collections Report for the first six months of fiscal year 2016 as prepared by the State Budget Office; and

Whereas, This report demonstrates that the State of West Virginia has experienced a revenue shortfall of approximately $158 million for the first six months of fiscal year 2016, as compared to the monthly revenue estimates for the first six months of the fiscal year 2016; and

Whereas, Current economic and fiscal trends are anticipated to result in projected year-end revenue deficits, including potential significant shortfalls in Severance Tax, and shortfalls in Personal Income Tax and Consumers Sales and Use Tax; and

Whereas, Projected year-end revenue surpluses in various other General Revenue sources will only offset a small portion of these deficits; and

Whereas, The total projected year-end revenue deficit for the General Revenue Fund is estimated at $354 million; and

Whereas, On October 22, 2015, the Governor issued Executive Order 7-15 which directed a spending reduction for General Revenue appropriations for fiscal year 2016 totaling $93,379,526; and
Whereas, The Legislature agreed to take voluntary action to effect a four percent spending reduction of its General Revenue appropriation for fiscal year 2016 totaling $938,067; and

Whereas, The Revenue Shortfall Reserve Fund may be drawn on in the event of a revenue shortfall in lieu of imposing additional reductions in appropriations; and

Whereas, The Governor finds that the account balances in the Department of Revenue, Insurance Commissioner – Examination Revolving Fund, fund 7150, fiscal year 2016, organization 0704, and in the Department of Revenue, Insurance Commissioner, WV Health Insurance Plan Fund, fund 7161, fiscal year 2016, organization 0704, exceed that which is necessary for the purposes for which the accounts were established; 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, 2016, in the Department of Revenue, Office of the Secretary - Revenue Shortfall Reserve Fund, fund 7005, fiscal year 2016, organization 0701, be decreased by expiring the amount of $51,800,000, and in the Department of Revenue, Insurance Commissioner – Examination Revolving Fund, fund 7150, fiscal year 2016, organization 0704 be decreased by expiring the amount of $1,940,500, and in the Department of Revenue, Insurance Commissioner, WV Health Insurance Plan Fund, fund 7161, fiscal year 2016, organization 0704 be decreased by expiring the amount of $4,800,000, all to the unappropriated balance of the State Fund, General Revenue, to be available during the fiscal year ending June 30, 2016.
AN ACT supplementing and amending by decreasing an appropriation and making a supplementary appropriation from the balance of moneys remaining as an unappropriated balance from the State Fund, State Excess Lottery Revenue Fund, to the Department of Revenue, Lottery Commission – Distributions to Statutory Funds and Purposes, fund 7213, fiscal year 2016, organization 0705, by supplementing and amending the appropriations for the fiscal year ending June 30, 2016.

Whereas, The Governor submitted the Executive Budget Document to the Legislature on January 13, 2016, which included a Statement of the State Excess Lottery Revenue Fund setting forth therein the unappropriated cash balance as of July 1, 2015, and further included the estimate of revenues for the fiscal year 2016, less regular appropriations for fiscal year 2016; and

Whereas, It appears from the Governor’s Statement of the State Excess Lottery Revenue Fund, and this legislation, there now remains an unappropriated balance in the State Treasury which is available for appropriation during the fiscal year ending June 30, 2016; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2016, to fund 7213, fiscal year 2016, organization 0705, be supplemented and amended by decreasing an existing item of appropriation as follows:
Sec. 5. Appropriations from state excess lottery revenue fund.

309 – Lottery Commission –
Distributions to Statutory Funds and Purposes

Fund 7213 FY 2016 Org 0705

Excess
Appropriation
Lottery Funds

27 Historic Resort Hotel Fund. . . . . 70013 $ 20,289

And, That the total appropriation for the fiscal year ending June 30, 2016, to fund 7213, fiscal year 2016, organization 0705, be supplemented and amended by increasing an existing item of appropriation as follows:

Sec. 5. Appropriations from state excess lottery revenue fund.

309 – Lottery Commission –
Distributions to Statutory Funds and Purposes

Fund 7213 FY 2016 Org 0705

Excess
Appropriation
Lottery Funds

22 General Revenue Fund –
23 Transfer. . . . . . . . . . . . . . . . . . 70011 $ 20,289
AN ACT making a supplementary appropriation of public moneys out of the Treasury from the balance of moneys remaining as an unappropriated surplus balance in the State Fund, General Revenue, to the Department of Administration, Public Defender Services, fund 0226, fiscal year 2016, organization 0221, by supplementing and amending the appropriations for the fiscal year ending June 30, 2016.

Whereas, The Governor submitted to the Legislature the Executive Budget Document, dated January 13, 2016, which included a Statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2015, and further included the estimate of revenues for the fiscal year 2016, less net appropriation balances forwarded and regular appropriations for the fiscal year 2016 and further included recommended expirations to the surplus balance of the State Fund, General Revenue; and

Whereas, It appears from the Executive Budget Document, Statement of the State Fund, General Revenue, and the passage of Senate Bill 341 during the 2016 Regular Session of the Legislature, there now remains an unappropriated surplus balance in the State Treasury which is available for appropriation during the fiscal year ending June 30, 2016; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2016, to fund 0226, fiscal year 2016, organization 0221, be
supplemented and amended by increasing an existing item of appropriation as follows:

1 TITLE II – APPROPRIATIONS.

Section 1. Appropriations from General Revenue.

DEPARTMENT OF ADMINISTRATION

27 – Public Defender Services

(WV Code Chapter 29)

Fund 0226 FY 2016 Org 0221

General Appropriation

Revenue Fund

6 Appointed Counsel Fees – Surplus.................. 43500 $ 15,300,000

CHAPTER 25

(S. B. 450 - By Senators Cole (Mr. President) and Kessler)

[By Request of the Executive]

[Passed February 24, 2016; in effect from passage.]
[Approved by the Governor on March 1, 2016.]

AN ACT making a supplementary appropriation of public moneys out of the Treasury from the balance of moneys remaining as an unappropriated surplus balance in the State Fund, General Revenue, to the Department of Health and Human Resources, Division of Health, fund 0407, fiscal year 2016, organization 0506,
and the Department of Health and Human Resources, Division of Human Services, fund 0403, fiscal year 2016, organization 0511, by supplementing and amending the appropriations for the fiscal year ending June 30, 2016.

Whereas, The Governor submitted to the Legislature the Executive Budget Document, dated January 13, 2016, which included a Statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2015, and further included the estimate of revenues for the fiscal year 2016, less net appropriation balances forwarded and regular appropriations for the fiscal year 2016, and further included recommended expirations to the surplus balance of the State Fund, General Revenue; and

Whereas, It appears from the Executive Budget Document, Statement of the State Fund, General Revenue, and the passage of Senate Bill 341 during the 2016 Regular Session of the Legislature, there now remains an unappropriated surplus balance in the State Treasury which is available for appropriation during the fiscal year ending June 30, 2016; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2016, to fund 0407, fiscal year 2016, organization 0506, be supplemented and amended by increasing an existing item of appropriation as follows:

1 TITLE II – APPROPRIATIONS.

2 Section 1. Appropriations from General Revenue.

3 DEPARTMENT OF HEALTH AND HUMAN RESOURCES

4 62 – Division of Health –

5 Central Office

6
And, that the total appropriation for the fiscal year ending June 30, 2016, to fund 0403, fiscal year 2016, organization 0511, be supplemented and amended by increasing an existing item of appropriation as follows:

**TITLE II – APPROPRIATIONS.**

**Section 1. Appropriations from General Revenue.**

**DEPARTMENT OF HEALTH AND HUMAN RESOURCES**

66 – Division of Human Services

(WV Code Chapter 9, 48 and 49)

Fund 0403 FY 2016 Org 0511
AN ACT making a supplementary appropriation of public moneys out of the Treasury from the balance of moneys remaining as an unappropriated surplus balance in the State Fund, General Revenue, to the Department of Military Affairs and Public Safety, West Virginia Parole Board, fund 0440, fiscal year 2016, organization 0605, and to the Department of Military Affairs and Public Safety, Division of Juvenile Services, fund 0570, fiscal year 2016, organization 0621, by supplementing and amending the appropriations for the fiscal year ending June 30, 2016.

Whereas, The Governor submitted to the Legislature the Executive Budget Document, dated January 13, 2016, which included a Statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2015, and further included the estimate of revenues for the fiscal year 2016, less net appropriation balances forwarded and regular appropriations for the fiscal year 2016, and further included recommended expirations to the surplus balance of the State Fund, General Revenue; and

Whereas, It appears from the Executive Budget Document, Statement of the State Fund, General Revenue, and the passage of Senate Bill 341 during the 2016 Regular Session of the Legislature, there now remains an unappropriated surplus balance in the State Treasury which is available for appropriation during the fiscal year ending June 30, 2016; therefore
Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2016, to fund 0440, fiscal year 2016, organization 0605, be supplemented and amended by adding a new item of appropriation as follows:

1 TITLE II – APPROPRIATIONS.

2 Section 1. Appropriations from General Revenue.

DEPARTMENT OF MILITARY AFFAIRS AND PUBLIC SAFETY

70 – West Virginia Parole Board

(WV Code Chapter 62)

Fund 0440 FY 2016 Org 0605

General Appropriation Revenue Fund

5a Operating Expenses – Surplus . . 77900 $ 50,000

And, That the total appropriation for the fiscal year ending June 30, 2016, to fund 0570, fiscal year 2016, organization 0621, be supplemented and amended by adding a new item of appropriation and increasing existing items of appropriation as follows:

1 TITLE II – APPROPRIATIONS.

2 Section 1. Appropriations from General Revenue.

DEPARTMENT OF MILITARY AFFAIRS

AND PUBLIC SAFETY
AN ACT to amend and reenact §5-3-3 and §5-3-4 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §5-3-3a, all relating generally to appointment of attorneys to assist the Attorney General; authorizing the Attorney General to appoint special assistant attorneys general; establishing when special assistant attorneys general can be appointed; establishing competitive bidding process for the use of private attorneys on a contingency fee basis by the
Attorney General; requiring written determinations for the Attorney General’s selection of private attorneys to represent the state on a contingency fee basis; setting fees for contingency fee legal arrangements or contracts between private attorneys and the Attorney General; requiring appointed private attorneys to accept an award of attorney fees in accordance with, and no greater than, the established fee limitations; establishing supervision requirements for private lawyers representing the state on a contingency fee basis; requiring the posting of certain documents relating to the Attorney General’s retention of private attorneys to represent the state on a contingency fee basis; providing for the designation as a special assistant attorney general upon appointment; requiring Attorney General reports on certain legal causes and matters to the Governor, President of the Senate and Speaker of the House; outlining contents of those reports; updating and removing outdated provisions; defining terms; clarifying that the appointment of a special assistant attorney general shall not be construed to alter, inhibit or expand the attorney-client relationship between the Attorney General and the state in the control or conduct of a cause of action; and providing that these new provisions are inapplicable to and shall not impair any contingency fee legal arrangement or contract awarded prior to the effective date.

Be it enacted by the Legislature of West Virginia:

That §5-3-3 and §5-3-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto a new section, designated §5-3-3a, all to read as follows:

ARTICLE 3. ATTORNEY GENERAL.

§5-3-3. Assistants to Attorney General.

(a) The Attorney General may appoint such deputy or assistant attorneys general as may be necessary to properly perform the duties of his or her office. The total compensation of
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all such deputies or assistants shall be within the limits of the
amounts appropriated by the Legislature for personal services.
All deputy or assistant attorneys general so appointed shall serve
at the will and pleasure of the Attorney General and shall
perform such duties as the Attorney General may require of
them.

(b) The Attorney General may appoint such special assistant
attorneys general as may be necessary to properly perform the
duties of his or her office: Provided, That if the appointment
relates to a contingency fee legal arrangement or contract as
defined in W. Va. Code §5-3-3a(a)(1), then the appointment
must be in accordance with the procedures and compensation set
forth in W.Va. Code §5-3-3a. All special assistant attorneys
general appointed shall serve at the will and pleasure of the
Attorney General and shall perform such duties as the Attorney
General may require of them: Provided, however, That the
appointment of a special assistant Attorney General under this
section shall not be construed to alter, inhibit or expand the
attorney-client relationship set forth in this article between the
Attorney General and the state in the control or conduct of a
cause of action.

(c) All laws or parts of laws inconsistent with the provisions
hereof are hereby amended to be in harmony with the provisions
of this section.

§5-3-3a. Competitive bidding required for private attorneys,
special assistant attorneys general.

(a) The following terms, wherever used or referred to in this
section, have the following meanings:

(1) “Contingency fee legal arrangement or contract” means
any legal fee arrangement that provides for a private attorney or
special assistant Attorney General to be paid a percentage of any
recovery associated with any claims brought by the private
attorney or special assistant Attorney General on behalf of the
state or to be paid through a court-approved award of attorney’s
fees.

(2) “Deputy or assistant Attorney General” means an
attorney employed by the state as a staff attorney in the Attorney
General’s office.

(3) “Private attorney” means any attorney who is neither an
assistant Attorney General on the Attorney General’s staff nor an
employee of another state agency.

(4) “Special assistant Attorney General” means an attorney
that has been retained or appointed by the Attorney General to
assist in the legal representation of the state.

(5) “State” means the State of West Virginia, including state
officers, departments, boards, commissions, divisions, bureaus,
councils and units of organization, however designated, of the
executive branch of state government and any of its agents.

(b) The state may not enter into any contingency fee legal
arrangement or contract with a private attorney unless the
Attorney General, or his or her designee, makes a written
determination prior to entering into such a contract that the legal
representation is both cost-effective and in the best interest of the
public. Any written determination shall include specific findings
for each of the following factors:

(1) Whether sufficient and appropriate legal and financial
resources exist within the Attorney General’s office to handle the
matter;

(2) The time and labor required; the novelty, complexity and
difficulty of the questions involved; and the skill requisite to
perform the attorney services properly;
(3) The geographic area where the attorney services are to be
generated, as well as any potential costs associated with
providing legal services in that geographic area; and

(4) The amount of experience desired for the particular kind
of legal services to be provided and the need for a private
attorney’s experience with similar issues or cases.

(c) If the Attorney General, or his or her designee, makes
the written determination described in subsection (b) of this
section, the Attorney General shall request proposals from
private attorneys to represent the state accordingly on the basis
of a fee arrangement as set forth in subsection (h) of this section,
unless the Attorney General, or his or her designee, makes a
written determination that one of the following factors applies:

(1) An emergency situation exists that requires time-
sensitive legal services that cannot be adequately provided by the
Office of Attorney General and for which insufficient time exists
to complete the customary competitive bidding process;

(2) An appointment, or the continuation of an appointment,
is necessary to avoid disruption in pending legal matters by
allowing previously appointed outside counsel to continue
providing legal representation; or

(3) The legal services are to be provided on a pro bono basis
and, therefore, will not benefit from a competitive bidding
process.

(d) Any requests for proposal shall be posted to the website
of the Office of the Attorney General. The time period under
which the proposal is open should be clearly stated.

(e) When soliciting proposals from private attorneys to
represent the state on the basis of a fee arrangement as set forth
in subsection (h) of this section, the Attorney General, or his or
her designee, shall consider the following factors when
determining the most competitive proposal for legal services and
make a written determination as to the application of these
factors, prior to entering into any contract for outside legal
services:

(1) Whether the private attorneys possess the requisite skills
and expertise needed to handle the legal matters in question;

(2) Whether the private attorneys possess requisite staffing
and support to handle the scope of the litigation or matter;

(3) Whether the private attorneys or any members of the
private attorneys’ law firm have been subject to discipline by the
West Virginia State Bar, or other entities, for unethical conduct;

(4) Whether the private attorneys have been peer rated and,
if so, what peer ratings they have received, along with any other
recognitions or awards for legal services;

(5) The estimated fees, costs and expenses of the private
attorneys to perform the legal services requested;

(6) The willingness of the private attorneys to enter into
alternative billing arrangements;

(7) Whether the private attorneys are in compliance with all
applicable laws of the State of West Virginia;

(8) Any potential disqualifying conflicts of interest between
the private attorneys and the state;

(9) Any relevant input from the state entity client, if
applicable, regarding the needed legal services; and

(10) Any such other relevant factors as may be identified by
the Attorney General or his or her designee.
(f) If, after soliciting proposals for legal services, the Attorney General, or his or her designee, determines that the proposals received are insufficient based on an application of the factors set forth in subsection (e) of this section, additional proposals may be solicited pursuant to subsections (b), (c) and (e) of this section.

(g) The state shall not enter into a contingency fee legal arrangement or contract as defined herein for private attorney services unless the following requirements are met throughout the contract period and any extensions thereof:

(1) The Attorney General, or the deputy or assistant Attorney General involved in the case, shall retain management and supervisory authority over the private attorney;

(2) The Attorney General, or the deputy or assistant Attorney General with supervisory authority, is personally involved in overseeing the litigation;

(3) Decisions regarding settlement of the case are reserved exclusively to the discretion of the state or other client entity. An appropriate representative of the Attorney General’s office shall attend settlement conferences whenever possible.

(h) The state may not enter into any fee arrangement that provides for the private attorney to receive an aggregate fee in excess of:

(1) Twenty-five percent of the first $10 million recovered; plus

(2) Twenty percent of any portion of the recovery between $10 million and $15 million; plus

(3) Fifteen percent of any portion of the recovery between $15 million and $20 million; plus
Ten percent of any portion of the recovery between $20 million and $25 million; plus

(5) Five percent of any portion of the recovery exceeding $25 million.

In no event shall the aggregate fee for any legal matter exceed $50 million for any matters arising from a single event or occurrence, exclusive of reasonable costs and expenses, and irrespective of the number of lawsuits filed or the number of private attorneys retained to achieve the recovery. Any legal fees shall not be based on penalties or fines awarded or any amounts attributable to penalties or fines.

To the extent that any private attorneys are to be paid through a court-approved award of attorney’s fees, their appointment to represent the state is contingent upon the acceptance of the fee limitations set forth herein. To the extent that any award of attorney fees is subject to judicial discretion, the private attorneys appointed pursuant to this section may not accept an award of attorney fees greater than the fee limitations outlined in this subsection.

(i) The Attorney General shall develop a standard addendum to every contract for private attorney services that shall be used in all cases, describing in detail what is expected of both the contracted private attorney and the Attorney General’s office, including, without limitation, the requirements listed in subsection (h) of this section.

(j) Subject to the provisions of subsection (l) of this section, the Attorney General’s written determination to enter into any legal arrangement or contract with a private attorney shall be posted on the Attorney General’s website for public inspection within ten business days after the selection of a private attorney and shall remain posted on the website for the duration of the
contract for legal services, including any extensions or amendments thereto. Any and all written determinations made pursuant to subsection (b) or (c) of this section shall also be posted on the Attorney General’s website for public inspection within ten business days after the issuance of the written determination. Any payment of fees as set forth in subsection (h) of this section shall be posted on the Attorney General’s website within thirty calendar days after the payment of such fees to the private attorney and shall remain posted on the website for at least three hundred sixty-five calendar days thereafter.

(k) Any private attorney under contract to provide services to the state shall, from the inception of the contract until at least four years after the contract expires or is terminated, maintain detailed current records, including documentation of all expenses, disbursements, charges, credits, underlying receipts and invoices, and other financial transactions that concern the provision of such legal services. In conjunction with the Attorney General’s office, the private attorney shall make all such records that are not covered by the attorney-client privilege or otherwise confidential in nature available for inspection and copying upon request in accordance with the West Virginia Freedom of Information Act, sections one through seven, inclusive, article one, chapter twenty-nine-b of this code. In addition, the private attorney shall maintain detailed contemporaneous time records for the attorneys, other professionals and paraprofessionals working on the matter for a period of at least four years and shall promptly provide these records to the Attorney General upon request.

(l) The Attorney General retains the right to temporarily waive the disclosure requirements set forth in subsection (j) of this section upon making a written determination that:

(1) A waiver is necessary to protect attorney-client or privileged information; or
(2) Immediate disclosure of the existence of an arrangement or contract with a private attorney, or any other sensitive information, could compromise the initiation, handling or conclusion of any investigation or case matter handled by the office of Attorney General.

Once any risks to the attorney-client privilege or confidential work product are no longer present, the office of Attorney General shall make any and all suspended disclosures as soon as possible and all subsequent disclosures in accordance with the time frame and manner set forth by subsection (j) of this section.

(m) Once a private attorney is appointed pursuant to this section, he or she may thereafter be designated as a special assistant Attorney General, and, upon such appointment, shall provide representation subject to the terms contained in subsection (g) of this section.

(n) If the Attorney General’s office chooses to not be involved in a legal matter as a result of a conflict of interest, and thus cannot implement in good faith the provisions of this section as a result of the conflict, then the process set forth herein shall be implemented by the client state entity needing representation, with the assistance of the Department of Administration if necessary.

(o) Nothing in this section expands the authority of any state agency or state agent to enter into contracts nor shall it be deemed to change any existing law that authorizes a state agency or state agent to employ its own counsel or enter into contracts for legal services.

(p) The requirements and procedures established in this section are inapplicable to and shall not impair any contingency fee legal arrangement or contract awarded prior to the effective date of this section.
(q) The appointment of a special assistant Attorney General under this section shall not be construed to alter, inhibit or expand the attorney-client relationship set forth in this article between the Attorney General and the state in the control or conduct of a cause of action.

§5-3-4. Annual report to Governor, President of the Senate and Speaker of the House.

(a) The Attorney General shall annually, on or before November 1, deliver to the Governor, President of the Senate and Speaker of the House a report detailing:

(1) The state and condition of the several causes, in which the state is a party, pending in courts mentioned in section two of this article.

(2) The use of any fee arrangements as provided in subsection (h), section three-a of this article with private attorneys in the preceding year. At a minimum, the report shall:

(A) Identify all new fee arrangements entered into during the year and all previously executed fee arrangements that remain current during any part of the year and for each contract describe:

(i) The name of the private attorney with whom the state has contracted, including the name of the attorney’s law firm;

(ii) The nature and status of the legal matter;

(iii) The name of the parties to the legal matter;

(iv) The amount of the recovery; and

(v) The amount of any legal fees paid.

(B) Include copies of any written determinations made pursuant to section three-a of this article during the year.
(b) The Attorney General’s annual report shall be posted on the Attorney General’s website within thirty days of submitting the report to the Governor, President of the Senate and Speaker of the House and shall remain posted on the website for at least two years thereafter.

(c) Nothing in this section shall be considered to require the Attorney General to report or disclose any information protected by the attorney-client or other privilege.

CHAPTER 28

(Com. Sub. for H. B. 4245 - By Delegates Walters, Frich, Westfall, McCuskey, Manchin, Skinner, Rowe, Flanigan, Waxman, Perry and B. White)

[Passed February 19, 2016; in effect ninety days from passage.]
[Approved by the Governor on February 25, 2016.]

AN ACT to amend and reenact §31A-4-20 of the Code of West Virginia, 1931, as amended, relating to requirements for the review of the financial condition of state chartered banks; requiring the cashier or executive officer of a state banking institution to provide shareholders with the institution’s most recent fiscal year audited financial statement; authorizing alternative delivery to shareholders and consolidated or combined statements; requiring that the board of directors of a bank, or its controlling bank holding company, appoint an outside independent auditing firm; eliminating the requirement that a bank transmit a copy of an audit report of its financial condition to the division of financial institutions; eliminating the approval required for a shareholder committee to utilize or employ registered or certified public
accountants; and eliminating the division examiner’s ability to require the presence of the examining committee or executive committee during an examination.

Be it enacted by the Legislature of West Virginia:

That §31A-4-20 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 4. BANKING INSTITUTIONS AND SERVICES GENERALLY.

§31A-4-20. Stockholders’ annual meeting; financial statement; appointment, duties and report of outside auditing firm.

(a) The stockholders of each state banking institution shall meet annually. At the annual meeting it is the duty of the cashier or other executive officer of the banking institution to prepare and submit to the stockholders a copy of the institution’s most recent fiscal year audited financial statements. This requirement is satisfied if the banking institution mails or otherwise delivers to its shareholders annual audited financial statements, which may be consolidated or combined statements of the banking institution, its holding company and any subsidiaries, that include a balance sheet as of the end of the fiscal year, an income statement for that year and a statement of changes in shareholders’ equity for the year, within one hundred twenty days of the close of the fiscal year.

(b) The board of directors of the banking institution or, if such banking institution is controlled by a bank holding company, the bank holding company shall appoint an outside auditing firm on an annual basis to serve as the banking institution’s auditor for the year.

(c) At such time or times as it may be directed to do so by the written request of the board of directors or the Commissioner
of Financial Institutions, such outside independent auditing firm
shall immediately proceed to examine the condition of the bank
and, upon completion of such examination, shall file its report in
writing with the board of directors. Such report shall set forth in
detail all items included in the assets of the bank which the firm
has reason to believe are not of the value at which they appear on
the books and records of the bank, and shall give the value of
each of such items according to its judgment. The board of
directors shall cause such report to be retained as a part of the
records of the bank.

(d) The workpapers of any audit, including any materials
associated with an audit of the bank’s electronic data procedures,
shall be made available to the commissioner or to the examiners
of the Division of Financial Institutions upon request, and will
be accorded confidentiality in conformity with section four,
article two of this chapter.

CHAPTER 29

(S. B. 613 - By Senators Gaunch, Ashley and Plymale)

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

AN ACT to amend and reenact §31A-4-26 of the Code of West
Virginia, 1931, as amended, relating to defining “unimpaired
capital” and “unimpaired surplus” for purposes of calculating the
lending limit of a state-chartered bank.

Be it enacted by the Legislature of West Virginia:

That §31A-4-26 of the Code of West Virginia, 1931, as amended,
be amended and reenacted to read as follows:
ARTICLE  4. BANKING INSTITUTIONS AND SERVICES GENERALLY.

§31A-4-26. Limitation on loans and extensions of credit; limitation on investments; loans to executive officers and directors of banks and employees of the banking department; exceptions; valuation of securities.

(a) (1) The total loans and extensions of credit made by a state-chartered banking institution to any one person or common enterprise and not fully secured, as determined in a manner consistent with subdivision (2) of this subsection, may not exceed fifteen percent of the unimpaired capital and unimpaired surplus of that state-chartered banking institution initially determined for the period such loan or extension of credit is made.

(2) Where the total loans and extensions of credit by a state-chartered banking institution to any one person or common enterprise are fully secured by readily marketable collateral having a market value, as determined by reliable and continuously available price quotations, at least equal to the outstanding amount of such loans and extensions, then the bank may provide such loans or extensions of up to ten percent of the unimpaired capital and unimpaired surplus of that state-chartered banking institution initially determined for the period such loan or extension is made. This limitation shall be separate from and in addition to the limitation contained in subdivision (1) of this subsection.

(3) For the purposes of this subsection:

(A) The term “loans and extensions of credit” includes all direct or indirect advances of funds to a person made on the basis of any obligation of that person to repay the funds or repayable from specific property pledged by or on behalf of the person and to the extent specified by the Commissioner of
Financial Institutions; the terms also include any liability of a
state-chartered banking institution to advance funds to or on
behalf of a person pursuant to a contractual commitment;

(B) The term “person” includes an individual, partnership,
sole proprietorship, society, association, firm, institution,
company, public or private corporation, not-for-profit
corporation, state, governmental agency, bureau, department,
division or instrumentality, political subdivision, county
commission, municipality, trust, syndicate, estate or any other
legal entity whatsoever, formed, created or existing under the
laws of this state or any other jurisdiction;

(C) The term “unimpaired capital and unimpaired surplus”
means the amount of tier 1 (core) capital, as defined in federal
regulations, that is outstanding as indicated in the bank’s most
recent quarterly report of condition and income as filed with the
Commissioner of Financial Institutions pursuant to section
nineteen of this article, plus the amount of the allowance for loan
losses; and

(D) The term “common enterprise” includes, but is not
limited to, persons and entities who are so related by business or
otherwise that the expected source of repayment on the loan or
extension of credit is substantially the same for each person or
entity.

(4) The limitations contained in this subsection are subject
to the following exceptions:

(A) Loans or extensions of credit arising from the discount
of commercial or business paper evidencing an obligation to the
person negotiating it with recourse are not subject to any
limitation based on capital and surplus;

(B) The purchase of bankers’ acceptances of the kind
described in Section 13 of the Federal Reserve Act and issued by
other banks are not subject to any limitation based on capital and surplus;

(C) Loans and extensions of credit having a term of ten months or less and secured by bills of lading, warehouse receipts or similar documents transferring or securing title to readily marketable staples are subject to a limitation of twenty percent of unimpaired capital and unimpaired surplus in addition to the general limitations set forth in subdivision (1) of this subsection, provided the market value of the staples securing each additional loan or extension of credit at all times equals or exceeds one hundred fifteen percent of the outstanding amount of such loan or extension of credit. The staples shall be fully covered by insurance whenever it is customary to insure the staples. If collateral values of the staples fall below the levels required herein, to the extent that the loan is no longer in conformance with its collateral requirements and exceeds the general fifteen percent limitation, the loan must be brought into conformance within five business days, except where judicial proceedings, regulatory actions or other extraordinary occurrences prevent the bank from taking action;

(D) Loans or extensions of credit secured by bonds, notes, certificates of indebtedness or treasury bills of the United States or by other such obligations fully guaranteed as to principal and interest by the United States or by bonds, notes, certificates of indebtedness which are general obligations of the State of West Virginia or by other such obligations fully guaranteed as to principal and interest by the State of West Virginia are not subject to any limitation based on capital and surplus;

(E) Loans or extensions of credit to or secured by unconditional takeout commitments or guarantees of any department, agency, bureau, board, commission or establishment of the United States or of the State of West Virginia or any corporation wholly owned directly or indirectly by the United
States are not subject to any limitation based on capital and surplus;

(F) Loans or extensions of credit secured by a segregated deposit account in the lending bank are not subject to any limitation based on capital and surplus;

(G) Loans or extensions of credit to any banking institution or to any receiver, conservator or other agent in charge of the business and property of such banking institution or other federally insured depository institution, when the loans or extensions of credit are approved by the Commissioner of Financial Institutions, are not subject to any limitation based on capital and surplus;

(H) (i) Loans and extensions of credit arising from the discount of negotiable or nonnegotiable installment consumer paper which carries a full recourse endorsement or unconditional guarantee by the person or common enterprise transferring the paper are subject under this section to a maximum limitation equal to twenty-five percent of such unimpaired capital and unimpaired surplus, notwithstanding the collateral requirements set forth in subdivision (2) of this subsection;

(ii) If the bank’s files or the knowledge of its officers of the financial condition of each maker of consumer paper is reasonably adequate and an officer of the bank designated for that purpose by the board of directors of the bank certifies in writing that the bank is relying primarily upon the responsibility of each maker for payment of such loans or extensions of credit and not upon any full or partial recourse endorsement or guarantee by the transferor, the limitations of this section as to the loans or extensions of credit of each such maker are the sole applicable loan limitations;

(I) (i) Loans and extensions of credit secured by shipping documents or instruments transferring or securing title covering
livestock or giving a lien on livestock when the market value of
the livestock securing the obligation is not at any time less than
one hundred fifteen percent of the face amount of the note
covered shall be subject under this section to a maximum
limitation equal to twenty-five percent of the unimpaired capital
and unimpaired surplus, notwithstanding the collateral
requirements set forth in subdivision (2) of this subsection;

(ii) Loans and extensions of credit which arise from the
discount by dealers in livestock of paper given in payment for
livestock, which paper carries a full recourse endorsement or
unconditional guarantee of the seller and which are secured by
the livestock being sold, are subject under this section to a
limitation of twenty-five percent of the unimpaired capital and
unimpaired surplus, notwithstanding the collateral requirements
set forth in subdivision (2) of this subsection;

(iii) If collateral values of the livestock documents,
instruments or discount paper fall below the levels required
herein, to the extent that the loan is no longer in conformance
with its collateral requirements and exceeds the general fifteen
percent limitation, the loan must be brought into conformance
within thirty business days, except where judicial proceedings,
regulatory actions or other extraordinary occurrences prevent the
bank from taking action;

(J) Loans or extensions of credit to the Student Loan
Marketing Association are not subject to any limitation based on
capital and surplus; and

(K) Loans or extensions of credit to a corporation owning
the property in which that state-chartered banking institution is
located, when that state-chartered banking institution has an
unimpaired capital and surplus of not less than $1 million or
when approved in writing by the Commissioner of Financial
Institutions, are not subject to any limitation based on capital and
surplus.
(5) (A) The Commissioner of Financial Institutions may prescribe rules to administer and carry out the purposes of this subsection including rules to define or further define terms used in this subsection and to establish limits or requirements other than those specified in this subsection for particular classes or categories of loans or extensions of credit;

(B) The Commissioner of Financial Institutions may also prescribe rules to deal with loans or extensions of credit, which were not in violation of this section prior to the effective date of this article, but which will be in violation of this section upon the effective date of this article; and

(C) The Commissioner of Financial Institutions may also determine when a loan putatively made to a person is, for purposes of this subsection, attributed to another person.

(b) (1) Except as hereinafter provided or otherwise permitted by law, nothing herein contained authorizes the purchase by a state-chartered banking institution for its own account of any shares of stock of any corporation: Provided, That a state-chartered banking institution may purchase and sell securities and stock without recourse, solely upon the order and for the account of customers.

(2) The total amount of investment securities of any one obligor or maker held by a state-chartered banking institution for its own account may not exceed that percentage of the unimpaired capital and unimpaired surplus of that state-chartered banking institution as is permitted for investment by national banks or for any federally insured depository institution.

(3) For purposes of this subsection:

(A) The term “investment securities” means a marketable obligation in the form of a stock, bond, note or debenture commonly regarded as an investment security and that is salable
under ordinary circumstances with reasonable promptness at a fair value. “Derivative security” means a type of investment security involving a financial contract whose value depends on the values of one or more underlying assets or indexes of asset values. The term “derivative” refers inter alia to financial contracts such as collateralized mortgage obligations, forwards, futures, forward rate agreements, swaps, options and caps/floors/collars whose primary purpose is to transfer price risks associated with fluctuations in asset values;

(B) The term “person” includes any individual, partnership, sole proprietorship, society, association, firm, institution, company, public or private corporation, not-for-profit corporation, state, governmental agency, bureau, department, division or instrumentality, political subdivision, county commission, municipality, trust, syndicate, estate or any other legal entity whatsoever, formed, created or existing under the laws of this state or any other jurisdiction; and

(C) The term “unimpaired capital and unimpaired surplus” has the same meaning as set forth in subsection (a) of this section.

(4) Notwithstanding any other provision of this subsection, a state-chartered banking institution may invest its funds in any investment authorized for national banking associations or for any other federally insured depository institution. The investments by state-chartered banking institutions shall be on the same terms and conditions applicable to national banking associations or any other federally insured depository institution: Provided, That: (i) The purchase of investment securities under this subdivision may be made only when in the bank’s prudent judgment, which judgment may be based in part on estimates which it believes to be reliable, there is adequate evidence that the obligor will be able to perform all it undertakes to perform in connection with the securities, including all debt service
requirements, and that the securities may be sold with reasonable
promptness at a price that corresponds to their fair value; and (ii)
the purchase conforms to the requirement of subdivision (5) of
this subsection. The Commissioner of Financial Institutions may,
from time to time, provide notice to state-chartered banking
institutions of authorized investments under this paragraph.

(5) The purchase of investment securities, including
derivative securities, in which the investment characteristics are
considered distinctly or predominantly speculative, or the
purchase of such securities that are in default, whether as to
principal or interest, is prohibited. The proper management of
interest rate risk through the use of derivative or other
investment securities may not be held a speculative purpose.

(6) The Commissioner of Financial Institutions may
prescribe rules to administer and carry out the purposes of this
subsection, including rules to define or further define terms used
in this subsection and to establish limits or requirements other
than those specified in this subsection for particular classes or
categories of investment securities.

(c) If there is a material decline of unimpaired capital and
unimpaired surplus of a state-chartered bank during any
quarterly reporting period of more than twenty percent from that
amount reported in the bank’s most recent report of income and
condition, or where there is a decrease of more than thirty
percent in any twelve-month period, the bank shall review its
outstanding loans, extensions of credit and investments and
report to the Commissioner of Financial Institutions those loans,
extensions and investments that exceed the limitations of this
section using the bank’s current reevaluated unimpaired capital
and unimpaired surplus. The report shall detail the bank’s
position in each such loan, extension of credit and investment.
The commissioner may, within his or her discretion, require that
such loans, extensions of credit and investments be brought into
conformity with the bank’s current reevaluated legal lending and
investment limitation.

(d) Notwithstanding any other provision of this section, in
order to ensure a bank’s safety and soundness, the Commissioner
of Financial Institutions retains the authority to direct any state-
chartered bank to recalculate its lending and investment limits at
more frequent intervals than otherwise provided herein and to
require all outstanding loans, extensions of credit and
investments be brought into conformance with the reevaluated
limitations. In such cases, the commissioner will provide the
bank a written notice explaining briefly the specific reasons why
the determination was made to require the more frequent
calculations.

(e) Loans to directors or executive officers are subject to the
following limitations:

(1) A director or executive officer of any banking institution
may not borrow, directly or indirectly, from a banking institution
with which he or she is connected any sum of money without the
prior approval of a majority of the board of directors or discount
committee of the banking institution, or of any duly constituted
committee whose duties include those usually performed by a
discount committee. The approval shall be by resolution adopted
by a majority vote of the board or committee, exclusive of the
director or executive officer to whom the loan is made.

(2) If any director or executive officer of any bank owns or
controls a majority of the stock of any corporation, or is a partner
in any partnership, a loan to the corporation or partnership
constitutes a loan to the director or officer.

(3) For purposes of this subsection, an “executive officer”
means:

(A) A person who participates or has authority to participate,
other than in the capacity of a director, in major policy-making
functions of the company or bank, regardless of any official title, salary or other compensation. The chairman of the board, the president, every vice president, the cashier, the secretary and the treasurer of a company or bank are considered executive officers unless the officer is excluded, by resolution of the board of directors or by the bylaws of the bank or company from participation, other than in the capacity of director, in major policy-making functions of the bank or company and the officer does not actually participate therein.

(B) An executive officer of a company of which the bank is a subsidiary, and any other subsidiary of that company, unless the executive officer of the subsidiary is excluded, by name or by title, from participation in major policy-making functions of the bank by resolutions of the boards of directors of both the subsidiary and the bank and does not actually participate in such major policy-making functions.

(4) Prior approval under subdivision (1) of this subsection is not required for:

(A) Payments of overdrafts pursuant to: (i) A written, preauthorized, interest-bearing extension of credit plan that has been approved by the board of directors or an appropriate committee and that specifies a method of repayment; or (ii) a written, preauthorized transfer of funds from another account of the account holder at the bank; or

(B) Payments of inadvertent overdrafts on an account in an aggregate amount of $1,000 or less: Provided, That: (i) The account is not overdrawn for more than five consecutive business days; and (ii) the bank charges the director or executive officer the same fee charged to any other customer of the bank in similar circumstances.

(f) An employee of the Division of Financial Institutions whose regulatory activities involve participation in an
examination, audit, visitation, review, investigation or any other particular matter involving depository institutions chartered by the division may not borrow, directly or indirectly, any sum of money from a state-chartered bank or state-chartered credit union. An employee of the Division of Financial Institutions whose regulatory activities involve participation in an examination, audit, visitation, review, investigation or any other particular matter involving nondepository institutions licensed by the division may not borrow, directly or indirectly, any sum of money from a nondepository entity that is licensed by the division. The commissioner, deputy commissioner and in-house legal counsel of the Division of Financial Institutions may not borrow, directly or indirectly, any sum of money from any entity that is under the jurisdiction of the division.

(g) Securities purchased by a state-chartered banking institution shall be entered upon the books of the bank at actual cost. For the purpose of calculating the undivided profits applicable to the payment of dividends, securities may not be valued at a valuation exceeding their present cost as determined by amortization of premiums and accretion of discounts pursuant to generally accepted accounting principles, that is, by charging to profit and loss a sum sufficient to bring them to par at maturity: Provided, That securities held for trade or permissible marketable equity securities and any other types of debt securities which pursuant to generally accepted accounting principles are to be carried on the bank’s books at fair market value shall have the unrealized market appreciation and depreciation included in the income and capital as permitted by generally accepted accounting principles.

(h) The market value of securities purchased and loans extended by a state-chartered banking institution shall be reported in all public reports and quarterly reports to the commissioner pursuant to section nineteen of this article in accordance with generally accepted accounting principles and any applicable state or federal law, rule or regulation.
CHAPTER 30

(S. B. 329 - By Senators Trump, Kessler, Woelfel, Palumbo, Romano, Plymale, Stollings and Unger)

[Passed March 8, 2016; in effect ninety days from passage.]
[Approved by the Governor on March 23, 2016.]

AN ACT to amend and reenact §49-1-207 of the Code of West Virginia, 1931, as amended; to amend and reenact §49-2-125 of said code; and to amend and reenact §49-4-502, §49-4-604, §49-4-605, §49-4-607, §49-4-701 and §49-4-709 of said code, all relating to defining “juvenile referee”; eliminating sunset provision for the commission to study residential placement of children; clarifying that prosecuting attorneys are not required to represent any party other than Department of Health and Human Resources in child abuse and neglect cases; clarifying that Department of Health and Human Resources is required to make an effort to terminate parental rights when parent has committed sexual assault or sexual abuse; and making technical changes.

Be it enacted by the Legislature of West Virginia:

That §49-1-207 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §49-2-125 of said code be amended and reenacted; and that §49-4-502, §49-4-604, §49-4-605, §49-4-607, §49-4-701 and §49-4-709 of said code be amended and reenacted, all to read as follows:

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.

§49-1-207. Definitions related to court actions.

1 When used in this chapter, terms defined in this section have
2 the meanings ascribed to them that relate to, but are not limited
to, court actions, except in those instances where a different 
meaning is provided or the context in which the word is used 
clearly indicates that a different meaning is intended.

“Court” means the circuit court of the county with 
jurisdiction of the case or the judge in vacation unless otherwise 
specifically provided.

“Court appointed special advocate (CASA) program” means 
a community organization that screens, trains and supervises 
CASA volunteers to advocate for the best interests of children 
who are involved in abuse and neglect proceedings section one 
hundred two, article three of this chapter.

“Extrajudicial Statement” means any utterance, written or 
oral, which was made outside of court.

“Juvenile referee” means a magistrate appointed by the 
circuit court to perform the functions expressly prescribed for a 
referee under the provisions of this chapter.

“Multidisciplinary team” means a group of professionals and 
paraprofessionals representing a variety of disciplines who 
interact and coordinate their efforts to identify, diagnose and 
treat specific cases of child abuse and neglect. Multidisciplinary 
teams may include, but are not limited to, medical, educational, 
child care and law-enforcement personnel, social workers, 
psychologists and psychiatrists. Their goal is to pool their 
respective skills in order to formulate accurate diagnoses and to 
provide comprehensive coordinated treatment with continuity 
and follow-up for both parents and children.

“Community team” means a multidisciplinary group which 
addresses the general problem of child abuse and neglect in a 
given community and may consist of several multidisciplinary 
teams with different functions.
“Res gestae” means a spontaneous declaration made by a person immediately after an event and before the person has had an opportunity to conjure a falsehood.

“Valid court order” means an order issued by a court of competent jurisdiction relating to a child brought before the court who is the subject of that order. Prior to the entry of the order the child shall have received the full due process rights guaranteed to that child or juvenile by the Constitutions of the United States and the State of West Virginia.

“Violation of a traffic law of West Virginia” means a violation of chapter seventeen-a, seventeen-b, seventeen-c or seventeen-d of this code except a violation of section one or two, article four, chapter seventeen-c of this code relating to hit and run or section one, two or three, article five of that chapter, relating, respectively, to negligent homicide, driving under the influence of alcohol, controlled substances or drugs and reckless driving.

ARTICLE 2. STATE RESPONSIBILITIES FOR CHILDREN.

§49-2-125. Commission to Study Residential Placement of Children; findings; requirements; reports; recommendations.

(a) The Legislature finds that the state’s current system of serving children and families in need of or at risk of needing social, emotional and behavioral health services is fragmented. The existing categorical structure of government programs and their funding streams discourages collaboration, resulting in duplication of efforts and a waste of limited resources. Children are usually involved in multiple child-serving systems, including child welfare, juvenile justice and special education. More than ten percent of children presently in care are presently in out-of-state placements. Earlier efforts at reform have focused on quick
fixes for individual components of the system at the expense of the whole. It is the purpose of this section to establish a mechanism to achieve systemic reform by which all of the state’s child-serving agencies involved in the residential placement of at-risk youth jointly and continually study and improve upon this system and make recommendations to their respective agencies and to the Legislature regarding funding and statutory, regulatory and policy changes. It is further the Legislature’s intent to build upon these recommendations to establish an integrated system of care for at-risk youth and families that makes prudent and cost-effective use of limited state resources by drawing upon the experience of successful models and best practices in this and other jurisdictions, which focuses on delivering services in the least restrictive setting appropriate to the needs of the child, and which produces better outcomes for children, families and the state.

(b) There is created within the Department of Health and Human Resources the Commission to Study the Residential Placement of Children. The commission consists of the Secretary of the Department of Health and Human Resources, the Commissioner of the Bureau for Children and Families, the Commissioner for the Bureau for Behavioral Health and Health Facilities, the Commissioner for the Bureau for Medical Services, the State Superintendent of Schools, a representative of local educational agencies, the Director of the Office of Institutional Educational Programs, the Director of the Office of Special Education Programs and Assurance, the Director of the Division of Juvenile Services and the Executive Director of the Prosecuting Attorney’s Institute. At the discretion of the West Virginia Supreme Court of Appeals, circuit and family court judges and other court personnel, including the Administrator of the Supreme Court of Appeals and the Director of the Juvenile Probation Services Division, may serve on the commission. These statutory members may further designate additional
persons in their respective offices who may attend the meetings
deliberations, the commission shall also consult and solicit input from families and service providers.

(c) The Secretary of the Department of Health and Human Resources shall serve as chair of the commission, which shall meet on a quarterly basis at the call of the chair.

(d) At a minimum, the commission shall study:

(1) The current practices of placing children out-of-home and into in-residential placements, with special emphasis on out-of-state placements;

(2) The adequacy, capacity, availability and utilization of existing in-state facilities to serve the needs of children requiring residential placements;

(3) Strategies and methods to reduce the number of children who must be placed in out-of-state facilities and to return children from existing out-of-state placements, initially targeting older youth who have been adjudicated delinquent;

(4) Staffing, facilitation and oversight of multidisciplinary treatment planning teams;

(5) The availability of and investment in community-based, less restrictive and less costly alternatives to residential placements;

(6) Ways in which up-to-date information about in-state placement availability may be made readily accessible to state agency and court personnel, including an interactive secure web site;
(7) Strategies and methods to promote and sustain cooperation and collaboration between the courts, state and local agencies, families and service providers, including the use of inter-agency memoranda of understanding, pooled funding arrangements and sharing of information and staff resources;

(8) The advisability of including no-refusal clauses in contracts with in-state providers for placement of children whose treatment needs match the level of licensure held by the provider;

(9) Identification of in-state service gaps and the feasibility of developing services to fill those gaps, including funding;

(10) Identification of fiscal, statutory and regulatory barriers to developing needed services in-state in a timely and responsive way;

(11) Ways to promote and protect the rights and participation of parents, foster parents and children involved in out-of-home care;

(12) Ways to certify out-of-state providers to ensure that children who must be placed out-of-state receive high quality services consistent with this state’s standards of licensure and rules of operation; and

(13) Any other ancillary issue relative to foster care placement.

(e) The commission shall report annually to the Legislative Oversight Commission on Health and Human Resources Accountability its conclusions and recommendations, including an implementation plan whereby:

(1) Out-of-state placements shall be reduced by at least ten percent per year and by at least fifty percent within three years;
(2) Child-serving agencies shall develop joint operating and funding proposals to serve the needs of children and families that cross their jurisdictional boundaries in a more seamless way;

(3) Steps shall be taken to obtain all necessary federal plan waivers or amendments in order for agencies to work collaboratively while maximizing the availability of federal funds;

(4) Agencies shall enter into memoranda of understanding to assume joint responsibilities;

(5) System of care components and cooperative relationships shall be incrementally established at the local, state and regional levels, with links to existing resources, such as family resource networks and regional summits, wherever possible; and

(6) Recommendations for changes in fiscal, statutory and regulatory provisions are included for legislative action.

ARTICLE 4. COURT ACTIONS.

§49-4-502. Prosecuting attorney to cooperate with persons other than the department in child abuse and neglect matters; duties.

It is the duty of every prosecuting attorney to cooperate fully and promptly with persons seeking to apply for relief, including copetitioners with the department, under this article in all cases of suspected child abuse and neglect; to promptly prepare applications and petitions for relief requested by those persons, to investigate reported cases of suspected child abuse and neglect for possible criminal activity; and to report at least annually to the grand jury regarding the discharge of his or her duties with respect thereto.
§49-4-604. Disposition of neglected or abused children; case plans; dispositions; factors to be considered; reunification; orders; alternative dispositions.

(a) Child and family case plans. — Following a determination pursuant to section six hundred two of this article wherein the court finds a child to be abused or neglected, the department shall file with the court a copy of the child’s case plan, including the permanency plan for the child. The term “case plan” means a written document that includes, where applicable, the requirements of the family case plan as provided in section four hundred eight of this article and that also includes, at a minimum, the following:

1. A description of the type of home or institution in which the child is to be placed, including a discussion of the appropriateness of the placement and how the agency which is responsible for the child plans to assure that the child receives proper care and that services are provided to the parents, child, and foster parents in order to improve the conditions that made the child unsafe in the care of his or her parent(s), including any reasonable accommodations in accordance with the Americans with Disabilities Act of 1990, 42 U. S. C. §12101, et seq., to parents with disabilities in order to allow them meaningful access to reunification and family preservation services;

2. A plan to facilitate the return of the child to his or her own home or the concurrent permanent placement of the child; and address the needs of the child while in relative or foster care, including a discussion of the appropriateness of the services that have been provided to the child.

The term “permanency plan” refers to that part of the case plan which is designed to achieve a permanent home for the child in the least restrictive setting available. The plan must document efforts to ensure that the child is returned home within...
approximate time lines for reunification as set out in the plan. Reasonable efforts to place a child for adoption or with a legal guardian should be made at the same time, or concurrent with, reasonable efforts to prevent removal or to make it possible for a child to return to the care of his or her parent(s) safely. If reunification is not the permanency plan for the child, the plan must state why reunification is not appropriate and detail the alternative, concurrent permanent placement plans for the child to include approximate time lines for when the placement is expected to become a permanent placement. This case plan shall serve as the family case plan for parents of abused or neglected children. Copies of the child’s case plan shall be sent to the child’s attorney and parent, guardian or custodian or their counsel at least five days prior to the dispositional hearing. The court shall forthwith proceed to disposition giving both the petitioner and respondents an opportunity to be heard.

(b) Disposition decisions. — The court shall give precedence to dispositions in the following sequence:

(1) Dismiss the petition;

(2) Refer the child, the abusing parent, the battered parent or other family members to a community agency for needed assistance and dismiss the petition;

(3) Return the child to his or her own home under supervision of the department;

(4) Order terms of supervision calculated to assist the child and any abusing parent or battered parent or parents or custodian which prescribe the manner of supervision and care of the child and which are within the ability of any parent or parents or custodian to perform;

(5) Upon a finding that the abusing parent or battered parent or parents are presently unwilling or unable to provide
adequately for the child’s needs, commit the child temporarily
to the care, custody, and control of the state department, a
licensed private child welfare agency, or a suitable person who
may be appointed guardian by the court. The court order shall
state:

(A) That continuation in the home is contrary to the best
interests of the child and why;

(B) Whether or not the department has made reasonable
efforts, with the child’s health and safety being the paramount
concern, to preserve the family, or some portion thereof, and to
prevent or eliminate the need for removing the child from the
child’s home and to make it possible for the child to safely return
home;

(C) Whether the department has made reasonable
accommodations in accordance with the Americans with
with disabilities in order to allow them meaningful access to
reunification and family preservation services;

(D) What efforts were made or that the emergency situation
made those efforts unreasonable or impossible; and

(E) The specific circumstances of the situation which made
those efforts unreasonable if services were not offered by the
department. The court order shall also determine under what
circumstances the child’s commitment to the department are to
continue. Considerations pertinent to the determination include
whether the child should:

(i) Be considered for legal guardianship;

(ii) Be considered for permanent placement with a fit and
willing relative; or
(iii) Be placed in another planned permanent living arrangement, but only in cases where the child has attained 16 years of age and the department has documented to the circuit court a compelling reason for determining that it would not be in the best interests of the child to follow one of the options set forth in subparagraphs (i) or (ii) of this paragraph. The court may order services to meet the special needs of the child. Whenever the court transfers custody of a youth to the department, an appropriate order of financial support by the parents or guardians shall be entered in accordance with part eight of this article;

(6) Upon a finding that there is no reasonable likelihood that the conditions of neglect or abuse can be substantially corrected in the near future and, when necessary for the welfare of the child, terminate the parental, custodial and guardianship rights and responsibilities of the abusing parent and commit the child to the permanent sole custody of the nonabusing parent, if there be one, or, if not, to either the permanent guardianship of the department or a licensed child welfare agency. The court may award sole custody of the child to a nonabusing battered parent. If the court shall so find, then in fixing its dispositional order the court shall consider the following factors:

(A) The child’s need for continuity of care and caretakers;

(B) The amount of time required for the child to be integrated into a stable and permanent home environment; and

(C) Other factors as the court considers necessary and proper. Notwithstanding any other provision of this article, the court shall give consideration to the wishes of a child fourteen years of age or older or otherwise of an age of discretion as determined by the court regarding the permanent termination of parental rights. No adoption of a child shall take place until all proceedings for termination of parental rights under this article
and appeals thereof are final. In determining whether or not parental rights should be terminated, the court shall consider the efforts made by the department to provide remedial and reunification services to the parent. The court order shall state:

(i) That continuation in the home is not in the best interest of the child and why;

(ii) Why reunification is not in the best interests of the child;

(iii) Whether or not the department made reasonable efforts, with the child’s health and safety being the paramount concern, to preserve the family, or some portion thereof, and to prevent the placement or to eliminate the need for removing the child from the child’s home and to make it possible for the child to safely return home, or that the emergency situation made those efforts unreasonable or impossible; and

(iv) Whether or not the department made reasonable efforts to preserve and reunify the family, or some portion thereof, including a description of what efforts were made or that those efforts were unreasonable due to specific circumstances;

(7) For purposes of the court’s consideration of the disposition custody of a child pursuant to this subsection, the department is not required to make reasonable efforts to preserve the family if the court determines:

(A) The parent has subjected the child, another child of the parent or any other child residing in the same household or under the temporary or permanent custody of the parent to aggravated circumstances which include, but are not limited to, abandonment, torture, chronic abuse and sexual abuse;

(B) The parent has:
(i) Committed murder of the child’s other parent, guardian or custodian, another child of the parent or any other child residing in the same household or under the temporary or permanent custody of the parent;

(ii) Committed voluntary manslaughter of the child’s other parent, guardian or custodian, another child of the parent or any other child residing in the same household or under the temporary or permanent custody of the parent;

(iii) Attempted or conspired to commit murder or voluntary manslaughter or been an accessory before or after the fact to either crime;

(iv) Committed a malicious assault that results in serious bodily injury to the child, the child’s other parent, guardian or custodian, to another child of the parent or any other child residing in the same household or under the temporary or permanent custody of the parent; or

(v) Committed sexual assault or sexual abuse of the child, the child’s other parent, guardian or custodian, another child of the parent or any other child residing in the same household or under the temporary or permanent custody of the parent;

(C) The parental rights of the parent to another child have been terminated involuntarily;

(D) A parent has been required by state or federal law to register with a sex offender registry, and the court has determined in consideration of the nature and circumstances surrounding the prior charges against that parent, that the child’s interests would not be promoted by a preservation of the family.

(c) As used in this section, “no reasonable likelihood that conditions of neglect or abuse can be substantially corrected”
means that, based upon the evidence before the court, the
abusing adult or adults have demonstrated an inadequate
capacity to solve the problems of abuse or neglect on their own
or with help. Those conditions exist in the following
circumstances, which are not exclusive:

(1) The abusing parent or parents have habitually abused or
are addicted to alcohol, controlled substances or drugs, to the
extent that proper parenting skills have been seriously impaired
and the person or persons have not responded to or followed
through the recommended and appropriate treatment which
could have improved the capacity for adequate parental
functioning;

(2) The abusing parent or parents have willfully refused or
are presently unwilling to cooperate in the development of a
reasonable family case plan designed to lead to the child’s return
to their care, custody and control;

(3) The abusing parent or parents have not responded to or
followed through with a reasonable family case plan or other
rehabilitative efforts of social, medical, mental health or other
rehabilitative agencies designed to reduce or prevent the abuse
or neglect of the child, as evidenced by the continuation or
insubstantial diminution of conditions which threatened the
health, welfare or life of the child;

(4) The abusing parent or parents have abandoned the child;

(5) The abusing parent or parents have repeatedly or
seriously injured the child physically or emotionally, or have
sexually abused or sexually exploited the child, and the degree
of family stress and the potential for further abuse and neglect
are so great as to preclude the use of resources to mitigate or
resolve family problems or assist the abusing parent or parents
in fulfilling their responsibilities to the child;
(6) The battered parent’s parenting skills have been seriously impaired and the person has willfully refused or is presently unwilling or unable to cooperate in the development of a reasonable treatment plan or has not adequately responded to or followed through with the recommended and appropriate treatment plan.

(d) The court may, as an alternative disposition, allow the parents or custodians an improvement period not to exceed six months. During this period the court shall require the parent to rectify the conditions upon which the determination was based. The court may order the child to be placed with the parents, or any person found to be a fit and proper person, for the temporary care of the child during the period. At the end of the period, the court shall hold a hearing to determine whether the conditions have been adequately improved and at the conclusion of the hearing shall make a further dispositional order in accordance with this section.

§49-4-605. When department efforts to terminate parental rights are required.

(a) Except as provided in subsection (b) of this section, the department shall file or join in a petition or otherwise seek a ruling in any pending proceeding to terminate parental rights:

(1) If a child has been in foster care for fifteen of the most recent twenty-two months as determined by the earlier of the date of the first judicial finding that the child is subjected to abuse or neglect or the date which is sixty days after the child is removed from the home;

(2) If a court has determined the child is abandoned, tortured, sexually abused, or chronically abused; or

(3) If a court has determined the parent has committed murder or voluntary manslaughter of another of his or her
(b) The department may determine not to file a petition to terminate parental rights when:

(1) At the option of the department, the child has been placed permanently with a relative by court order;

(2) The department has documented in the case plan made available for court review a compelling reason, including, but not limited to, the child’s age and preference regarding termination or the child’s placement in custody of the department based on any proceedings initiated under part seven of this article, that filing the petition would not be in the best interests of the child; or

(3) The department has not provided, when reasonable efforts to return a child to the family are required, the services to the child’s family as the department deems necessary for the safe return of the child to the home.

§49-4-607. Consensual termination of parental rights.

An agreement of a natural parent in termination of parental rights is valid if made by a duly acknowledged writing, and
entered into under circumstances free from duress and fraud. Where during the pendency of an abuse and neglect proceeding, a parent offers voluntarily to relinquish of his or her parental rights, and the relinquishment is accepted by the circuit court, the relinquishment may, without further evidence, be used as the basis of an order of adjudication of abuse and neglect by that parent of his or her children.

PART VII. JUVENILE PROCEEDINGS

§49-4-701. Juvenile jurisdiction of circuit courts, magistrate courts and municipal courts; Constitutional guarantees; requirements; hearings; right to counsel; opportunity to be heard; evidence and transcripts.

(a) The circuit court has original jurisdiction of proceedings brought under this article. A person under the age of eighteen years who appears before the circuit court in proceedings under this article is a ward of the court and protected accordingly.

(b) If during a criminal proceeding in any court it is ascertained or appears that the defendant is under the age of nineteen years and was under the age of eighteen years at the time of the alleged offense, the matter shall be immediately certified to the juvenile jurisdiction of the circuit court. The circuit court shall assume jurisdiction of the case in the same manner as cases which are originally instituted in the circuit court by petition.

(c) Notwithstanding any other provision of this article, magistrate courts have concurrent juvenile jurisdiction with the circuit court for a violation of a traffic law of West Virginia, for a violation of section nine, article six, chapter sixty, section three or section four, article nine-a, chapter sixteen, or section nineteen, article sixteen, chapter eleven of this code, or for any violation of chapter twenty of this code. Juveniles are liable for
punishment for violations of these laws in the same manner as adults except that magistrate courts have no jurisdiction to impose a sentence of incarceration for the violation of these laws.

(d) Notwithstanding any other provision of this article, municipal courts have concurrent juvenile jurisdiction with the circuit court for a violation of any municipal ordinance regulating traffic, for any municipal curfew ordinance which is enforceable or for any municipal ordinance regulating or prohibiting public intoxication, drinking or possessing alcoholic liquor or nonintoxicating beer in public places, any other act prohibited by section nine, article six, chapter sixty or section nineteen, article sixteen, chapter eleven of this code or underage possession or use of tobacco or tobacco products, as provided in article nine-a, chapter sixteen of this code. Municipal courts may impose the same punishment for these violations as a circuit court exercising its juvenile jurisdiction could properly impose, except that municipal courts have no jurisdiction to impose a sentence of incarceration for the violation of these laws.

(e) A juvenile may be brought before the circuit court for proceedings under this article only by the following means:

(1) By a juvenile petition requesting that the juvenile be adjudicated as a status offender or a juvenile delinquent; or

(2) By certification or transfer to the juvenile jurisdiction of the circuit court from the criminal jurisdiction of the circuit court, from any foreign court, or from any magistrate court or municipal court in West Virginia.

(f)(1) If a juvenile commits an act which would be a crime if committed by an adult, and the juvenile is adjudicated delinquent for that act, the jurisdiction of the court which adjudged the juvenile delinquent continues until the juvenile becomes twenty-one years of age. The court has the same power
over that person that it had before he or she became an adult, and
has the power to sentence that person to a term of incarceration:
*Provided*, That any term of incarceration may not exceed six
months. This authority does not preclude the court from
exercising criminal jurisdiction over that person if he or she
violates the law after becoming an adult or if the proceedings
have been transferred to the court’s criminal jurisdiction
pursuant to section seven hundred four of this article.

(2) If a juvenile is adjudicated as a status offender because
he or she is habitually absent from school without good cause,
the jurisdiction of the court which adjudged the juvenile a status
offender continues until either the juvenile becomes twenty-one
years of age, completes high school, completes a high school
equivalent or other education plan approved by the court, or the
court otherwise voluntarily relinquishes jurisdiction, whichever
occurs first. If the jurisdiction of the court is extended pursuant
to this subdivision, the court has the same power over that
person that it had before he or she became an adult. No person
so adjudicated who has attained the age of nineteen may be
ordered to attend school in a regular, nonalternative setting.

(g) A juvenile is entitled to be admitted to bail or
recognizance in the same manner as an adult and be afforded the
protection guaranteed by Article III of the West Virginia
Constitution.

(h) A juvenile has the right to be effectively represented by
counsel at all stages of proceedings under this article, including
participation in multidisciplinary team meetings, until the child
is no longer under the jurisdiction of the court. If the juvenile or
the juvenile’s parent or custodian executes an affidavit showing
that the juvenile cannot afford an attorney, the court shall
appoint an attorney, who shall be paid in accordance with article
twenty-one, chapter twenty-nine of this code.
In all proceedings under this article, the juvenile will be afforded a meaningful opportunity to be heard. This includes the opportunity to testify and to present and cross-examine witnesses. The general public shall be excluded from all proceedings under this article except that persons whose presence is requested by the parties and other persons whom the circuit court determines have a legitimate interest in the proceedings may attend.

In cases in which a juvenile is accused of committing what would be a felony if the juvenile were an adult, an alleged victim or his or her representative may attend any related juvenile proceedings, at the discretion of the presiding judicial officer.

In any case in which the alleged victim is a juvenile, he or she may be accompanied by his or her parents or representative, at the discretion of the presiding judicial officer.

At all adjudicatory hearings held under this article, all procedural rights afforded to adults in criminal proceedings shall be afforded the juvenile unless specifically provided otherwise in this chapter.

At all adjudicatory hearings held under this article, the rules of evidence applicable in criminal cases apply, including the rule against written reports based upon hearsay.

Except for res gestae, extrajudicial statements made by a juvenile who has not attained fourteen years of age to law-enforcement officials or while in custody are not admissible unless those statements were made in the presence of the juvenile’s counsel. Except for res gestae, extrajudicial statements made by a juvenile who has not attained sixteen years of age but who is at least fourteen years of age to law-enforcement officers or while in custody, are not admissible unless made in the
presence of the juvenile’s counsel or made in the presence of, and with the consent of, the juvenile’s parent or custodian, and the parent or custodian has been fully informed regarding the juvenile’s right to a prompt detention hearing, the juvenile’s right to counsel, including appointed counsel if the juvenile cannot afford counsel, and the juvenile’s privilege against self-incrimination.

(m) A transcript or recording shall be made of all transfer, adjudicatory and dispositional hearings held in circuit court. At the conclusion of each of these hearings, the circuit court shall make findings of fact and conclusions of law, both of which shall appear on the record. The court reporter shall furnish a transcript of the proceedings at no charge to any indigent juvenile who seeks review of any proceeding under this article if an affidavit is filed stating that neither the juvenile nor the juvenile’s parents or custodian have the ability to pay for the transcript.

§49-4-709. Right to jury trial for juveniles; inapplicability.

(a) In a proceeding under this article, the juvenile, the juvenile’s counsel or the juvenile’s parent or guardian may demand, or the judge on his or her own motion may order a jury trial on any question of fact, in which the juvenile is accused of any act or acts of delinquency which, if committed by an adult would expose the adult to incarceration.

(b) A juvenile who is charged with a status offense or other offense where incarceration is not a possibility due either to the statutory penalty or where the court rules pretrial that a sentence of incarceration will not be imposed upon adjudication is not entitled to a trial by jury.

(c) This section is inapplicable to proceedings held pursuant to section seven hundred sixteen of this article.

(d) Juries consist of twelve members.
AN ACT to amend and reenact §49-2-113 of the Code of West Virginia, 1931, as amended, relating to child-care center licensing requirements; and exempting county parks and recreation commissions, boards and municipalities from licensure.

Be it enacted by the Legislature of West Virginia:

That §49-2-113 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2. STATE RESPONSIBILITIES FOR CHILDREN.

PART 1. GENERAL AUTHORITY AND DUTIES OF THE DEPARTMENT OF HEALTH AND HUMAN RESOURCES.

§49-2-113. Residential child-care centers; licensure, certification, approval and registration; requirements.

1 (a) Any person, corporation or child welfare agency, other than a state agency, which operates a residential child-care center shall obtain a license from the department.

4 (b) Any residential child-care facility, day-care center or any child-placing agency operated by the state shall obtain approval of its operations from the secretary.

7 (c) Any family day-care facility which operates in this state, including family day-care facilities approved by the department
for receipt of funding, shall obtain a statement of certification from the department.

(d) Every family day-care home which operates in this state, including family day-care homes approved by the department for receipt of funding, shall obtain a certificate of registration from the department. The facilities and placing agencies shall maintain the same standards of care applicable to licensed facilities, centers or placing agencies of the same category.

(e) This section does not apply to:

(1) A kindergarten, preschool or school education program which is operated by a public school or which is accredited by the state Department of Education or any other kindergarten, preschool or school programs which operate with sessions not exceeding four hours per day for any child;

(2) An individual or facility which offers occasional care of children for brief periods while parents are shopping, engaging in recreational activities, attending religious services or engaging in other business or personal affairs;

(3) Summer recreation camps operated for children attending sessions for periods not exceeding thirty days;

(4) Hospitals or other medical facilities which are primarily used for temporary residential care of children for treatment, convalescence or testing;

(5) Persons providing family day care solely for children related to them;

(6) Any juvenile detention facility or juvenile correctional facility operated by or under contract with the Division of Juvenile Services for the secure housing or holding of juveniles committed to its custody;
(7) Any out-of-school time program that has been awarded a grant by the West Virginia Department of Education to provide out-of-school time programs to kindergarten through twelfth grade students when the program is monitored by the West Virginia Department of Education; or

(8) Any out-of-school time program serving children six years of age or older and meets all of the following requirements, or is an out-of-school time program that is affiliated and in good standing with a national congressionally chartered organization or is operated by a county parks and recreation commission, boards and municipalities and meets all of the following requirements:

(A) The program is located in a facility that meets all fire and health codes;

(B) The program performs state and federal background checks on all volunteers and staff;

(C) The programs’ primary source of funding is not from fees for service except for programs operated by county parks and recreation commissions, boards and municipalities;

(D) The program has a formalized monitoring system in place.

(f) The secretary is authorized to issue an emergency rule relating to conducting a survey of existing facilities in this state in which children reside on a temporary basis in order to ascertain whether they should be subject to licensing under this article or applicable licensing provisions relating to behavioral health treatment providers.

(g) Any informal family child-care home or relative family child-care home may voluntarily register and obtain a certificate of registration from the department.
(h) All facilities or programs that provide out-of-school time care shall register with the department upon commencement of operations and on an annual basis thereafter. The department shall obtain information, such as the name of the facility or program, the description of the services provided and any other information relevant to the determination by the department as to whether the facility or program meets the criteria for exemption under this section.

(i) Any child-care service that is licensed or receives a certificate of registration shall have a written plan for evacuation in the event of fire, natural disaster or other threatening situation that may pose a health or safety hazard to the children in the child-care service.

(1) The plan shall include, but not be limited to:

(A) A designated relocation site and evacuation;

(B) Procedures for notifying parents of the relocation and ensuring family reunification;

(C) Procedures to address the needs of individual children including children with special needs;

(D) Instructions relating to the training of staff or the reassignment of staff duties, as appropriate;

(E) Coordination with local emergency management officials; and

(F) A program to ensure that appropriate staff are familiar with the components of the plan.

(2) A child-care service shall update the evacuation plan by December 31 of each year. If a child-care service fails to update the plan, no action shall be taken against the child-care services
96 license or registration until notice is provided and the child-care
97 service is given thirty days after the receipt of notice to provide
98 an updated plan.

(3) A child-care service shall retain an updated copy of the
99 plan for evacuation and shall provide notice of the plan and
100 notification that a copy of the plan will be provided upon request
101 to any parent, custodian or guardian of each child at the time of
102 the child’s enrollment in the child-care service and when the
103 plan is updated.

(4) All child-care centers and family child-care facilities
105 shall provide the plan and each updated copy of the plan to the
106 Director of the Office of Emergency Services in the county
107 where the center or facility is located.

CHAPTER 32
(Com. Sub. for S. B. 326 - By Senators Trump, Kessler,
Woelfel, Palumbo, Romano and Plymale)

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

AN ACT to repeal §49-4-901 and §49-4-902 of the Code of West
Virginia, 1931, as amended; and to amend said code by adding
thereto a new section, designated §61-8D-10, all relating to
repealing the criminal offense of contributing to the delinquency
or neglect of a child; relating to repealing providing the court or
the judge discretion to suspend the sentence and allow a child to
remain in the custody of the convicted person with certain
conditions; creating the criminal offense of contributing to the
delinquency of a child; defining delinquency; providing for
penalties; authorizing restitution; allowing for additional terms and conditions to be imposed upon conviction; providing that delinquency of a child does not apply to a parent, guardian or custodian who fails or refuses, or allows another person to fail or refuse, to supply a child under the care, custody, or control of the parent, guardian, or custodian with necessary medical care, when medical care conflicts with the tenets and practices of a recognized religious denomination or order which parent, guardian or custodian is an adherent or member; establishing that it is not an essential element of the offense that the minor actually be delinquent; providing for certain conditions of bond upon conviction and suspension of the sentence by the court; providing that a bond given upon suspension of a sentence which becomes forfeited is recoverable without separate suit; providing procedure for recovery of bond by principal or surety; providing that any money collected or paid upon execution, or upon the bond, shall be deposited with the clerk and applied to court costs then to treatment, care, or maintenance of the child; and permitting the child to remain in the custody of the convicted person with certain conditions.

Be it enacted by the Legislature of West Virginia:

That §49-4-901 and §49-4-902 of the Code of West Virginia, 1931, as amended, be repealed; and that said code be amended by adding thereto a new section, designated §61-8D-10, all to read as follows:

ARTICLE 8D. CHILD ABUSE.

§61-8D-10. Contributing to delinquency of a child; penalties; payment of medical costs; proof; court discretion; other payments; suspended sentence; maintenance and care; temporary custody.

(a) Any person eighteen years of age or older who knowingly contributes to or encourages the delinquency of a
child is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $50 nor more than $500 or confined for a period not exceeding one year or both.

(b) As used in this section, “delinquency” means the violation or attempted violation of any federal or state statute, county or municipal ordinance, or a court order, or the habitual or continual refusal to comply, without just cause, with the lawful supervision or direction of a parent, guardian or custodian.

(c) In addition to any penalty provided under this section and any restitution which may be ordered by the court pursuant to section five, article eleven-a of this chapter the court may order any person convicted of a violation of subsection (a) of this section to pay all or any portion of the cost of medical, psychological or psychiatric treatment provided the child resulting from the acts for which the person is convicted.

(d) This section does not apply to any parent, guardian or custodian who fails or refuses, or allows another person to fail or refuse, to supply a child under the care, custody, or control of the parent, guardian, or custodian with necessary medical care, when medical care conflicts with the tenets and practices of a recognized religious denomination or order of which parent, guardian or custodian is an adherent or member.

(e) It is not an essential element of the offense created by this section that the minor actually be delinquent.

(f) Upon conviction, the court may suspend the sentence of a person found guilty under this section. A suspended sentence may be subjected to the following terms and conditions:

(1) That offender pay for any and all treatment, support, and maintenance while the child is in the custody of the state or
(2) That the offender post a sufficient bond to secure the payment for all sums ordered to be paid under this section, as long as the bond does not exceed $5,000; and

(3) That the offender participate in any program or training that will assist the child in correcting the delinquent behavior or, in the case of neglect, that will assist the offender in correcting his or her behavior that led to violation of this section.

(g)(1) The penalty of a bond given upon suspension of a sentence which becomes forfeited is recoverable without a separate suit. The court may cause a citation or a summons to issue to the principal and surety, requiring that they appear at a time named by the court, not less than ten days, from the issuance of the summons, and show cause why a judgment should not be entered for the penalty of the bond and execution issued against the property of the principal and the surety.

(2) Any money collected or paid upon an execution, or upon the bond, shall be deposited with the clerk of the court in which the bond was given. The money shall be applied first to the payment of all court costs and then to the treatment, care, or maintenance of the child who was at issue when the offender was convicted of this section.

(h) If the guilty person had custody of the child prior to conviction, the court or judge may, on suspending sentence, permit the child to remain in the custody of the person, and make it a condition of suspending sentence that the person provides whatever treatment and care may be required for the welfare of the child, and shall do whatever may be calculated to secure obedience to the law or to remove the cause of the delinquency.
AN ACT to amend and reenact §49-5-101 of the Code of West Virginia, 1931, as amended; to amend and reenact §62-6B-2 of said code; and to amend said code by adding thereto a new section, designated §62-6B-6, all relating to confidentiality of records; providing that a recorded interview of a minor in a criminal or abuse or neglect case is generally confidential and exempt from disclosure; defining terms, including “interviewed child” and “recorded interview”; providing that recorded interviews of children in criminal and administrative proceedings are confidential and subject to disclosure only pursuant to a court order; providing that all written documentation related to the recorded interviews of children in criminal and administrative proceedings are confidential; providing for certain individuals to have access to the recorded interview of a child prior to the commencement of formal proceedings and providing for limitations and conditions for certain individuals to have such access; requesting Supreme Court of Appeals promulgate rules regulating the publication and duplication of recorded interviews in the courts of this state, including use, duplication and publication by counsel, and to include in any such rule limitations upon the publication, duplication, distribution or use of the recorded statements of a child; creating the criminal offense of knowingly and willfully duplicating or publishing a recorded interview in violation of the terms of a court order or the general confidentiality provisions; and establishing penalties therefor.
Be it enacted by the Legislature of West Virginia:

That §49-5-101 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §62-6B-2 of said code be amended and reenacted; and that said code be amended by adding thereto a new section, designated §62-6B-6, all to read as follows:

CHAPTER 49. CHILD WELFARE.

ARTICLE 5. RECORDKEEPING AND DATABASE.

§49-5-101. Confidentiality of records; nonrelease of records; exceptions; penalties.

(a) Except as otherwise provided in this chapter or by order of the court, all records and information concerning a child or juvenile which are maintained by the Division of Juvenile Services, the Department of Health and Human Resources, a child agency or facility, court or law-enforcement agency are confidential and shall not be released or disclosed to anyone, including any federal or state agency.

(b) Notwithstanding the provisions of subsection (a) of this section or any other provision of this code to the contrary, records concerning a child or juvenile, except adoption records and records disclosing the identity of a person making a complaint of child abuse or neglect, may be made available:

(1) Where otherwise authorized by this chapter;

(2) To:

(A) The child;

(B) A parent whose parental rights have not been terminated;

or

(C) The attorney of the child or parent;
(3) With the written consent of the child or of someone authorized to act on the child’s behalf; or

(4) Pursuant to an order of a court of record. However, the court shall review the record or records for relevancy and materiality to the issues in the proceeding and safety, and may issue an order to limit the examination and use of the records or any part thereof.

(c) In addition to those persons or entities to whom information may be disclosed under subsection (b) of this section, information related to child abuse or neglect proceedings, except information relating to the identity of the person reporting or making a complaint of child abuse or neglect, shall be made available, upon request, to:

(1) Federal, state or local government entities, or any agent of those entities, including law-enforcement agencies and prosecuting attorneys, having a need for that information in order to carry out its responsibilities under law to protect children from abuse and neglect;

(2) The child fatality review team;

(3) Child abuse citizen review panels;

(4) Multidisciplinary investigative and treatment teams; or

(5) A grand jury, circuit court or family court, upon a finding that information in the records is necessary for the determination of an issue before the grand jury, circuit court or family court.

(d) In the event of a child fatality or near fatality due to child abuse and neglect, information relating to a fatality or near fatality shall be made public by the Department of Health and Human Resources and to the entities described in subsection (c) of this section, all under the circumstances described in that
subsection. However, information released by the Department of Health and Human Resources pursuant to this subsection may not include the identity of a person reporting or making a complaint of child abuse or neglect. For purposes of this subsection, “near fatality” means any medical condition of the child which is certified by the attending physician to be life threatening.

(e) Except in juvenile proceedings which are transferred to criminal proceedings, law-enforcement records and files concerning a child or juvenile shall be kept separate from the records and files of adults and not included within the court files. Law-enforcement records and files concerning a child or juvenile shall only be open to inspection pursuant to section one hundred three of this article.

(f) Any person who willfully violates this section is guilty of a misdemeanor and, upon conviction, shall be fined not more than $1,000, or confined in jail for not more than six months, or both fined and confined. A person convicted of violating this section is also liable for damages in the amount of $300 or actual damages, whichever is greater.

(g) Notwithstanding the provisions of this section, or any other provision of this code to the contrary, the name and identity of any juvenile adjudicated or convicted of a violent or felonious crime shall be made available to the public;

(h)(1) Notwithstanding the provisions of this section or any other provision of this code to the contrary, the Division of Juvenile Services may provide access to and the confidential use of a treatment plan, court records or other records of a juvenile to an agency in another state which:

(A) Performs the same functions in that state that are performed by the Division of Juvenile Services in this state;
(B) Has a reciprocal agreement with this state; and

(C) Has legal custody of the juvenile.

(2) A record which is shared under this subsection may only provide information which is relevant to the supervision, care, custody and treatment of the juvenile.

(3) The Division of Juvenile Services is authorized to enter into reciprocal agreements with other states and to propose rules for legislative approval in accordance with article three, chapter twenty-nine-a of this code to implement this subsection.

(4) Other than the authorization explicitly given in this subsection, this subsection may not be construed to enlarge or restrict access to juvenile records as provided elsewhere in this code.

(i) The records subject to disclosure pursuant to subsection (b) of this section shall not include a recorded/videotaped interview, as defined in subdivision (6), section two, article six-b, chapter sixty-two of this code, the disclosure of which is exclusively subject to the provisions of section six of said article.

CHAPTER 62. CRIMINAL PROCEDURE.

ARTICLE 6B. PROTECTION AND PRESERVATION OF STATEMENTS AND TESTIMONY OF CHILD WITNESS.


For the purposes of this article, the words or terms defined in this section, and any variation of those words or terms required by the context, have the meanings ascribed to them in this section. These definitions are applicable unless a different meaning clearly appears from the context.
(1) “Child witness” means a person under the age of sixteen years of age who is or will be called to testify in a criminal matter concerning an alleged violation of the provisions of sections three, four, five and seven, article eight-b, chapter sixty-one of this code in which the child is the alleged victim.

(2) “Live, closed-circuit television” means a simultaneous transmission, by closed-circuit television or other electronic means, between the courtroom and the testimonial room.

(3) “Operator” means the individual authorized by the court to operate the closed-circuit television equipment used in accordance with the provisions of this article.

(4) “Testimonial room” means a room within the courthouse other than the courtroom from which the testimony of a child witness or the defendant is transmitted to the courtroom by means of live, closed-circuit television.

(5) “Interviewed child” shall mean any person under the age of eighteen who has been interviewed by means of any type of recording equipment in connection with alleged criminal behavior or allegations of abuse or neglect of any child under the age of eighteen.

(6) “Recorded interview” means any electronic recording of the interview, and any transcript thereof, of an interviewed child conducted by: (1) An employee or representative of a child advocacy center as that term is defined in section one hundred one, article three, chapter forty-nine of this code; (2) any psychologist, psychiatrist, physician, nurse, social worker or other person appointed by the court to interview the interviewed child as provided in subsection (c), section three of this article; or (3) a child protective services worker, law-enforcement officer, prosecuting attorney or any representative of his or her office, or any other person investigating allegations of criminal
§62-6B-6. Confidentiality of recorded interviews of children.

(a) Except as provided by the provisions of this article, recorded interviews of an interviewed child in any judicial or administrative proceeding shall not be published or duplicated except pursuant to the terms of an order of a court of competent jurisdiction. All written documentation in any form that is related to the recorded interview shall also be deemed confidential.

(b) Prior to the commencement of formal proceedings as contemplated in subsection (a) of this section, the persons or agencies listed in subdivision (6), section two of this article shall be entitled to access to or copies of the recorded interview of an interviewed child: Provided, That such persons or agencies may provide access to the recorded interview of a child to a legal parent, guardian or custodian of such child when: (1) Such parent, guardian or custodian is not alleged to have been involved or engaged in conduct that may give rise to a judicial or administrative proceeding; and (2) it would not undermine or frustrate an ongoing investigation: Provided, however, That prior to the commencement of formal proceedings only psychologists, psychiatrists, physicians, nurses and social workers who are providing services to the interviewed child may be afforded reasonable access to the recorded interview.

(c) The Supreme Court of Appeals is requested to promulgate a rule or rules regulating in the courts of this state the publication and duplication of recorded interviews, including use, duplication and publication by counsel, and to include in any such rule limitations upon the publication, duplication, distribution or use of the recorded statements of a child.
(d) Any person who knowingly and willfully duplicates or publishes a recorded interview in violation of the terms of an order entered by a court of competent jurisdiction or in violation of the provisions of subsection (b) of this section shall be guilty of a misdemeanor and, upon conviction, shall be confined in jail for not less than ten days nor more than one year or fined not less than $2,000 nor more than $10,000, or both fined and confined.

CHAPTER 34

(Com. Sub. for H. B. 4237 - By Delegates O’Neal, Arvon, Storch, Azinger, Butler, Hamrick, Kessinger, Rowan, P. Smith, Ferro and Longstreth)

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

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §49-8-1, §49-8-2, §49-8-3, §49-8-4, §49-8-5 and §49-8-6, all relating to the temporary delegation of certain custodial powers by a parent or legal custodian; setting forth legislative findings and purpose; defining terms; requiring qualified nonprofit organizations to register with Department of Health and Human Resources; requiring qualified nonprofit organizations to provide quarterly reports to Department of Health and Human Resources concerning child placements; permitting the delegation of certain custodial powers; limiting scope of delegation; permitting parent or legal custodian to revoke or withdraw power of attorney at any time; clarifying that scope of delegation of power of attorney only extends to the extent, and so long as, the parent, guardian or legal custodian retains custody; providing that power of attorney shall be revoked if parental rights
terminated; directing court to notify person assuming parental rights under power of attorney; permitting child to retain with person assuming parental rights under power of attorney until court finalizes subsequent placement of child; clarifying that period of placement with person shall not be considered as a factor in custody hearing in which family member seeks to be awarded custody of child; providing that execution of power of attorney does not, without other evidence, constitute abandonment, abuse or neglect; creating exception under certain circumstances; reaffirming authority of Bureau for Children and Families and law enforcement to investigate allegations of abuse, abandonment, neglect or other mistreatment of child; requiring qualified nonprofit organization to conduct criminal history and background checks prior to execution of power of attorney; providing for payment of criminal history and background checks; requiring qualified nonprofit organization to train the designee on rights, duties and limitations associated with providing care for a child, including preventing and reporting of suspected child abuse or neglect; prohibiting designee from moving without written approval of parent or legal custodian; making persons who accept custody under this article mandatory reporters of suspected child abuse and neglect; providing for circumstances in which parent or legal custodian dies or becomes incapacitated; clarifying that temporary delegation of certain custodial powers does not restrict certain other rights; creating a form for delegation of parental or legal custody; making legally sufficient a power of attorney that substantially complies with form contains acknowledged signatures of the parties; mandating certain disclosures by child investigative personnel; and clarifying applicability of licensing and other requirements of childcare facilities.

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 §49-8-1, §49-8-2, §49-8-3, §49-8-4, §49-8-5 and §49-8-6, all to read as follows:
ARTICLE 8. SUPPORTING AND STRENGTHENING FAMILIES ACT.

§49-8-1. Legislative findings; statement of legislative purpose.

(a) The Legislature finds that in certain circumstances where a parent, guardian or legal custodian of a child is temporarily unable to care for the child due to a crisis or other circumstances, a less intrusive alternative to guardianship or the Department of Health and Human Resources taking custody of the child should be available. In such circumstances, a parent, guardian or legal custodian may benefit from the assistance of charitable organizations in their community that assist families by providing safe, temporary care for children and support for families during difficult times.

(b) It is the purpose of this article to ensure that a parent, guardian or legal guardian has the right to provide for the temporary care of their child with the assistance of a qualified nonprofit organization as set forth in this article.

§49-8-2. Definitions.

For purposes of this article:

(1) “Child” means an individual under eighteen years of age;

(2) “Qualified nonprofit organization” means a charitable or religious institution that is exempt from federal income taxation under Section 501(a) of the Internal Revenue Code of 1986, as an organization described by Section 501(c)(3) of that code, which assists the parent or legal guardian of a child with the process of providing for the temporary care of a child through the execution of a power of attorney as described in this section.
§49-8-3. Delegation of care and custody of a child

(a) The following shall apply only to situations where a parent, guardian or legal custodian of a child provides for the temporary care and custody of a child with the assistance of a qualified nonprofit organization. Nothing in this section shall be interpreted to restrict the rights of parents, guardians or legal custodians providing for the care of children by power of attorney in other contexts.

(b) A parent, guardian or legal custodian of a child may, by a properly executed power of attorney, delegate to a person, for a period not to exceed one year, the care and custody of the child.

(c) A parent, guardian or legal custodian may not delegate:

(1) The power to consent to marriage or adoption of the child;

(2) The performance or inducement of an abortion on or for the child; or

(3) The termination of parental rights to the child.

(d) A delegation of care and custody of a child, under this article, does not change or modify any parental or legal rights, obligations, or authority established by an existing court order, or deprive the parent, guardian or legal custodian of any parental or legal rights, obligations, or authority regarding the custody, visitation, or support of the child.

(e) The parent, guardian or legal custodian of the child may revoke or withdraw this power of attorney at any time. Upon the termination, expiration, or revocation of the power of attorney the child shall be returned to the custody of the parent, guardian or legal custodian within forty-eight hours.
(f) Unless the authority is revoked or withdrawn by the parent, guardian or legal custodian, the designee shall exercise parental or legal authority on a continuous basis without compensation for the duration of the power of attorney.

(g) The care and custody of a child may only be delegated to the extent, and so long as, the parent, guardian or legal custodian retains care and custody. If the rights of the parent, guardian or custodian of the child are terminated, the power of attorney shall be deemed to be revoked. A court that revokes the care and custody rights of a parent, guardian or legal custodian shall notify the person to whom those parental rights has been delegated, and the child may remain with that person until the court shall finalize the subsequent placement of the child: Provided, That no period of placement with a person pursuant to the provisions of this article shall be considered as a factor in a custody hearing in which a family member seeks to be awarded custody of the child.

(h) The execution of a power of attorney by a parent, guardian or legal custodian does not, without other evidence, constitute abandonment, abuse or neglect unless the parent, guardian or legal custodian fails to either take custody of the child or execute a new power of attorney after the one year time limit has elapsed: Provided, That nothing in this article may be interpreted to prevent the West Virginia Bureau for Children and Families or law enforcement from investigating allegations of abuse, abandonment, neglect or other mistreatment of a child.

(i) If a parent, guardian or legal custodian of a child wishes to utilize the power of attorney authorized by this section to delegate any powers regarding the care and custody of the child to another person, the qualified nonprofit organization shall conduct a criminal history and federal and state background check on the person to whom powers are delegated prior to the execution of the power of attorney. The criminal history and
federal and state background check shall be paid for by the qualified nonprofit organization, the parent, guardian or legal custodian, or the parent’s designee. Additionally, the qualified nonprofit organization shall train the designee in the rights, duties, and limitations associated with providing care for a child under this section, including the prevention and reporting of suspected child abuse or neglect.

(j) The designee may not move from the address listed on the parental rights form without written approval of the parent, guardian or legal custodian.

(k) Any person who accepts care and custody of a child pursuant to the provisions of this article shall be deemed a person mandated to report suspected abuse and neglect pursuant to the provisions of section eight hundred three, article two, chapter forty-nine of this code.

(l) If a parent, guardian or legal custodian dies or becomes incapacitated, then the provisions of article ten, chapter forty-four of this code shall apply.

(m) Nothing in this section is intended, nor shall anything herein be interpreted, to otherwise restrict the rights of custodial parents or non-custodial parents to temporarily delegate or provide for the care and custody of a child, or to assert their right to request custody, in accordance with other provisions of West Virginia law.

§49-8-4. Delegation of parental rights form.

(a) The following statutory form of power of attorney to delegate parental or legal custody may be used:

STATE OF WEST VIRGINIA

STATUTORY FORM FOR POWER OF ATTORNEY TO DELEGATE PARENTAL OR LEGAL CUSTODIAN POWERS
1. “I, ________________, certify that I am the parent or legal custodian of:

2. ___________________________ ___________________________

3. (Full name of minor child) (Date of birth)

4. ___________________________ ___________________________

5. (Full name of minor child) (Date of birth)

6. ___________________________ ___________________________

7. (Full name of minor child) (Date of birth)

8. who is/are minor children.”

9. “I designate _________________________ (Full name of designee),

10. ______________________________________________________

11. (Street address, city, state and zip code of designee)

12. ______________________________________________________

13. (Home phone of designee) (Work phone of designee) as the designee of each minor child named above.”

14. “I delegate to the designee all of my power and authority regarding the care, custody and property of each minor child named above, including but not limited to the right to enroll the child in school, inspect and obtain copies of education records and other records concerning the child, the right to attend school activities and other functions concerning the child, and the right to give or withhold any consent or waiver with respect to school activities, medical and dental treatment, and any other activity, function or treatment that may concern the child. This delegation
does not include the power or authority to consent to marriage or adoption of the child, the performance or inducement of an abortion on or for the child, or the termination of parental rights to the child.”

Or

(4) “I delegate to the designee the following specific powers and responsibilities

(write in):__________________________________________

(In the event paragraph four is completed paragraph three does not apply).

This delegation does not include the power or authority to consent to marriage or adoption of the child, the performance or inducement of an abortion on or for the child, or the termination of parental rights to the child.”

(5) “This power of attorney is effective for a period not to exceed one year, beginning,

____________, ____, and ending ____________, ____. I reserve the right to revoke this authority at any time.”

By: ___________________________________________
(Parent/Legal Custodian signature)

(6) “I hereby accept my designation as designee for the minor child/children specified in this power of attorney.

By: ___________________________________________
(Designee signature)

State of _______________________

County of ______________________
ACKNOWLEDGMENT

Before me, the undersigned, a Notary Public, in and for said County and State on this ___ day of _____________, ____. personally appeared _____________________________ (Name of Parent/Legal Custodian) and ___________________ (Name of designee), to me known to be the identical persons who executed this instrument and acknowledged to me that each executed the same as his or her free and voluntary act and deed for the uses and purposes set forth in the instrument.

Witness my hand and official seal the day and year above written.

__________________________________ (Signature of notarial officer)

__________________________________ (Title and Rank)

My commission expires: ___________________”

(b) A power of attorney is legally sufficient under this article if the wording of the form substantially complies with this section, the form is properly completed, and the signatures of the parties are acknowledged.

(c) A copy of each power of attorney executed pursuant to this article shall be retained by the qualified nonprofit organization for a period of three years following the conclusion of the power of attorney. The qualified nonprofit organization shall, upon request, make these records available to the Department of Health and Human Resources.

§49-8-5. Mandatory disclosures by child investigative personnel.

1 During a child protective investigation that does not result in an out-of-home placement, a child protective investigator shall
provide information to the parent, guardian or legal custodian about community service programs that provide respite care, voluntary guardianship or other support services for families in crisis.

§49-8-6. Applicability of licensing and other requirements of childcare facilities.

(a) A delegation under this article by a parent, guardian or legal custodian is not subject to the requirements of the child care facility licensing statutes or foster care licensing statutes, and does not constitute an out of home child placement under this code.

(b) A qualified nonprofit organization as defined herein shall not be considered a child care center, child placing agency, or child welfare agency as defined in section two hundred six of article one, chapter forty-nine of this Code, unless such organization also pursues these activities in addition to providing services outlined under this section.

CHAPTER 35


[Passed February 29, 2016; in effect from passage.]
[Approved by the Governor on March 3, 2016.]

AN ACT finding and declaring certain claims against the state and its agencies to be moral obligations of the state; and directing the Auditor to issue warrants for the payment thereof.
Be it enacted by the Legislature of West Virginia:

CLAIMS AGAINST THE STATE

§1. Finding and declaring certain claims against the Department of Health and Human Resources to be moral obligations of the state and directing payments thereof.

The Legislature has heretofore made findings of fact that the state has received the benefit of the commodities received and/or services rendered by certain claimants herein and has considered these claims against the state, and agency thereof, which have arisen due to overexpenditures of the departmental appropriations by officers of the state spending units, the claims having been previously considered by the Court of Claims which also found that the state has received the benefit of the commodities received and/or services rendered by the claimants, but were denied by the Court of Claims on the purely statutory grounds that to allow the claims would be condoning illegal acts contrary to the laws of the state. The Legislature, pursuant to its findings of fact and also by the adoption of the findings of fact by the Court of Claims as its own, while not condoning such illegal acts, hereby declares it to be the moral obligation of the state to pay these claims in the amounts specified below and directs the Auditor to issue warrants upon receipt of properly executed requisitions supported by itemized invoices, statements or other satisfactory documents as required by section ten, article three, chapter twelve of the Code of West Virginia, 1931, as amended, for the payments thereof out of any fund appropriated and available for the purpose.

Claims against the Department Of Health and Human Resources:

(TO BE PAID FROM GENERAL REVENUE FUND)

(1) Basagic Funeral Home. .................. $3,700.00
AN ACT finding and declaring certain claims against the state and its agencies to be moral obligations of the state; and directing the Auditor to issue warrants for the payment thereof.
Be it enacted by the Legislature of West Virginia:

CLAIMS AGAINST THE STATE.

§1. Finding and declaring certain claims against the Department of Administration; Department of Education; Division of Corrections; Division of Highways; Division of Juvenile Services; Division of Labor; Office of the Chief Medical Examiner; Regional Jail Authority; State Fire Commission; and State of West Virginia to be moral obligations of the state and directing payment thereof.

The Legislature has considered the findings of fact and recommendations reported to it by the Court of Claims concerning various claims against the state and agencies thereof and in respect to each of the following claims, the Legislature adopts those findings of fact as its own and in respect of certain claims herein, the Legislature has independently made findings of fact and determinations of award and hereby declares it to be the moral obligation of the state to pay each such claim in the amount specified below and directs the Auditor to issue warrants for the payment thereof out of any fund appropriated and available for the purpose.

(a) Claim against the Department of Administration:

(TO BE PAID FROM SPECIAL REVENUE FUND)

Emmanuel Tsitsilanos, dba International Restoration Specialists. $36,500.00

(b) Claim against the Department of Education:

(TO BE PAID FROM GENERAL REVENUE FUND)

Colyar Consulting Group. $2,000.00

(c) Claims against the Division of Corrections:
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384  (325) Heather Cook and Robert Ebbecke. $241.08
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404 (345) Milton T. Evans and Eloise Evans. ...... $155.35
405 (346) John M. Everly. .............................. $279.66
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446 (385) Douglas Garten and Sharon Garten. $250.00
447 (386) Ateah Geiger...................... $235.09
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Misty Lynn Gibson as Parent and Guardian of Drake Allen Gibson... $500.00
Thomas Giese... $295.25
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Jack D. Gilbert II and Kelly Gilbert... $149.99
Melissa Gilbert... $500.00
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Danny Gilmore and Angela Gilmore... $131.42
Kimberly Gissy... $270.83
Chris J. Giuliani... $244.71
Judith L. Glatz and John T. Glatz Jr... $186.87
Ceateetra Goard... $500.00
Mark A. Godbey... $6,700.00
Linda Goddard... $93.34
Dennis Godfrey... $263.89
Marvin Goff and Gwen Goff... $190.00
Heather Golden and John Golden... $250.00
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Ronald Goodman... $500.00
160 CLAIMS AGAINST THE STATE [Ch. 36

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475 (412) Letishia Grapes. ...................... $250.00
476 (413) Tyler J. Graves. ...................... $250.00
477 (414) Linda C. Gray. ....................... $250.00
478 (415) Vanessa F. Gray. ..................... $500.00
479 (416) Judy Graybeal. ....................... $66.95
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484 Briana Greathouse. ....................... $958.77
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498    Virginia M. Gross......................... $250.00
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509    David Patrick Hager...................... $1,000.00
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512  (444) Sandra J. Haines...................... $554.07
513  (445) Franklin Hairston...................... $500.00
514  (446) Danny Hall............................. $90.00
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539  (470) William E. Hart. ........................ $3,942.00
540  (471) Isaac Hartman.............................. $500.00
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543  (473) Tammy M. Harvey........................ $861.65
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551      Janice Hay. ................................. $150.00
552  (481) Kim Haynes. .............................. $250.00
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556  (485) James W. Hedges.......................... $500.00
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605 (527) Betsy S. Huffman.  $100.00

606 (528) Denny Hughes and Helen Hughes.  $413.30

607 (529) Joel R. Hughes.  $500.00

608 (530) Harry Humphreys Jr.  $151.66

609 (531) Matthew Humphries.  $177.02

610 (532) Christy J. Hunter.  $250.00

611 (533) Frances E. Hunter.  $220.06

612 (534) Mindy Hunter.  $500.00

613 (535) Donald Hussell and Alice Hussell.  $100.00

614 (536) Gary A. Hutchinson.  $98.05

615 (537) Carole Hutton.  $106.00

616 (538) James B. Isaacs and Iris R. Isaacs.  $127.20

617 (539) Constance P. Jackson and
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618 (540) Kathleen J. Jackson.  $125.50

619 (541) Leonard Jackson.  $146.28

620 (542) Mark Jackson.  $250.00

621 (543) Mistie Jackson.  $120.90

622 (544) Norman E. Jackson.  $500.00
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(546) Vicki L. Jackson. . . . . . . . . . . . . . . . . . . . . . $199.38
(547) Larry Jackson Jr. . . . . . . . . . . . . . . . . . . . . . . $626.99
(548) Brandon James. . . . . . . . . . . . . . . . . . . . . . . . $180.18
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(551) Tracy A. Jarvis. . . . . . . . . . . . . . . . . . . . . . . . $365.95
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(553) Joyce Jenkins. . . . . . . . . . . . . . . . . . . . . . . . . . $181.01
(554) Larry Jenkins. . . . . . . . . . . . . . . . . . . . . . . . . . $400.11
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(557) Teresa Johns and Timothy Johns. . . . . . . . . . . . $202.56
(558) Barbara J. Johnson. . . . . . . . . . . . . . . . . . . . . . . $502.35
(559) Brandon C. Johnson. . . . . . . . . . . . . . . . . . . . . . . $222.67
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Sandra K. Kiger $146.28
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Dan Kinder $345.74
Charles E. King Jr. and Phyllis King $840.88
E. David King $500.00
King Coal Chevrolet $1,500.00
Heather A. Kirk $210.94
Deborah Kirkendall and William Kirkendall $500.00
Kathryn H. Kiser $500.00
Tony Kitzmiller $185.97
Stacie Klishis $926.33
Kelly Knapp and Debbie Knapp-Grimm $250.00
Beth Kohler $238.37
William A. Kolibash $718.88
Michael L. Kortz and Victoria Kortz $500.00
(603) David Kotovsky. ......................... $265.76
(604) R. Scott Krabill. ......................... $1,738.40
(605) Matthew Timothy Krack. ............... $140.93
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(607) Shannon M. Kuchinski. ................. $500.00
(608) Gary J. Kulchock. ....................... $199.60
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(610) Daniel Kuntz. .......................... $114.64
(611) John Kurpil. ............................ $284.15
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(613) Brian C. Lacy. .......................... $514.83
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712 (622) Julia A. Lawson and
713 Nicholas J. Lawson. .......... $94.16
714 (623) John Layton and Jennifer Layton. .... $5,016.00
715 (624) Merna L. Layton and Roy Layton. .... $141.28
716 (625) Tae Wan Lee. ................. $275.60
717 (626) Douglas M. Leech. ............. $280.90
718 (627) Donna Leftwich. ............... $210.40
719 (628) Hughart O. Legg. .............. $363.98
720 (629) Jessica R. Legg. ............... $254.34
721 (630) James R. Legg II. .............. $287.89
722 (631) Russell B. Legg Jr. ............. $1,000.00
723 (632) Mandy Legg, as Executrix of the
724 Estate of Jason Legg. .......... $300,000.00
725 (633) Daniel Jones, Linda Lehman and
726 Leonard Lehman. ............... $503.50
727 (634) Jeff LeMaster. ................. $91.16
728 (635) Kathy J. Lemley. ............... $285.00
729 (636) Fern Leonard. ................. $250.00
730 (637) Amanda Lester. ............... $411.81
731 (638) Christopher T. Lester. ........ $500.00
732 (639) Mary E. Leuliette. ............ $500.00
733 (640) Antonio Lewis. ............... $714.00
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Franklin E. Lilly ........................................... $432.48
Lonnie Lilly ................................................... $1,000.00
Nola J. Lilly ................................................... $500.00
Richard E. Lilly and Wendy Kay Lilly .................. $312.00
Gregory D. Liming ........................................... $62.01
Eric Jacob Lindstrom ....................................... $500.00
Laurie Linville ............................................... $500.00
Richard F. Linville ......................................... $970.19
Danielle M. Lipscomb ....................................... $78.35
Harold F. Lipscomb ......................................... $2,262.08
Judy Lipscomb and Alvin Lipscomb ...................... $99.15
Keith Lipscomb and Marcie Lipscomb .................... $500.00
Charles F. Little ............................................ $500.00
Maggie Little ................................................ $231.62
Robbie E. Little’s ........................................... $1,049.07
Amanda Keshner and Allison Logrippo ................. $304.40
Jack L. Long .................................................. $119.04
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174 CLAIMS AGAINST THE STATE [Ch. 36

778 (680) Carol A. Mangone. ....................... $500.00

779 (681) Eric F. Mankowski. ...................... $500.00

780 (682) Darlene FS Manley and

781 Michael Manley. ......................... $500.00

782 (683) William Clark Manning and

783 Lauren L. Manning....................... $576.79

784 (684) Ashley Marchman. ...................... $500.00

785 (685) Terri Marcischak. ...................... $500.00

786 (686) David J. Marino and

787 Jacqueline Marino. ....................... $163.77

788 (687) Jaren Marino......................... $500.00

789 (688) Mark Marino. ......................... $241.18

790 (689) Delta E. Marks. ....................... $250.00

791 (690) Christopher W. Marsh. ............... $95.40

792 (691) Connie Marsh......................... $500.00

793 (692) Arthur C. Martin and Carol Martin. .... $163.90

794 (693) Brandi R. Martin. ...................... $100.00

795 (694) Carol M. Martin and Virgil Martin. ..... $400.00

796 (695) Gary A. Martin and Lana L. Martin. .... $335.21

797 (696) Karen Martin. ......................... $394.42

798 (697) Marilyn Martin. ....................... $152.08

799 (698) Michelle A. Martin................... $435.59
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(802) Billy J. Mullins. . . . . . . . . . . . . . . . . . . . . . . $89.53
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(813) Janice Nestor. . . . . . . . . . . . . . . . . . . . . . . . . $500.00
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Ch. 36] CLAIMS AGAINST THE STATE

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1236  Rebecca R. Sutphin. ................. $336.00
1237  (1098) Casondra Sutton and
1238  Bradley Sutton. ..................... $500.00
1239  (1099) Lynn A. Swan...................... $222.60
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1241  (1101) Kammie M. Swanger................. $426.30
1242  (1102) Pamela A. Swiger............... $108.50
1243  (1103) Barry N. Szafran...................... $160.01
1244  (1104) Johnna Szafran..................... $184.54
1245  (1105) Francis R. Tait and
1246  Yvonne W. Tait. ...................... $250.00
1247  (1106) Thomas L. Kopinski and
1248  Mary Lou Tait. ...................... $90.10
1249  (1107) Tom Talerico and
1250  Rebecca Talerico. ................... $691.56
1251  (1108) Jennifer L. Tampoya............... $250.00
1252  (1109) Michele L. Tardivo............... $533.77
1253  (1110) John Teeuwissen................... $250.00
1254  (1111) Franklin Terry..................... $361.93
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1256  Debra L. Thiele. ................. $25,000.00
1257  (1113) Kayla Thomas..................... $76.32
1258  (1114) Misty M. Thompson. ................. $682.53
1259  (1115) Pamela Thompson. ................. $65.00
1260  (1116) Tyler M. Thompson. ............... $1,205.13
1261  (1117) Jason Thorn. ....................... $82.58
1262  (1118) Randy Thornsbury and
1263           Angela Thornsbury................. $500.00
1264  (1119) Douglas T. Tilley. ................. $333.27
1265  (1120) Gay E. Timbrook. ................. $208.38
1266  (1121) Brandon Tinney. ................... $392.27
1267  (1122) Samuel A. Tipton II and
1268           April Tipton. ..................... $233.18
1269  (1123) Angelica A. Titus and
1270           Christopher Titus. ............... $211.21
1271  (1124) Wanda Tomblin and
1272           Danny Tomblin. .................... $162.37
1273  (1125) Twila Jean Tomer................. $138.00
1274  (1126) Mark G. Tomlin. ................... $500.00
1275  (1127) Stevenson Tose’-Rigell. .......... $414.25
1276  (1128) Richard Totten and Sheena Totten. $214.08
1277  (1129) Keith Townsend and
1278           Lori Ann Townsend. ............. $424.87
1279  (1130) Gerald Travis. ..................... $149.81
1280  (1131) James Treola. ...................... $323.94
1281 (1132) Earl D. Trice.................................................. $133.03
1282 (1133) Geraldine Trogdon................................. $101.74
1283 (1134) Denise Truman........................................ $365.70
1284 (1135) John Truman........................................... $500.00
1285 (1136) Karen Hunter Tubert.............................. $250.00
1286 (1137) Barbara Tucker....................................... $480.12
1287 (1138) Brenda L. Tucker................................... $94.50
1288 (1139) Craig Turnbull....................................... $121.90
1289 (1140) David Turner.......................................... $1,052.90
1290 (1141) Nancy A. Twigg and
1291 ................................................................. Emory S. Twigg........................................ $500.00
1292 (1142) Leonard Tyree........................................ $1,000.00
1293 (1143) Chun Underwood and
1294 ................................................................. Steve Underwood........................................ $500.00
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(e) Claim against the Division of Juvenile Services:

(TO BE PAID FROM GENERAL REVENUE FUND)

Mountain State Justice. $256,669.09

(f) Claim against the Division of Labor:

(TO BE PAID FROM GENERAL REVENUE FUND)

Thompson Reuters – West. $1,732.50

(g) Claim against the Office of the Chief Medical Examiner:

(TO BE PAID FROM GENERAL REVENUE FUND)

Traco Business Systems. $13,964.25

(h) Claims against the Regional Jail Authority:

(TO BE PAID FROM SPECIAL REVENUE FUND)

(1) Gary R. Baker. $100.00
(2) Anthony Cartagena. $140.00
(3) Earl Edmondson. $140.00
(4) Dale P. Field Jr. $68.68
(5) Lawrence Galbearth. $25.00
(6) Sandra Harron. $300.00
(7) Travis Hudson. $800.00
(8) Dana D. Lafond. $75.00
(9) Stephen Randolph Miller Jr. .................. $275.00
(10) Robert W. Moats. .............................. $550.00
(11) Vu Thien Nguyen. ............................ $420.00
(12) Brian W. Pearl. ................................. $500.00

(i) Claim against the State Fire Commission:

(TO BE PAID FROM SPECIAL REVENUE FUND)

WV Media Management LLC. ............... $50,016.00

(j) Claims against the State of West Virginia:

(TO BE PAID FROM GENERAL REVENUE FUND)

(1) Roger Allen Green. ......................... $11,000.00
(2) Wesley Charles Hardy....................... $1,000.00
(3) Casey Jo McGee and Sarah Elizabeth Adkins;
    Justin Murdock and William Glavaris;
    and Nancy Elizabeth Michael and Jane
    Louise Fenton, as next friends of A.S.M.,
    minor child ............................... $99,804.64

The Legislature finds that the above moral obligations and
the appropriations made in satisfaction thereof shall be the full
compensation for all claimants and that prior to the payments to
any claimant provided in this bill, the Court of Claims shall
receive a release from said claimant releasing any and all claims
for moral obligations arising from the matters considered by the
Legislature in the finding of the moral obligations and the
making of the appropriations for said claimant. The Court of
Claims shall deliver all releases obtained from claimants to the
department against which the claim was allowed.
CHAPTER 37


[By Request of the Department of Administration]

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


Be it enacted by the Legislature of West Virginia:

§1. Repeal of article creating the West Virginia Permitting and Licensing Information Act.


CHAPTER 38

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

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

AN ACT to repeal §19-25-7 of the Code of West Virginia, 1931, as amended, relating to insurance policies and such policies impact
on liability of landowners or insurers of landowners who open their
property for use by others for military, law-enforcement or
homeland-defense training or recreational or wildlife propagation
purposes.

Be it enacted by the Legislature of West Virginia:

ARTICLE 25. LIMITING LIABILITY OF LANDOWNERS.

§1. Repeal of section relating to insurance policies.

§19-25-7 of the Code of West Virginia, 1931, as amended,
is hereby repealed.

CHAPTER 39

(H. B. 4005 - By Delegates Householder, Cowles,
Duke, Foster, Gearheart, Miller, Overington, Shott, Walters,
Waxman and Westfall)

[Passed February 4, 2016; in effect ninety days from passage.
Vetoed by the Governor. Repassed notwithstanding the objections of the Governor,
February 12, 2016.]

AN ACT to repeal §21-5A-1, §21-5A-2, §21-5A-3, §21-5A-5,
and §21-5A-12 of the Code of West Virginia, 1931, as amended,
all relating to repealing prevailing hourly rate of wages
requirements by or on behalf of public authorities engaged in
construction of public improvements.

Be it enacted by the Legislature of West Virginia:

of the Code of West Virginia, 1931, as amended, be repealed.
ARTICLE 5A. WAGES FOR CONSTRUCTION OF PUBLIC IMPROVEMENTS.

§1. Repeal of article relating to wages for construction of public improvements.


CHAPTER 40

(Com. Sub. for H. B. 2101 - By Delegates Morgan, Caputo, Faircloth, Folk, Howell and R. Smith)

[Passed February 8, 2016; in effect ninety days from passage.]
[Approved by the Governor on February 11, 2016.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by repealing §29-12C-1 and §29-12C-2, relating to eliminating obsolete government entities; and repealing sections relating to the Patient Injury Compensation Plan Study Board.

Be it enacted by the Legislature of West Virginia:

That §29-12C-1 and §29-12C-2 of the Code of West Virginia, 1931, as amended, be repealed.

§2. Repeal of article relating to the Patient Injury Compensation Plan Study Board.

§29-12C-1 and §29-12C-2 of the Code of West Virginia, 1931, as amended, are hereby repealed.
AN ACT to amend and reenact §46A-1-105 of the Code of West Virginia, 1931, as amended; and to amend and reenact §46A-2-115 and §46A-2-121 of said code, all relating to the Consumer Credit and Protection Act; excluding obligation to make required payments to property owners’ or homeowners’ association from provisions of the Consumer Credit and Protection Act; clarifying conduct for unconscionable inducement; and providing limits on charges a secured lender may recover from a consumer borrower upon default.

Be it enacted by the Legislature of West Virginia:

That §46A-1-105 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §46A-2-115 and §46A-2-121 of said code be amended and reenacted; all to read as follows:

ARTICLE 1. SHORT TITLE, DEFINITIONS AND GENERAL PROVISIONS.

§46A-1-105. Exclusions.

1 (a) This chapter does not apply to:

2 (1) Extensions of credit to government or governmental agencies or instrumentalities;

3 (2) The sale of insurance by an insurer, except as otherwise provided in this chapter;
(3) The obligation of a property owner, lot owner or homeowner in a planned community containing no more than twelve units which is not subject to any development rights or a planned community that provides in its declaration that the annual average common expense liability of all units restricted to residential purposes, exclusive of optional user fees and any insurance premiums paid by the association, may not exceed $300 as adjusted pursuant to section one hundred fourteen, chapter one, article thirty-six-b of this code, or the efforts of property owners’ associations or homeowners’ associations to collect the same to pay dues, assessments, costs or fees of any kind to a property owners’ association or homeowners’ association;

(4) Transactions under public utility or common carrier tariffs if a subdivision or agency of this state or of the United States regulates the charges for the services involved, the charges for delayed payment, and any discount allowed for early payment; or

(5) Licensed pawnbrokers.

(b) Mortgage lender and broker licensees are excluded from the provisions of this chapter to the extent those provisions directly conflict with any section of article seventeen, chapter thirty-one of this code.

ARTICLE 2. CONSUMER CREDIT PROTECTION.

§46A-2-115. Limitation on default charges.

(a) Except for reasonable expenses, including costs and fees authorized by statute incurred in realizing on a security interest, the agreements that evidence a consumer credit sale or a consumer loan may not provide for charges as a result of default by the consumer other than those authorized by this chapter.
(b) With respect to this subsection:

1. The phrase “consumer loan” shall mean a consumer loan secured by real property: (A) Originated by a bank or savings and loan association, or an affiliate, not solicited by an unaffiliated broker; (B) held by a federal home loan bank, the federal National Mortgage Association, the federal Home Loan Mortgage Corporation, the Government National Mortgage Association, the West Virginia Housing Development Fund; or (C) insured or guaranteed by the Farmers Home Administration, the Veteran’s Administration or the Department of Housing and Urban Development.

2. Except as provided in subdivision (3) of this subsection, the agreements that evidence a consumer loan may permit the recovery of the following charges: (A) Costs of publication; (B) an appraisal fee; (C) all costs incidental to a title examination including professional fees, expenses incident to travel, and copies of real estate and tax records; (D) expenses incidental to notice made to lienholders and other parties and entities having an interest in the real property to be sold; (E) certified mailing costs; and (F) all fees and expenses incurred by a trustee incident to a pending trustee’s sale of the real property securing the consumer loan.

3. For purposes of the charges expressly authorized by this subsection, no charge may be assessed and collected from a consumer unless: (A) Each charge is reasonable in its amount; (B) each charge is actually incurred by or on behalf of the holder of the consumer loan; (C) each charge is actually incurred after the last day allowed for cure of the consumer’s default pursuant to section one hundred six, of this article and before the consumer reinstates the consumer loan or otherwise cures the default; (D) the holder of the consumer loan and the consumer have agreed to cancel any pending trustee’s sale or other foreclosure on the real property securing the consumer loan; and
(E) in the case of an appraisal fee, no appraisal fee has been charged to the consumer within the preceding six months.

(c) All amounts paid to a creditor arising out of any consumer credit sale or consumer loan shall be credited upon receipt against payments due: Provided, That amounts received and applied during a cure period will not result in a duty to provide a new notice of right to cure: Provided, however, That partial amounts received during the period set forth in subdivision (3) subsection (b) of this section do not create an automatic duty to reinstate and may be returned by the creditor. Default charges shall be accounted for separately. Those recoverable charges set forth in said subsection arising during the period described therein may be added to principal.

(d) At least once every twelve months, the holder or servicer of each consumer loan secured by real property against which the creditor assesses any default charge, and: (1) Not serviced by the originating lender or its affiliate or their successors by merger; (2) not held by a federal home loan bank, the federal National Mortgage Association, the federal Home Loan Mortgage Corporation, the Government National Mortgage Association, the West Virginia Housing Development Fund; or (3) not insured or guaranteed by the Farmers Home Administration, the Veteran’s Administration, Department of Housing and Urban Development, shall transmit to the consumer an accounting of every default charge assessed within the previous twelve months, including the date, amount and nature of the cost.

This subsection does not apply to delinquency charges permitted under sections one hundred twelve and one hundred thirteen, article three of this chapter; credit line over-the-limit fees; deferral charges permitted under section one hundred fourteen, article three of this chapter; collateral protection insurance permitted under section one hundred nine-a, article three of this chapter; and advances to pay taxes.
(e) A provision in violation of this section is unenforceable. The amendments to this section by acts of the Legislature in the regular session of 2003 are a clarification of existing law and shall be retroactively applied to all agreements in effect on the date of passage of the amendments, except where controversies arising under those agreements are pending prior to the date of passage of the amendments.

(f) Nothing in this section limits the expenses incidental to a trustee’s sale of real property that are recoverable pursuant to section seven, article one, chapter thirty-eight of this code.

§46A-2-121. Unconscionability; inducement by unconscionable conduct.

(a) With respect to a transaction which is or gives rise to a consumer credit sale, consumer lease or consumer loan, if the court as a matter of law finds:

(1) The agreement or transaction to have been unconscionable at the time it was made, or to have been induced by unconscionable conduct such as affirmative misrepresentations, active deceit or concealment of a material fact, the court may refuse to enforce the agreement; or

(2) Any term or part of the agreement or transaction to have been unconscionable at the time it was made, the court may refuse to enforce the agreement, or may enforce the remainder of the agreement without the unconscionable term or part, or may so limit the application of any unconscionable term or part as to avoid any unconscionable result.

(b) If it is claimed or appears to the court that the agreement or transaction or any term or part thereof may be unconscionable, the parties shall be afforded a reasonable opportunity to present evidence as to its setting, purpose and effect to aid the court in making the determination.
(c) For the purpose of this section, a charge or practice expressly permitted by this chapter is not unconscionable.

CHAPTER 42

(H. B. 4417 - By Delegates Shott, Hanshaw, Rowe, Marcum, Shaffer, Manchin, Summers, Kessinger, Ireland and Skinner)

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

AN ACT to amend and reenact §46A-2-130 of the Code of West Virginia, 1931, as amended, relating to limitations on garnishment generally; potentially increasing wages protected from garnishment.

Be it enacted by the Legislature of West Virginia:

That §46A-2-130 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2. CONSUMER CREDIT PROTECTION.

§46A-2-130. Limitation on garnishment.

1 (1) For the purposes of the provisions in this chapter relating to garnishment:

3 (a) “Disposable earnings” means that part of the earnings of an individual remaining after the deduction from those earnings of amounts required by law to be withheld; and

(b) “Garnishment” means any legal or equitable procedure through which the earnings of an individual are required to be withheld for payment of a debt.
(2) The maximum part of the aggregate disposable earnings of an individual for any workweek which is subjected to garnishment to enforce payment of a judgment arising from a consumer credit sale or consumer loan may not exceed the lesser of:

(a) Twenty percent of his or her disposable earnings for that week, or

(b) The amount by which his or her disposable earnings for that week exceed fifty times the federal minimum hourly wage prescribed by section 6(a) (1) of the “Fair Labor Standards Act of 1938,” U.S.C. Title 19, Sec. 206(a)(1), in effect at the time the earnings are payable.

(c) In the case of earnings for a pay period other than a week, the commissioner shall prescribe by rule a multiple of the federal minimum hourly wage equivalent in effect to that set forth in subdivision (b), subsection (2) of this section.

(3) No court may make, execute or enforce an order or process in violation of this section. Any time after a consumer’s earnings have been executed upon pursuant to article five-a or article five-b, chapter thirty-eight of this code by a creditor resulting from a consumer credit sale, consumer lease or consumer loan, such consumer may petition any court having jurisdiction of such matter or the circuit court of the county wherein he or she resides to reduce or temporarily or permanently remove such execution upon his or her earnings on the grounds that such execution causes or will cause undue hardship to him or her or his or her family. When such fact is proved to the satisfaction of such court, it may reduce or temporarily or permanently remove such execution.

(4) No garnishment governed by the provisions of this section will be given priority over a voluntary assignment of
wages to fulfill a support obligation, a garnishment to collect arrearages in support payments, or a notice of withholding from wages of amounts payable as support, notwithstanding the fact that the garnishment in question or the judgment upon which it is based may have preceded the support-related assignment, garnishment, or notice of withholding in point of time or filing.

CHAPTER 43

(Com. Sub. for S. B. 468 - By Senators Gaunch and Ashley)

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

AN ACT to amend and reenact §46A-6K-3 of the Code of West Virginia, 1931, as amended, relating to allowing accrual of interest during rescission period on a loan during the rescission period required under the federal Truth-in-Lending Act; providing exception if the loan is rescinded; and providing exception if the loan is for the purpose of paying in full a prior loan made by the same lender.

Be it enacted by the Legislature of West Virginia:

That §46A-6K-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 6K. GOOD FUNDS SETTLEMENT ACT.

§46A-6K-3. Duty of lender; accrual of interest.

1 The lender shall, at or before loan closing, cause disbursement of loan funds to the settlement agent; however, in
the case of a refinancing, or any other loan where a right of rescission applies, the lender shall, within one business day after the expiration of the rescission period required under the federal Truth-in-Lending Act (15 U. S. C. §1601 et seq.), cause disbursement of loan funds to the settlement agent, unless the loan is rescinded by the customer. All funds disbursed by the lender to the settlement agent must be collected funds. The lender may charge and receive interest on the loan during the rescission period required under the federal Truth-in-Lending Act (15 U. S. C. §1601 et seq.): Provided, That the lender may not receive any interest if the loan is rescinded by the customer: Provided, however, That the lender may not charge or receive interest on the loan during the rescission period, if the loan is for the purpose of paying a prior loan made by the same lender in full.

CHAPTER 44
(H. B. 4728 - By Delegates Ellington,
Summers and Householder)

[Passed on March 11, 2016; in effect ninety days from passage.]
[Approved by the Governor on March 29, 2016.]

AN ACT to amend and reenact §60A-2-208 of the Code of West Virginia, 1931, as amended, relating to schedule three controlled substances; designating human chorionic gonadotropin as a schedule three controlled substance; and allowing human chorionic gonadotropin solely for injection or implantation in cattle and other nonhuman species.

Be it enacted by the Legislature of West Virginia:

That §60A-2-208 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:
ARTICLE 2. STANDARDS AND SCHEDULES.

§60A-2-208. Schedule III.

(a) Schedule III consists of the drugs and other substances, by whatever official name, common or usual name, chemical name or brand name designated, listed in this section.

(b) Stimulants. — Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers (whether optical, position or geometric) and salts of such isomers whenever the existence of the salts, isomers and salts of isomers is possible within the specific chemical designation:

(1) Those compounds, mixtures or preparations in dosage unit form containing any stimulant substances listed in Schedule II which compounds, mixtures or preparations were listed on August 25, 1971, as excepted compounds under 21 C.F.R. §1308.32, and any other drug of the quantitative composition shown in that list for those drugs or which is the same except that it contains a lesser quantity of controlled substances;

(2) Benzphetamine;

(3) Chlorphentermine;

(4) Clortermine;

(5) Phendimetrazine.

(c) Depressants. — Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system:
(1) Any compound, mixture or preparation containing:

(A) Amobarbital;

(B) Secobarbital;

(C) Pentobarbital; or any salt of pentobarbital and one or more other active medicinal ingredients which are not listed in any schedule;

(2) Any suppository dosage form containing:

(A) Amobarbital;

(B) Secobarbital;

(C) Pentobarbital; or any salt of any of these drugs and approved by the food and drug administration for marketing only as a suppository;

(3) Any substance which contains any quantity of a derivative of barbituric acid or any salt of barbituric acid;

(4) Aprobarbital;

(5) Butabarbital (secbutabarbital);

(6) Butalbital (including, but not limited to, Fioricet);

(7) Butobarbital (butethal);

(8) Chlorhexadol;

(9) Embutramide;

(10) Gamma Hydroxybutryic Acid preparations;

(11) Ketamine, its salts, isomers and salts of isomers [Some other names for ketamine: (+)-2-(2-chlorophenyl)-2-(methylamino)-cyclohexanone];
(12) Lysergic acid;
(13) Lysergic acid amide;
(14) Methyprylon;
(15) Sulfondiethylmethane;
(16) Sulfonethylmethane;
(17) Sulfonmethane;
(18) Thiamylal;
(19) Thiopental;
(20) Tiletamine and zolazepam or any salt of tiletamine and zolazepam; some trade or other names for a tiletamine-zolazepam combination product: Telazol; some trade or other names for tiletamine: 2-(ethylamino)-2-(2-thienyl)-cyclohexanone; some trade or other names for zolazepam: 4-(2-flurophenyl)-6,8-dihydro-1,3,8-trimethylpyrazolo-[3,4-e][1,4]-diazepin-7(1H)-one, flupyrazapon; and
(21) Vinbarbital.

(d) Nalorphine.

(e) Narcotic drugs.—Unless specifically excepted or unless listed in another schedule:

(1) Any material, compound, mixture or preparation containing any of the following narcotic drugs, or their salts calculated as the free anhydrous base or alkaloid, in limited quantities as set forth below:

(A) Not more than 1.8 grams of codeine per 100 milliliters and not more than 90 milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium;
(B) Not more than 1.8 grams of codeine per 100 milliliters
or not more than 90 milligrams per dosage unit, with one or
more active, nonnarcotic ingredients in recognized therapeutic
amounts;

(C) Not more than 1.8 grams of dihydrocodeine per 100
milliliters and not more than 90 milligrams per dosage unit, with
one or more active, nonnarcotic ingredients in recognized
therapeutic amounts;

(D) Not more than 300 milligrams of ethylmorphine per 100
milliliters or not more than 15 milligrams per dosage unit, with
one or more active, nonnarcotic ingredients in recognized
therapeutic amounts;

(E) Not more than 500 milligrams of opium per 100
milliliters or per 100 grams or not more than 25 milligrams per
dosage unit, with one or more active, nonnarcotic ingredients in
recognized therapeutic amounts;

(F) Not more than 50 milligrams of morphine per 100
milliliters or per 100 grams, with one or more active,
nonnarcotic ingredients in recognized therapeutic amounts.

(2) Any material, compound, mixture or preparation
containing buprenorphine or its salts (including, but not limited
to, Suboxone).

(f) **Anabolic steroids.** — Unless specifically excepted or
unless listed in another schedule, any material, compound,
mixture, or preparation containing any quantity of anabolic
steroids, including its salts, isomers and salts of isomers
whenever the existence of the salts of isomers is possible within
the specific chemical designation.

(g) Human growth hormones.
(h) Dronabinol (synthetic) in sesame oil and encapsulated in a soft gelatin capsule in a United States food and drug administration approved drug product. (Some other names for dronabinol: (6aR-trans)-6a, 7, 8, 10a-tetrahydro-6, 6, 9-trimethyl-3-pentyl-6H-dibenzo [b,d] pyran-1-ol or (-)-delta-9-(trans)-tetrahydrocannabinol).

(i) Human chorionic gonadotropin, except when used for injection or implantation in cattle or any other nonhuman species and when that use is approved by the Food and Drug Administration.

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**CHAPTER 45**

*(Com. Sub. for S. B. 283 - By Senator Ferns)*

[Passed March 12, 2016; in effect ninety days from passage.]

[Approved by the Governor on March 25, 2016.]

AN ACT to amend and reenact §60A-4-411 of the Code of West Virginia, 1931, as amended, relating to creating a crime of causing the burning of a dwelling, outbuilding, building or other structure while operating or attempting to operate a clandestine drug laboratory; establishing criminal penalties; clarifying the offense as a separate and distinct offense from operation or attempted operation of a clandestine drug laboratory; making clear that the operation or attempted operation of a clandestine drug lab is not a lesser included offense; providing that the offenses are qualifying felony offenses of manufacturing and delivery of a controlled substance for purposes of first degree murder; and providing for payment of all reasonable costs, if any, associated with remediation of the site of the clandestine drug laboratory upon conviction.
Be it enacted by the Legislature of West Virginia:

That §60A-4-411 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 4. OFFENSES AND PENALTIES.

§60A-4-411. Operating or attempting to operate clandestine drug laboratories; offenses; penalties.

(a) Any person who operates or attempts to operate a clandestine drug laboratory is guilty of a felony and, upon conviction, shall be confined in a state correctional facility for not less than two years nor more than ten years or fined not less than $5,000 nor more than $25,000, or both.

(b) Any person who operates or attempts to operate a clandestine drug laboratory and who as a result of, or in the course of doing so, causes to be burned any dwelling, outbuilding, building or structure of any class or character is guilty of a felony and, upon conviction thereof, shall be fined not less than $1,000 nor more than $5,000, or imprisoned in a state correctional facility for not less than one nor more than five years, or both fined and imprisoned.

(c) For purposes of this section, a “clandestine drug laboratory” means any property, real or personal, on or in which a person assembles any chemicals or equipment or combination thereof for the purpose of manufacturing methamphetamine, methylenedioxymethamphetamine or lysergic acid diethylamide in violation of the provisions of section four hundred one of this article.

(d) The offenses in subsections (a) and (b) of this section are separate and distinct offenses and subsection (a) of this section shall not be construed to be a lesser included offense of subsection (b) of this section.
(e) For purposes of section one, article two of this chapter, both subsection (a) and (b) of this section shall be deemed qualifying felony offenses of manufacturing and delivery of a controlled substance.

(f) Any person convicted of a violation of subsection (a) or (b) of this section shall be responsible for all reasonable costs, if any, associated with remediation of the site of the clandestine drug laboratory.

CHAPTER 46

(Com. Sub. for S. B. 262 - By Senator Blair)

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

AN ACT to amend and reenact §25-1-17 and §25-1-18 of the Code of West Virginia, 1931, all relating to law enforcement not needing to obtain court orders prior to receiving recordings of inmate phone calls and inmate mail for investigative purposes; eliminating requirement for promulgation of legislative rules relating to monitoring of inmate telephone conversations and mail; requiring commissioner to promulgate policy directive establishing record-keeping procedure to memorialize telephone conversations and mail provided to law enforcement for investigation; requiring records to be retained in accordance with Division of Correction’s record retention policy; allowing an inmate’s attorney access to telephone conversations and inmate mail supplied to law enforcement and exceptions thereto; clarifying that inmate mail and telephone provisions apply only to inmates in physical custody of commissioner; and clarifying that information supplied to law enforcement is not subject to disclosure under the Freedom of Information Act.
Be it enacted by the Legislature of West Virginia:

That §25-1-17 and §25-1-18 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 1. ORGANIZATION, INSTITUTIONS AND CORRECTIONS MANAGEMENT.

§25-1-17. Monitoring of inmate telephone calls; procedures and restrictions; calls to or from attorneys excepted.

(a) The Commissioner of Corrections or his or her designee is authorized to monitor, intercept, record and disclose telephone calls to or from adult inmates of state correctional institutions in accordance with the following provisions:

(1) All adult inmates of state correctional institutions shall be notified in writing that their telephone conversations may be monitored, intercepted, recorded and disclosed;

(2) Only the commissioner, warden, administrator or their designee shall have access to recordings of inmates’ telephone calls unless disclosed pursuant to subdivision (4) of this subsection;

(3) Notice shall be prominently placed on or immediately near every telephone that may be monitored;

(4) The contents of inmates’ telephone calls may be disclosed to an appropriate law-enforcement agency when disclosure is necessary for the investigation, prevention or prosecution of a crime or to safeguard the orderly operation of the correctional institution. Disclosure may be made in civil or administrative proceedings pursuant to an order of a court or an administrative tribunal when the disclosure is:

(A) Necessary to safeguard and protect the orderly operation of the correctional institution; or
(B) Necessary to protect persons from physical harm or the threat of physical harm;

(5) All recordings of telephone calls shall be retained for at least three years and maintained and destroyed in accordance with the record retention policy of the Division of Corrections adopted pursuant to section one, article eight, chapter five-a of this code, et seq.; or

(6) To safeguard the sanctity of the attorney-client privilege, a telephone line that is not monitored shall be made available for telephone calls to or from an attorney. These calls shall not be monitored, intercepted, recorded or disclosed in any matter.

(b) The commissioner shall promulgate a policy directive establishing a record-keeping procedure which requires retention of: (1) A copy of the contents of any inmate telephone conversation provided to law enforcement; and (2) the name of the law-enforcement officer and the law-enforcement agency to which the contents of the telephone conversation were provided. The records required to be retained pursuant to this subsection shall be retained in accordance with the record retention policy specified in subdivision (5), subsection (a) of this section. The inmate’s telephone conversation and the information regarding law enforcement are law-enforcement records under subdivision (4), subsection (a), section four, article one, chapter twenty-nine-b of this code.

(c) Should an inmate be charged with a crime based in whole or in part on the inmate’s telephone conversation supplied to law enforcement, the inmate’s attorney in said criminal matter shall be entitled to access to and copies of the inmate’s telephone conversations in the custody of the commissioner which are not evidence in or the subject of another criminal investigation.

(d) The provisions of this section shall apply only to those persons serving a sentence of incarceration in the physical custody of the Commissioner of Corrections.
§25-1-18. Monitoring inmate mail; procedures and restrictions; identifying mail from a state correctional institution; mail to or from attorneys excepted.

(a) The Commissioner of Corrections or his or her designee is authorized to monitor, open, review, copy and disclose mail sent to adult inmates of state correctional institutions in accordance with the following provisions:

(1) All adult inmates of state correctional institutions shall be notified in writing that their mail may be monitored, opened, reviewed, copied and disclosed;

(2) Only the commissioner and his or her designee shall have access to copies of inmates’ mail unless disclosed pursuant to subdivision (4) of this subsection;

(3) Notice that the mail may be monitored shall be prominently placed on or immediately near every mail receptacle or other designated area for the collection or delivery of mail;

(4) The contents of inmates’ mail may be disclosed to an appropriate law-enforcement agency when disclosure is necessary for the investigation, prevention or prosecution of a crime or to safeguard the orderly operation of the correctional institution. Disclosure may be made in civil or administrative proceedings pursuant to an order of a court or administrative tribunal when the disclosure is:

(A) Necessary to safeguard and protect the orderly operation of the correctional institution; or

(B) Necessary to protect persons from physical harm or the threat of physical harm;

(5) All copies of mail shall be retained for at least three years and maintained and destroyed in accordance with the records
retention policy of the Division of Corrections adopted pursuant to section one, article eight, chapter five-a of this code, et seq.; or

(6) The inmate whose mail has been copied and disclosed under this section shall be given a copy of all such mail when it is determined by the commissioner, warden or administrator not to jeopardize the safe and secure operation of the facility or to be detrimental to an ongoing investigation or administrative action.

(b) To safeguard the sanctity of the attorney-client privilege, mail to or from an inmate’s attorney shall not be monitored, reviewed, copied or disclosed in any manner unless required by an order of a court of competent jurisdiction. However, such mail may be checked for weapons, drugs and other contraband provided it is done in the presence of the inmate and there is a reasonable basis to believe that any weapon, drug or other contraband exists in the mail.

(c) All inmates’ outgoing mail must be clearly identified as being sent from an inmate at a state correctional institution and must include on the face of the envelope the name and full address of the institution.

(d) The Commissioner of Corrections or his or her designee is authorized to open, monitor, review, copy and disclose an inmate’s outgoing mail in accordance with the provisions of subsection (a) of this section.

(e) The commissioner shall promulgate a policy directive establishing a record-keeping procedure which requires retention of: (1) All inmate mail provided to law enforcement; and (2) the name of the law-enforcement officer and the law-enforcement agency to which the inmate mail was provided. The records required to be retained pursuant to this subsection shall be retained in accordance with the record retention policy specified
in subdivision (5), subsection (a) of this section. The inmate mail
and the information regarding law enforcement are
law-enforcement records under subdivision (4), subsection (a),
section four, article one, chapter twenty-nine-b of this code.

(f) Should an inmate be charged with a criminal offense
based in whole or in part on the inmate’s mail supplied to law
enforcement, the inmate’s attorney in said criminal matter shall
be entitled to access to and copies of the inmate’s mail in the
custody of the commissioner which are not evidence in or the
subject of another criminal investigation.

(g) The provisions of this section shall apply only to those
persons serving a sentence of incarceration in the physical
custody of the Commissioner of Corrections.

CHAPTER 47

(Com. Sub. for H. B. 2904 - By Delegates McGeehan
and Zatezalo)

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

AN ACT to amend the Code of West Virginia, 1931, as amended, by
adding thereto a new section, designated §5-2-4, to amend said
code by adding thereto a new section, designated §7-1-3rr; and to
amend and reenact §7-1-7 of said code, all relating to accessible
county records; requiring county clerks to report certain county
official information to the Secretary of State annually; requiring
the Secretary of State to annually update a website of county
information; requiring county commissions to maintain a website;
and requiring the clerk of a county commission to maintain a
county ordinance book.
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 §5-2-4; and that said code be amended by adding thereto a new section, designated §7-1-3rr; and that §7-1-7 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 2.  SECRETARY OF STATE.

§5-2-4. Accessible county records; required information.

   (a) The Secretary of State shall maintain a website with certain county information. The website shall be updated annually.

   (b) On or before January 31, 2018, the county officer information website shall be updated by the Secretary of State.

   (c) The website shall contain the following minimum information regarding county officials:

       (1) The official title and name of each county office holder;

       (2) The contact information for each county office holder, including telephone number, facsimile number, office location and mailing address;

       (3) The electronic mail address of each elected county office holder where available; and

       (4) The website of each county commission, where available.
CHAPTER 7. COUNTY COMMISSIONS
AND OFFICERS.

ARTICLE 1. COUNTY COMMISSIONS GENERALLY.

§7-1-3rr. Accessible county records; required information.

(a) Beginning July 1, 2017, each county commission may
maintain a website that provides the following information
without charge:

1. The title and name of each elected county office holder;

2. The contact information of each elected county office
holder, including office telephone number, facsimile number,
office location and mailing address;

3. The government electronic mail address of each elected
county office holder;

4. A copy of each county ordinance as adopted;

5. A copy of the approved meeting minutes; and

6. A schedule of regular meeting days for each calendar
year.

(b) Beginning on or before December 31, 2017, and each
year thereafter, the Secretary of State shall obtain the following
information:

1. A list of each elected county official by title, with the
name of the elected official;

2. The office contact information for each county office
holder; and

3. The website address of the county commission website,
where available.
§7-1-7. Record books.

(a) Beginning on July 1, 2017, the county commission shall, within sixty days of adoption, through the clerk of the commission, enter into a separate book the complete record of all ordinances adopted by the county commission. The clerk shall list, along with each ordinance in the book, the provision of the West Virginia Code authorizing each ordinance. The clerk shall maintain the book in his or her office and shall make available a copy to the county sheriff. Compiling all such ordinances adopted by the county commission and publishing the same on a publically available internet website as delineated in section three-rr of this article shall constitute full compliance with the provisions of this section.

(b) The county commission of every county shall provide two record books for the use of the county commission, in one of which shall be entered all the proceedings of such county commission in relation to contested elections, all matters of probate, the appointment of appraisers of the estates of decedents and the appointment and qualification of personal representatives, guardians, committees and curators, and the settlement of their accounts, and all matters relating to apprentices; and in the other of said books shall be entered all the other proceedings of such county commission: Provided, That said county commission shall provide and keep such additional or different record books as may be specially required by law.
CHAPTER 48

(Com. Sub. for S. B. 298 - By Senator Walters)

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

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §7-1-3ss; to amend and reenact §11-16-18 of said code; to amend and reenact §60-4-3a and §60-4-3b of said code; to amend and reenact §60-7-12 of said code; and to amend and reenact §60-8-34 of said code, all relating to regulation of alcoholic liquor, wine and non-intoxicating beer generally; allowing county commissions to conduct a county option election on the question of whether to allow restaurants, private clubs, Class A retailers, wineries and wine serving entities to sell alcoholic liquors, wine and non-intoxicating beer as their licenses allow, and distilleries and mini-distilleries to offer complimentary samples of alcohol beginning at 10:00 a.m. on Sundays for on-premises consumption only; and establishing publication requirements for providing notice of election.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §7-1-3ss; that §11-16-18 of said code be amended and reenacted; that §60-4-3a and §60-4-3b of said code be amended and reenacted; that §60-7-12 of said code be amended and reenacted; and that §60-8-34 of said code be amended and reenacted, all to read as follows:

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 1. COUNTY COMMISSIONS GENERALLY.
§7-1-3ss. County option election on allowing nonintoxicating beer, wine or alcoholic liquors to be sold, given or dispensed after ten o’clock a.m. on Sundays.

The county commission of any county may conduct a county option election on the question of whether the sale or dispensing of nonintoxicating beer, wine or alcoholic liquors in or on premises shall be allowed in the county beginning ten o’clock a.m. on any Sunday, as provided in section eighteen, article sixteen, chapter eleven, sections three-a and three-b, article four, chapter sixty of this code, section twelve, article seven, of said chapter, and section thirty-four, article eight, of said chapter, upon approval as provided in this section. The option election on this question may be placed on the ballot in each county at any primary or general election. The county commission of the county shall give notice to the public of the election by publication of the notice as a Class II-0 legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for publication shall be the county in which the election is to be held. The date of the last publication of the notice shall fall on a date within the period of the fourteen consecutive days next preceding the election. On the local option election ballot shall be printed the following: “Shall the beginning hour at which non-intoxicating beer, wine and alcoholic liquor be sold or dispensed for on premises consumption only in ________ County on Sundays be changed from one o’clock p.m. to ten o’clock a.m.

If approved by the voters this would allow private clubs and restaurants licensed to sell and dispense non-intoxicating beer, wine and alcoholic liquor; licensed private wine restaurants, private wine spas, private wine bed and breakfasts to sell and dispense wine; and licensed Class A retail dealers to sell and dispense nonintoxicating beer for on premises consumption only beginning at ten o’clock a.m. Additionally, if approved, it would also allow any mini-distilleries, wineries or farm wineries in this
county to offer complimentary samples for on premises consumption only beginning at ten o’clock a.m.”

[ ] Yes [ ] No

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

The ballots shall be counted, returns made and canvassed as in general elections and the results certified by the commissioners of election to the county commission. The county commission shall, without delay, certify the result of the election. Upon receipt of the results of the election, in the event a majority of the votes are marked “Yes” all applicable licensees shall be permitted prohibited to sell and dispense beer, wine or alcoholic liquors beginning at ten o’clock a.m. on Sundays. In the event a majority of the votes are marked “No” all applicable licensees will continue to be required to comply with existing law.

CHAPTER 11. TAXATION.

ARTICLE 16. NONINTOXICATING BEER.

§11-16-18. Unlawful acts of licensees; criminal penalties.

(a) It shall be unlawful:

(1) For any licensee, his, her, its or their servants, agents or employees to sell, give or dispense, or any individual to drink or consume, in or on any licensed premises or in any rooms directly connected, nonintoxicating beer or cooler on weekdays between the hours of two o’clock a.m. and seven o’clock a.m., or between the hours of two o’clock a.m. and one o’clock p.m., or a Class A retail dealer who sells nonintoxicating beer for on premises consumption only between the hours of two o’clock a.m. and ten o’clock a.m. in any county upon approval as provided for in section three-pp, article one, chapter seven of this code, on any Sunday, except in private clubs licensed under the provisions of
article seven, chapter sixty of this code, where the hours shall conform with the hours of sale of alcoholic liquors;

(2) For any licensee, his, her, its or their servants, agents or employees to sell, furnish or give any nonintoxicating beer, as defined in this article, to any person visibly or noticeably intoxicated or to any person known to be insane or known to be a habitual drunkard;

(3) For any licensee, his, her, its or their servants, agents or employees to sell, furnish or give any nonintoxicating beer as defined in this article to any person who is less than twenty-one years of age;

(4) For any distributor to sell or offer to sell, or any retailer to purchase or receive, any nonintoxicating beer as defined in this article, except for cash and no right of action shall exist to collect any claims for credit extended contrary to the provisions of this subdivision. Nothing herein contained in this section prohibits a licensee from crediting to a purchaser the actual price charged for packages or containers returned by the original purchaser as a credit on any sale, or from refunding to any purchaser the amount paid or deposited for the containers when title is retained by the vendor: Provided, That a distributor may accept an electronic transfer of funds if the transfer of funds is initiated by an irrevocable payment order on the invoiced amount for the nonintoxicating beer. The cost of the electronic fund transfer shall be borne by the retailer and the distributor shall initiate the transfer no later than noon of one business day after the delivery;

(5) For any brewer or distributor or brew-pub or his, her, its or their agents to transport or deliver nonintoxicating beer as defined in this article to any retail licensee on Sunday;

(6) For any brewer or distributor to give, furnish, rent or sell any equipment, fixtures, signs or supplies directly or indirectly or through a subsidiary or affiliate to any licensee engaged in
serving products of the brewing industry at retail or to offer any
prize, premium, gift or other similar inducement, except
advertising matter of nominal value, to either trade or consumer
buyers: Provided, That a distributor may offer, for sale or rent,
tanks of carbonic gas. Nothing herein contained in this section
prohibits a brewer from sponsoring any professional or amateur
athletic event or from providing prizes or awards for participants
and winners in any events: Provided, however, That no event
shall be sponsored which permits actual participation by athletes
or other persons who are minors, unless specifically authorized
by the commissioner;

(7) For any licensee to permit in his or her premises any
lewd, immoral or improper entertainment, conduct or practice;

(8) For any licensee except the holder of a license to operate
a private club issued under the provisions of article seven,
chapter sixty of this code or a holder of a license or a private
wine restaurant issued under the provisions of article eight of
said chapter to possess a federal license, tax receipt or other
permit entitling, authorizing or allowing the licensee to sell
liquor or alcoholic drinks other than nonintoxicating beer;

(9) For any licensee to obstruct the view of the interior of his
or her premises by enclosure, lattice, drapes or any means which
would prevent plain view of the patrons occupying the premises.
The interior of all licensed premises shall be adequately lighted
at all times: Provided, That provisions of this subdivision do not
apply to the premises of a Class B retailer, the premises of a
private club licensed under the provisions of article seven,
chapter sixty of this code or the premises of a private wine
restaurant licensed under the provisions of article eight of said
chapter;

(10) For any licensee to manufacture, import, sell, trade,
barter, possess or acquiesce in the sale, possession or
consumption of any alcoholic liquors on the premises covered by a license or on premises directly or indirectly used in connection with it: *Provided,* That the prohibition contained in this subdivision with respect to the selling or possessing or to the acquiescence in the sale, possession or consumption of alcoholic liquors is not applicable with respect to the holder of a license to operate a private club issued under the provisions of article seven, chapter sixty of this code nor shall the prohibition be applicable to a private wine restaurant licensed under the provisions of article eight of said chapter insofar as the private wine restaurant is authorized to serve wine;

(11) For any retail licensee to sell or dispense nonintoxicating beer, as defined in this article, purchased or acquired from any source other than a distributor, brewer or manufacturer licensed under the laws of this state;

(12) For any licensee to permit loud, boisterous or disorderly conduct of any kind upon his or her premises or to permit the use of loud musical instruments if either or any of the same may disturb the peace and quietude of the community where the business is located: *Provided,* That no licensee may have in connection with his or her place of business any loudspeaker located on the outside of the licensed premises that broadcasts or carries music of any kind;

(13) For any person whose license has been revoked, as provided in this article, to obtain employment with any retailer within the period of one year from the date of the revocation, or for any retailer to knowingly employ that person within the specified time;

(14) For any distributor to sell, possess for sale, transport or distribute nonintoxicating beer except in the original container;
For any licensee to knowingly permit any act to be done upon the licensed premises, the commission of which constitutes a crime under the laws of this state;

For any Class B retailer to permit the consumption of nonintoxicating beer upon his or her licensed premises;

For any Class A licensee, his, her, its or their servants, agents or employees, or for any licensee by or through any servants, agents or employees, to allow, suffer or permit any person less than eighteen years of age to loiter in or upon any licensed premises; except, however, that the provisions of this subdivision do not apply where a person under the age of eighteen years is in or upon the premises in the immediate company of his or her parent or parents, or where and while a person under the age of eighteen years is in or upon the premises for the purpose of and actually making a lawful purchase of any items or commodities therein sold, or for the purchase of and actually receiving any lawful service therein rendered, including the consumption of any item of food, drink or soft drink therein lawfully prepared and served or sold for consumption on the premises;

For any distributor to sell, offer for sale, distribute or deliver any nonintoxicating beer outside the territory assigned to any distributor by the brewer or manufacturer of nonintoxicating beer or to sell, offer for sale, distribute or deliver nonintoxicating beer to any retailer whose principal place of business or licensed premises is within the assigned territory of another distributor of such nonintoxicating beer: Provided, That nothing in this section is considered to prohibit sales of convenience between distributors licensed in this state where one distributor sells, transfers or delivers to another distributor a particular brand or brands for sale at wholesale; and

For any licensee or any agent, servant or employee of any licensee to knowingly violate any rule lawfully promulgated
by the commissioner in accordance with the provisions of chapter twenty-nine-a of this code.

(b) Any person who violates any provision of this article including, but not limited to, any provision of this section, or any rule, or order lawfully promulgated by the commissioner, or who makes any false statement concerning any material fact in submitting application for license or for a renewal of a license or in any hearing concerning the revocation thereof, or who commits any of the acts herein declared to be unlawful is guilty of a misdemeanor and, upon conviction thereof, shall be punished for each offense by a fine of not less than $25, nor more than $500, or confined in the county or regional jail for not less than thirty days nor more than six months, or by both fine and confinement. Magistrates have concurrent jurisdiction with the circuit court and any other courts having criminal jurisdiction in their county for the trial of all misdemeanors arising under this article.

(c) (1) A Class B licensee that:

(A) Has installed a transaction scan device on its licensed premises; and

(B) Can demonstrate that it requires each employee, servant or agent to verify the age of any individual to whom nonintoxicating beer is sold, furnished or given away by the use of the transaction device may not be subject to: (i) Any criminal penalties whatsoever, including those set forth in subsection (b) of this section; (ii) any administrative penalties from the commissioner; or (iii) any civil liability whatsoever for the improper sale, furnishing or giving away of nonintoxicating beer to an individual who is less than twenty-one years of age by one of his or her employees, servants or agents. Any agent, servant or employee who has improperly sold, furnished or given away nonintoxicating beer to an individual less than twenty-one years
of age is subject to the criminal penalties of subsection (b) of this section. Any agent, servant or employee who has improperly sold, furnished or given away nonintoxicating beer to an individual less than twenty-one years of age is subject to termination from employment, and the employer shall have no civil liability for the termination.

(2) For purposes of this section, a Class B licensee can demonstrate that it requires each employee, servant or agent to verify the age of any individual to whom nonintoxicating beer is sold by providing evidence: (A) That it has developed a written policy which requires each employee, servant or agent to verify the age of each individual to whom nonintoxicating beer will be sold, furnished or given away; (B) that it has communicated this policy to each employee, servant or agent; and (C) that it monitors the actions of its employees, servants or agents regarding the sale, furnishing or giving away of nonintoxicating beer and that it has taken corrective action for any discovered noncompliance with this policy.

(3) “Transaction scan” means the process by which a person checks, by means of a transaction scan device, the age and identity of the cardholder, and “transaction scan device” means any commercial device or combination of devices used at a point of sale that is capable of deciphering in an electronically readable format the information enclosed on the magnetic strip or bar code of a driver’s license or other governmental identity card.

(d) Nothing in this article nor any rule or regulation of the commissioner shall prevent or be considered to prohibit any licensee from employing any person who is at least eighteen years of age to serve in the licensee’s lawful employ, including the sale or delivery of nonintoxicating beer as defined in this article. With the prior approval of the commissioner, a licensee whose principal business is the sale of food or consumer goods
CHAPTER 60. STATE CONTROL OF ALCOHOLIC LIQUORS.

ARTICLE 4. LICENSES.

§60-4-3a. Distillery and mini-distillery license to manufacture and sell.

(a) Sales of liquor. — An operator of a distillery or a mini-distillery may offer liquor for retail sale to customers from the distillery or the mini-distillery for consumption off premises only. Except for free complimentary samples offered pursuant to section one, article six of this chapter, customers are prohibited from consuming any liquor on the premises of the distillery or the mini-distillery: Provided, That a licensed distillery or mini-distillery may offer complimentary samples per this subsection of alcoholic liquors manufactured by that licensed distillery or mini-distillery for consumption on the premises only on Sundays beginning at ten o’clock a.m. in any county in which the same has been approved as provided for in section three-ss, article one, chapter seven of this code.

(b) Retail sales. — Every licensed distillery or mini-distillery shall comply with the provisions of sections nine, eleven, thirteen, sixteen, seventeen, eighteen, nineteen,
counties

17 twenty-two, twenty-three, twenty-four, twenty-five and
twenty-six, article three-a of this chapter and the provisions of
articles three and four of this chapter applicable to liquor
retailers and distillers.

21 (c) Payment of taxes and fees. — The distillery or
mini-distillery shall pay all taxes and fees required of licensed
retailers and meet applicable licensing provisions as required by
this chapter and by rule of the commissioner, except for
payments of the wholesale markup percentage and the handling
fee provided by rule of the commissioner: Provided, That all
liquor for sale to customers from the distillery or the
mini-distillery for off-premises consumption shall be subject of
a five percent wholesale markup fee and an 80 cents per case
bailment fee to be paid to the commissioner: Provided, however,
That no liquor sold by the distillery or mini-distillery shall be
priced less than the price set by the commissioner pursuant to
section seventeen, article three-a of this chapter.

34 (d) Payments to market zone retailers. — Each distillery or
mini-distillery shall submit to the commissioner two percent of
the gross sales price of each retail liquor sale for the value of all
sales at the distillery or the mini-distillery each month. This
collection shall be distributed by the commissioner, at least
quarterly, to each market zone retailer located in the distillery or
mini-distillery’s market zone, proportionate to each market zone
retailer’s annual gross prior years pretax value sales. The
maximum amount of market zone payments that a distillery or
mini-distillery shall be required to submit to the commissioner
is $15,000 per annum.

45 (e) Limitations on licensees. — No distillery or
mini-distillery may sell more than three thousand gallons of
product at the distillery or mini-distillery location the initial two
years of licensure. The distillery or mini-distillery may increase
sales at the distillery or mini-distillery location by two thousand
50 gallons following the initial twenty-four-month period of
51 licensure and may increase sales at the distillery or
52 mini-distillery location each subsequent twenty-four-month
53 period by two thousand gallons, not to exceed ten thousand
54 gallons a year of total sales at the distillery or mini-distillery
55 location. No licensed mini-distillery may produce more than
56 fifty thousand gallons per calendar year at the mini-distillery
57 location. No more than one distillery or mini-distillery license
58 may be issued to a single person or entity and no person may
59 hold both a distillery and a mini-distillery license.

§60-4-3b. Winery and farm winery license to manufacture and
sell.

1 (a) Sales of wine. — An operator of a winery or farm winery
2 may offer wine produced by the winery or farm winery for retail
3 sale to customers from the winery or farm winery for
4 consumption off the premises only. Except for free
5 complimentary samples offered pursuant to section one, article
6 six of this chapter, customers are prohibited from consuming any
7 wine on the premises of the winery or farm winery, unless such
8 winery or farm winery has obtained a multicapacity winery or
9 farm winery license: Provided, That a licensed winery or farm
10 winery may offer complimentary samples per this subsection of
11 wine manufactured by that licensed winery or farm winery for
12 consumption on the premises only on Sundays beginning at ten
13 o’clock a.m. in any county in which the same has been approved
14 as provided in section three-pp, article one, chapter seven of this
15 code.

16 (b) Retail sales. — Every licensed winery or farm winery
17 shall comply with the provisions of articles three, four and eight
18 of this chapter as applicable to wine retailers, wineries and
19 suppliers when properly licensed in such capacities.

20 (c) Payment of taxes and fees. — The winery or farm winery
21 shall pay all taxes and fees required of licensed wine retailers
and meet applicable licensing provisions as required by this chapter and by rule of the commissioner. Each winery or farm winery acting as its own supplier shall submit to the Tax Commissioner the liter tax for all sales at the winery or farm winery each month, as provided in article eight of this chapter.

(d) *Advertising.* — A winery or farm winery may advertise a particular brand or brands of wine produced by it, and the price of the wine subject to federal requirements or restrictions.

(e) *Limitations on licensees.* — A winery or farm winery must maintain separate winery or farm winery supplier, retailer and direct shipper licenses when acting in one or more of those capacities, and must pay all associated license fees, unless such winery or farm winery holds a license issued pursuant to the provisions of subdivision (12), subsection (b), section three, article eight of this chapter. A winery or farm winery, if holding the appropriate licenses or a multicapacity winery or farm winery license, may act as its own supplier; retailer for off-premises consumption of its wine as specified in section two, article six of this chapter; private wine restaurant; and direct shipper for wine produced by the winery or farm winery. All wineries must use a distributor to distribute and sell their wine in the state, except for farm wineries. No more than one winery or farm winery license may be issued to a single person or entity and no person may hold both a winery and a farm winery license.

ARTICLE 7. LICENSES TO PRIVATE CLUBS.

§60-7-12. Certain acts of licensee prohibited; criminal penalties.

(a) It is unlawful for any licensee, or agent, employee or member thereof, on such licensee’s premises to:

(1) Sell or offer for sale any alcoholic liquors other than from the original package or container;
(2) Authorize or permit any disturbance of the peace; obscene, lewd, immoral or improper entertainment, conduct or practice, gambling or any slot machine, multiple coin console machine, multiple coin console slot machine or device in the nature of a slot machine;

(3) Sell, give away or permit the sale of, gift to or the procurement of any nonintoxicating beer, wine or alcoholic liquors for or to, or permit the consumption of nonintoxicating beer, wine or alcoholic liquors on the licensee’s premises, by any person less than twenty-one years of age;

(4) Sell, give away or permit the sale of, gift to or the procurement of any nonintoxicating beer, wine or alcoholic liquors, for or to any person known to be deemed legally incompetent, or for or to any person who is physically incapacitated due to consumption of nonintoxicating beer, wine or alcoholic liquor or the use of drugs;

(5) Sell, give or dispense nonintoxicating beer, wine or alcoholic liquors in or on any licensed premises or in any rooms directly connected therewith, between the hours of three o’clock a.m. and one o’clock p.m., or, between the hours of three o’clock a.m. and ten o’clock a.m. in any county upon approval as provided for in section three-pp, article one, chapter seven of this code, on any Sunday;

(6) Permit the consumption by, or serve to, on the licensed premises any nonintoxicating beer, wine or alcoholic liquors, covered by this article, to any person who is less than twenty-one years of age;

(7) With the intent to defraud, alter, change or misrepresent the quality, quantity or brand name of any alcoholic liquor;

(8) Sell or offer for sale any alcoholic liquor to any person who is not a duly elected or approved dues paying member in good standing of said private club or a guest of such member;
COUNTIES

(9) Sell, offer for sale, give away, facilitate the use of or allow the use of carbon dioxide, cyclopropane, ethylene, helium or nitrous oxide for purposes of human consumption except as authorized by the commissioner;

(10) (A) Employ any person who is less than eighteen years of age in a position where the primary responsibility for such employment is to sell, furnish or give nonintoxicating beer, wine or alcoholic liquors to any person;

(B) Employ any person who is between the ages of eighteen and twenty-one who is not directly supervised by a person aged twenty-one or over in a position where the primary responsibility for such employment is to sell, furnish or give nonintoxicating beer, wine or alcoholic liquors to any person; or

(11) Violate any reasonable rule of the commissioner.

(b) It is unlawful for any licensee to advertise in any news media or other means, outside of the licensee’s premises, the fact that alcoholic liquors may be purchased thereat.

(c) Any person who violates any of the foregoing provisions is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $500 nor more than $1,000, or imprisoned in the county jail for a period not to exceed one year, or both fined and imprisoned.

ARTICLE 8. SALE OF WINES.

§60-8-34. When retail sales prohibited.

It shall be unlawful for a retailer, farm winery, wine specialty shop retailer, private wine bed and breakfast, private wine restaurant or private wine spa licensee, his or her servants, agents or employees to sell or deliver wine between the hours of two o’clock a.m. and one o’clock p.m., or, it shall be unlawful
for a winery, farm winery, private wine bed and breakfast, 
private wine restaurant or private wine spa, his or her servants, 
agents or employees to sell wine between the hours of two 
o’clock a.m. and ten o’clock a.m. in any county upon approval 
as provided for in section three-pp, article one, chapter seven of 
this code, on Sundays, or between the hours of two o’clock a.m. 
and seven o’clock a.m. on weekdays and Saturdays.

CHAPTER 49

(S. B. 306 - By Senator Blair)

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

AN ACT to amend and reenact §7-3-3 of the Code of West Virginia, 
1931, as amended, relating to sale of county or district property; 
permitting property be sold either at an on-site public auction or by 
utilizing an Internet-based public auction service; and requiring 
notice of sale include notice of the time, terms, manner and place 
of sale or the Internet-based public auction service to be utilized.

Be it enacted by the Legislature of West Virginia:

That §7-3-3 of the Code of West Virginia, 1931, as amended, be 
amended and reenacted to read as follows:

ARTICLE 3. COUNTY PROPERTY.

§7-3-3. Sale of county or district property.

1 Except as may be prohibited by law or otherwise, the county 
2 commission of a county is authorized by law to sell or dispose of
any property, either real or personal, belonging to the county or held by it for the use of any district thereof. The property shall be sold either at an on-site public auction or by utilizing an Internet-based public auction service, and such sale shall be conducted by the president of the county commission, but before making any such sale, notice of the time, terms, manner and either the location of the sale or the Internet-based public auction service to be utilized, together with a brief description of the property to be sold, shall be 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: Provided, That this section shall not apply to the sale of any one item of property of less value than $1,000: Provided, however, That the provisions of this section concerning sale at public auction shall not apply to a county commission selling or disposing of its property for a public use to the United States of America, its instrumentalities, agencies or political subdivisions or to the State of West Virginia, or its political subdivisions, including county boards of education, volunteer fire departments and volunteer ambulance services, for an adequate consideration without considering alone the present commercial or market value of the property: Provided further, That all real property conveyed or sold by a county commission to a volunteer fire department or volunteer ambulance service under this provision shall revert back to the county commission if the volunteer fire department or volunteer ambulance service ceases to use it for the purpose for which the real property was conveyed or sold.
AN ACT to amend and reenact §7-5-24 of the Code of West Virginia, 1931, as amended; and to amend and reenact §11A-2-2 of said code, all relating to permitting county commissions to hire outside attorneys to prosecute actions or defend the county’s interest in any proceeding before any United States Bankruptcy Court; providing for outside attorney to be reimbursed for actual expenses directly incurred in the representation; providing that engagements of outside counsel be in writing; requiring that hourly engagements with outside attorneys contain a cumulative cap of any hourly fees charged on a per-case basis; requiring that contingency fee agreements with outside attorneys contain a percentage cap on money or things of value recovered; and requiring attorney fees or costs be paid prior to distribution to taxing units.

Be it enacted by the Legislature of West Virginia:

That §7-5-24 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §11A-2-2 of said code be amended and reenacted, all to read as follows:

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 5. FISCAL AFFAIRS.
§7-5-24. Sheriff may commence civil action without paying fees and costs; fees and costs recoverable from defendants after completion of litigation.

The sheriff is not required to pay any filing fee, cost, bond or security, as may otherwise be required of other civil litigants by provisions of this code, in any action in which the sheriff commences the action in his or her official capacity or on behalf of the county government: Provided, That where the sheriff or county government prevails in the action and any filing fees, costs, bond or security are recovered from the opposing party, the sheriff shall pay therefrom the fees, costs, bond or security to the officer who otherwise would have been entitled thereto but for the provisions of this section: Provided, however, That any legal fees and costs not so recovered from the opposing party shall be paid out of the taxes so collected prior to the distribution of the taxes to the various taxing units.

CHAPTER 11A. COLLECTION AND ENFORCEMENT OF PROPERTY TAXES.

ARTICLE 2. DELINQUENCY AND METHODS OF ENFORCING PAYMENT.

§11A-2-2. Collection by civil action; fees and costs not required of sheriff.

(a) Taxes are hereby declared to be debts owing by the taxpayer, for which he or she shall be personally liable. After delinquency, the sheriff may enforce this liability by appropriate action in any court of competent jurisdiction. No such action may be brought after five years from the time the action accrued.

(b) In any such action, the sheriff may prosecute the same without paying fees or costs, and without providing bond or security, as may otherwise be required of civil litigants by the provisions of this code, and shall have all services and process,
including the services of witnesses, without paying therefor: Provided, That the sheriff shall maintain for each action for the recovery of delinquent taxes records sufficient to demonstrate the total fees and costs paid and that would have been paid but for the authority provided herein to seek recovery without such payment: Provided, however, That where the sheriff recovers delinquent taxes in or as the result of such action, whether by way of settlement or judgment, such fees and costs as above required to be recorded shall be recoverable from the opposite party and, upon receipt of any recovery, the sheriff shall pay from the amount recovered such fees or costs to the officer who otherwise would have been entitled thereto but for the provisions of this section: Provided further, That the fees and costs shall be paid prior to payment to the various taxing units of the balance of the recovered taxes: And provided further, That the payment to the various taxing units shall be prorated on the basis of the total amount of taxes due them.

(c) The county commission may hire an attorney to prosecute any such action for the collection of such delinquent taxes or to defend the county’s interest in any proceeding before any United States Bankruptcy Court: Provided, That any attorney so hired shall be reimbursed for actual expenses directly incurred in the course of the representation: Provided, however, That in any engagement of any attorney so hired under this section, the county commission shall enter into a written representation agreement with the attorney so engaged, which written representation agreement shall include, in the case of an hourly fee agreement, a cumulative cap of any hourly fees charged on a per-case basis or, in the case of a contingency fee agreement, a percentage cap of any money or things of value recovered in the representation. Any attorney fees or other costs associated with the collection of taxes, not heretofore provided for in subsection (b) of this section, shall be paid from the taxes so collected prior to the distribution to the various taxing units.
CHAPTER 51

(Com. Sub. for H. B. 4009 - By Delegates Statler, Ambler, Cooper, Ellington, D. Evans, Moffatt, Romine, Storch, Weld and Zatezalo)

[Passed March 12, 2015; in effect ninety days from passage.] [Approved by the Governor on April 30, 2016.]

requiring decision of Commissioner of Highways within sixty days of receipt; providing certification of approved project by Commissioner of Highways; requiring assignment of name to project plan and individual projects within plan by Commissioner of Highways; granting legislative rulemaking authority; requiring referendum for approval of certain road construction project plans; setting requirements for referendum election; prohibiting proceeding with road construction project plan to be financed by county transportation sales and use tax or by issuance of special revenue bonds unless approved by the voters; providing for amendments to road construction plans; providing for termination of road construction project plan; providing for termination of county transportation sales and use taxes; prohibiting termination or rate reduction as long as revenue bonds remain outstanding, unless payment of special revenue bonds has been secured in full; directing county commission to enter order describing road construction project plan after approval of plan by Commissioner of Highways and voters of county; setting forth contents of order, including establishment of county transportation sales and use taxes; limiting county transportation sales and use taxes to one percent; requiring transportation sales and use taxes to be identical; allowing joint road construction project plans; clarifying that obligations of parties under intergovernmental agreements may not be considered debt within the meaning of section six or eight, article X of the Constitution of West Virginia; authorizing county commissions and Commissioner of Highways enter into intergovernmental agreements; creating County Road Improvement Account and subaccounts; authorizing deposit of funds from certain sources into account; authorizing certain expenditures from county subaccount; allowing road construction projects be financed on cash basis or by special revenue bonds issued by West Virginia Economic Development Authority; giving Commissioner of Highways final approval of all road construction projects; providing that all road construction projects accepted into state road system are under exclusive jurisdiction and control of
Commissioner of Highways; specifying that road construction projects are public improvements; requiring annual reporting by Commissioner of Highways on county road construction projects; providing procedures and requirements for issuance of special revenue bonds by West Virginia Economic Development Authority; permitting special revenue bonds to be secured by trust agreement between Authority and corporate trustee; providing procedures and requirements for refunding bonds for county road construction projects; providing that bonds are not debts of state, county or any political subdivisions; providing that bonds are negotiable instruments; providing that bonds are exempt from taxation; specifying that neither West Virginia Economic Development Authority nor its officers or employees nor any persons executing bonds have personal liability on issued bonds; providing that powers relating to road construction project plans, construction of projects and issuance of special revenue bonds are additional powers; requiring county to enter into one or more intergovernmental agreements with Commissioner of Highways prior to imposing county transportation sales and use taxes; allowing county commissions with approved road construction projects to impose county transportation sales and use taxes; limiting rate of taxes; establishing tax base for county transportation sales and use taxes; providing exceptions to tax base; setting forth provisions for when purchases are made in county without county transportation sales and use taxes and purchase are used in county that does impose county transportation sales and use taxes; requiring county to notify Tax Commissioner at least one hundred eighty days before effective date of imposition of county transportation sales and use taxes; requiring copy of notice be sent to State Auditor and State Treasurer; requiring Tax Commissioner to administer, collect and enforce county transportation sales and use tax; authorizing Tax Commissioner to assess a fee for collection of county transportation sales and use taxes; providing for calculation of cost of service; providing for deposit of fees retained by Tax Commissioner into Local Sales Tax
and Excise Tax Administration Fund; requiring certain vendors to collect county transportation sales tax; providing for payment of county transportation use tax to Tax Commissioner; clarifying that county transportation sales and use taxes are to be collected and paid in addition to certain other taxes; granting purchaser credit against county transportation use tax for sales tax paid in another county; making county transportation sales and use taxes subject to sourcing rules; making applicable provisions of law related to state consumer sales and service tax provisions and state consumer use tax provisions; making county transportation sales and use taxes subject to West Virginia Tax Procedure and Administration Act; making West Virginia Tax Crimes and Penalties Act applicable to county transportation sales and use taxes; providing for date of first application for county transportation sales and use taxes; providing for deposit of county transportation sales and use taxes into subaccount of county in County Road Improvement Account; providing for crediting of county transportation sales and use taxes; authorizing issuance of requisition to Auditor to request issuance of state warrant for funds in county subaccount; requiring actions by State Auditor and State Treasurer upon receipt of requisition; providing for correction and adjustment to payments; setting effective date of county transportation sales and use tax; requiring county commissions to develop and maintain county rate and boundary databases; requiring county commission to notify Tax Commissioner if tax has been imposed or tax rate has changed; authorizing early retirement of special revenue bonds under certain conditions; authorizing termination of county transportation sales and use taxes once special revenue bonds are no longer outstanding or have been defeased; providing for excess funds be forwarded to county commission for deposit in county’s general fund; providing that all powers are supplemental; exempting public officers from personal liability; providing for severability; authorizing West Virginia Economic Development Authority to issue bonds for county capital improvements; setting requirements on issuance of bonds; setting certain terms for
revenue bonds; providing for handling of moneys deposited in account; providing for establishment of debt service fund for each bond issue; requiring West Virginia Economic Development Authority certify annually to county commission certain information regarding bond issue; providing for disposition of balance remaining in debt service fund after bond issued and requirements have been satisfied; and directing generally how the West Virginia Economic Development Authority implements and manages bonds issued for county road construction projects.

Be it enacted by the Legislature of West Virginia:


ARTICLE 27. LETTING OUR COUNTIES ACT LOCALLY ACT.

PART I. GENERAL.

§7-27-1. Short title.

1 This article shall be known as the “Letting Our Counties Act Locally Act.”

§7-27-2. Purpose and findings.

1 (a) The Legislature hereby makes the following findings:
(1) Roads maintained by the Department of Transportation include:

(A) Thirty-eight thousand six hundred eighty-four miles of public roads;

(B) Thirty-five thousand eight hundred ninety-three miles of state owned highways;

(C) Four hundred sixty-eight miles of state owned Interstate highway;

(D) Eighty-eight miles of West Virginia Turnpike;

(E) One thousand nine hundred seventy-two miles included in the National Highway System, twenty-three miles of which are connectors to other modes of transportation such as airports, trains and buses;

(F) Six thousand nine hundred fourteen bridges, thirty-three percent of which are more than one hundred feet in length;

(G) One all-American road;

(H) Five national byways;

(I) Fourteen state byways; and

(J) Eight backways.

(2) A 2012 road needs assessment prepared for Governor Tomblin’s Blue Ribbon Commission by Wilbur Smith Associates reveals that:

(A) During the next seventeen years:

(i) Fifty-one thousand one hundred eight lane miles of road will need to be improved;
(ii) Ten thousand four hundred one lane miles will need modernization improvements including lane widening, road reconstruction, and shoulder improvements; and

(iii) Three thousand four hundred two lane miles will need to be constructed;

(B) Within the next twenty-five years:

(i) Eight hundred fourteen bridges will need to be replaced;

(ii) Five hundred seventy-seven bridges will need to be widened;

(iii) Eight bridges will need to be straightened; and

(iv) One bridge will need to be raised;

(C) The funding gap for road construction and maintenance over the next twenty-five years is estimated to be $36.7 billion, excluding new road construction; and

(D) The funding gap for bridges construction and maintenance was $2.4 billion, excluding new bridge construction.

(3) Modern, safe roads are critical to economic development.

(4) Modern, safe roads and bridges are essential to the growth of our communities and to the public health, welfare and safety.

(5) Counties need greater ability to influence when and where new roads are constructed and existing roads and bridges are modernized or upgraded, including the ability to recommend to the Division of Highways road and bridge construction projects and to assist in the financing of those projects.
(b) The purpose of this article is to provide county commissions with a source of funding to finance the accelerated construction of new roads and bridges in their respective counties; and the accelerated upgrading or modernizing of existing state roads and bridges in their counties, by allowing them to impose transportation sales and use taxes as provided in this article.


For purposes of this article:

(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 a county of this state that imposes transportation sales and use taxes pursuant to this article.

(2) “Calendar quarter” means the three-month time period beginning on January 1, April 1, July 1 and October 1 of each year.

(3) “Commissioner of Highways” means the chief executive officer of the Division of Highways of the Department of Transportation provided in section one, article two-a, chapter seventeen of this code, or his or her designee. The term “designee” in the phrase “or his or her designee”, when used in reference to the Commissioner of Highways, means any officer or employee of the Division of Highways duly authorized by the commissioner directly, or indirectly by one or more redelegations of authority, to perform the functions mentioned or described in this article or rules promulgated for this article.

(4) “Consumer” means any person purchasing tangible personal property, custom software or a taxable service from a
(5) “County transportation sales tax” means the sales tax imposed by a county commission pursuant to this article.

(6) “County transportation sales and use taxes” means the transportation sales tax and the transportation use tax imposed by a county commission pursuant to this article.

(7) “County transportation use tax” means the use tax imposed by a county commission pursuant to this article.

(8) “Custom software” means software prepared for a particular customer to meet the specific needs or circumstances of the customer.

(9) “Executive Director of the West Virginia Economic Development Authority” means the chief executive officer of the West Virginia Economic Development Authority created in section five, article fifteen, chapter thirty-one, of this code.

(10) “Expansion projects” are road and bridge construction projects that add to the existing road system and include, but are not limited to, new roads, new bridges, new lanes and new interchanges.

(11) “Highway authority” or “highway association” means any entity created by the Legislature for the advancement and improvement of the state road and highway system, including, but not limited to, the New River Parkway Authority, Midland Trail Scenic Highway Association, Shawnee Parkway Authority, Corridor G Regional Development Authority, Coalfields Expressway Authority, Robert C. Byrd Corridor H Highway Authority, West Virginia 2 and I-68 Authority, Little Kanawha River Parkway Authority, King Coal Highway Authority, Coal
(12) “Modernization projects” are road and bridge construction projects that improve safety by improving the existing roadway including, but not limited to, shoulder improvements, reducing the grade of hills, straightening curves, and improving interchanges.

(13) “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.

(14) “Preservation projects” are road and bridge construction projects that take care of infrastructure already in place and include, but are not limited to, pavement rehabilitation and reconstruction, and bridge repairs and replacements.

(15) “Project costs” means capital costs, costs of financing, planning, designing, constructing, expanding, improving, or maintaining a road; the cost of land, equipment, machinery, installation of utilities and other similar expenditures; and all other charges or expenses necessary, appurtenant or incidental to the foregoing.

(16) “Purchase” means any transfer, exchange or barter, conditional or otherwise, in any manner or by any means, for a consideration.
85 (17) “Purchaser” means a person to whom a sale of personal
86 property is made or to whom a service is furnished.

87 (18) “Retailer” means and includes every person engaging
88 in the business of selling, leasing or renting tangible personal
89 property or custom software or furnishing a taxable service for
90 use within the meaning of this article, or in the business of
91 selling, at auction, tangible personal property or custom software
92 owned by the person or others for use in the county imposing
93 taxes pursuant to this article. However, when, in the opinion of
94 the Tax Commissioner, it is necessary for the efficient
95 administration of county use taxes imposed pursuant to this
96 article to regard any salespersons, representatives, truckers,
97 peddlers or canvassers as the agents of the dealers, distributors,
98 supervisors, employees or persons under whom they operate or
99 from whom they obtain the tangible personal property sold by
100 them, irrespective of whether they are making sales on their own
101 behalf or on behalf of the dealers, distributors, supervisors,
102 employers or persons, the Tax Commissioner may so regard
103 them and may regard the dealers, distributors, supervisors,
104 employers, or persons as retailers for purposes of county use
105 taxes.

106 (19) “Retailer engaging in business in the county” or any
107 like term, unless otherwise limited by federal statute, means and
108 includes, but is not limited to:

109 (A) Any retailer having or maintaining, occupying or using,
110 within the county, directly or by a subsidiary, an office,
111 distribution house, sales house, warehouse, or other place of
112 business, or any agent, however called, operating within the
113 county under the authority of the retailer or its subsidiary,
114 irrespective of whether the place of business or agent is located
115 in the county permanently or temporarily, or whether the retailer
116 or subsidiary is admitted to do business within this state pursuant
117 to article fifteen, chapter thirty-one-d of this code or article
118 fourteen, chapter thirty-one-e of this code; or
(B) 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 section three-a, article twenty four, chapter eleven of this code, that:

(i) 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 the county;

(ii) Performs services in the county 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) By any agent, or representative (by whatever name called), or employee, performs services in the county 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) Directly or indirectly, through or by an agent, representative or employee located in, or present in, the county, solicits business in the county 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 the county, the service of operating a mail order business or telephone, Internet or other remote order business from facilities located within the county, the service of operating a website or internet-based business from a location within the county imposing the use tax or any other service.

(20) “Road” means a public highway, road, bridge, tunnel, or overpass to be used for the transportation of persons or goods including bicycle and pedestrian facilities.

(21) “Road project” means any project to acquire, design, construct, expand, renovate, extend, enlarge, increase, equip, improve, maintain or operate a road in this state, including, but not limited to, providing bicycle and pedestrian facilities in conjunction with a road in this state, that is under the jurisdiction of the Division of Highways.

(22) “Road construction project” means and includes any road construction project included in a road construction project plan that is adopted by a county commission pursuant to this article and approved by the Commissioner of Highways as provided in this article.

(23) “Sale” means any transaction resulting in the purchase or lease of tangible personal property, custom software or a taxable service from a retailer.

(24) “Tax Commissioner” means the State Tax Commissioner provided in article one, chapter eleven of this code 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.
(25) “Taxpayer” means a taxpayer, as that term is defined in section two, article fifteen-b, chapter eleven of this code, who is subject to a county transportation sales tax or county transportation use tax imposed by a county commission pursuant to this article, whether acting for himself or herself or as a fiduciary, and who is liable for payment of any additions to tax, penalties or interest imposed by article ten, chapter eleven of this code for failure to timely pay or remit the county transportation sales taxes or county transportation use taxes imposed by a county commission pursuant to this article.

(26) “Vendor” means any person furnishing services subject to a county’s sales and use taxes imposed pursuant to this article, or making sales of tangible personal property or custom software subject to a county’s sales and use taxes imposed pursuant to this article. The terms “vendor,” “retailer” and “seller” are used interchangeably in this article.

(27) “West Virginia Economic Development Authority” or “Authority” means the governmental entity created in section five, article fifteen, chapter thirty-one of this code.

As used in this article, the terms “computer software,” “lease,” “purchase price,” “retail sale,” “sale at retail,” “sales price,” “seller,” “service,” “selected service,” and “tangible personal property” have the same meanings as those terms are given in section two, article fifteen-b, chapter eleven of this code.

PART II. COUNTY ROAD AND BRIDGE CONSTRUCTION PROJECTS.

§7-27-4. Creation of county road construction project plan.

A county commission may, upon its own initiative or upon application of: (1) a highway authority; (2) a local, county or regional economic development authority; or (3) any resident of
the county, propose creation of a road construction project plan for the county, or propose an amendment to an existing road construction project plan of the county.

§7-27-5. Public hearing and notice requirements.

(a) General. — The county commission shall hold one or more public hearings at which interested persons may express their views on the county’s proposed road construction project plan.

(b) Notice of public hearing. — Notice of the public hearing or hearings shall be published as a Class II legal advertisement in accordance with the requirements of article three, chapter fifty-nine of this code. The published notice shall include, at a minimum:

1. (1) The date, time, place and purpose of the public hearing or hearings;

2. (2) A description of each road construction project included in the proposed road construction project plan in sufficient detail to give the public notice of the contents of the proposed road construction project plan to cause residents of the county and other interested persons to examine the proposed road construction project plan and attend the public hearing or submit written comments thereon;

3. (3) The places in the county where the proposed road construction project plan may be viewed: Provided, That the county commission shall include the proposed road construction project plan on its webpage; and

4. (4) Information regarding how the county commission anticipates funding the road construction projects contained in the road construction project plan, including, but not limited to, whether one or more projects in the proposed road construction
project plan, will be financed, in whole or in part, by the imposition of a county transportation sales and use tax and the proposed rate of the taxes the county finds necessary to finance, in whole or in part, the proposed road construction project plan, and any proposed road construction special revenue bonds to be issued to finance the road construction project plan.

(c) Notice by mail. — On or before the first day of publication of the public notice required in subsection (b) of this section, the county commission shall send a copy of the notice by first-class mail to the Commissioner of Highways, the Executive Director of the West Virginia Economic Development Authority and the mayor of each municipality located within the county. When the county commission reasonably anticipates that a proposed road construction project may affect one or more bordering counties, it shall send a copy of the notice by first-class mail to the president of the county commission of the bordering county or counties.

(d) Public Hearing. — All persons who appear at any public hearing held pursuant to this section shall be afforded a reasonable opportunity to express their views on all or any part of the proposed road construction project plan. Each public hearing shall be recorded by a court reporter, or be digitally recorded.

(e) Written comments. — Written comments may be submitted to the county commission before, during, or within five business days after the last public hearing. Timely mailing of the written comments to the county commission, at the mailing address of the courthouse, postage prepaid, shall be deemed timely submission of the written comments.

§7-27-6. Finalization of road construction project plan.

(a) Resolution of county commission. — After the public hearing or hearings are concluded and the public comment
period is closed, and after receipt of any required resolution of the governing body of a municipality, as required in subsection (b) of this section, the county commission may, by resolution, finalize its road construction project plan: Provided, That if there is more than one road construction project in the road construction project plan, the road construction project plan shall include a prioritization of each road construction project.

(b) Consent of municipality in which project located. — No county commission may adopt a resolution approving a road construction project plan, any portion of which is located within the boundaries of a Class I, II, III or IV municipality, without the adoption of a resolution by the governing body of that municipality consenting to the road construction project.

§7-27-7. Submission of road construction project plan to Commissioner of Highways; contents of application.

(a) After the county commission has finalized its road construction project plan, the commission may submit the plan to the Commissioner of Highways.

(b) Each application submitted pursuant to this article shall include:

(1) A true copy of the county’s proposed road construction project plan, or proposed amendment to a project plan previously approved by the Commissioner of Highways, that is adopted, after the public hearing, by resolution of the county commission;

(2) A true copy of the resolution adopted by the county commission approving submission of the adopted road construction project plan, or the proposed amendment to a project plan previously approved by the Commissioner of Highways, to the Commissioner of Highways for approval;

(3) A true copy of the notice of public hearing or hearings on the county’s proposed road construction plan, or proposed
amendment to a previously adopted project plan, and a true copy
of the proposed plan, or the proposed amendment to an existing
project plan that was the subject of the public hearing;

(4) An affidavit signed by the president of the county
commission confirming publication of the notice of public
hearing;

(5) A true copy of the transcript of the public hearing or
hearings, or a true copy of the digital recording of the public
hearing or hearings;

(6) True copies of any written comments received by the
commission on the proposed road construction project plan, or
the proposed amendment to an existing project plan;

(7) A statement generally describing each project included
in the county’s road construction project plan, or the proposed
amendment to an existing project plan, and identifying:

(A) Type of project, as a road project, bridge project, or both
road and bridge project;

(B) Location of the project;

(C) Length of the project (in miles or feet);

(D) Scope of the work;

(E) Classification of the project as a preservation project,
modernization project, or expansion project;

(F) Estimated cost of the project;

(G) Method of financing the project; and

(H) Timeline for completion of the project.
(8) A map of the county showing the geographic location of each road construction project included in the county’s road construction project plan;

(9) When the road construction project is located, in whole or in part, within the corporate limits of any municipality, a true copy of the resolution adopted by the governing body of the municipality consenting to the road construction project;

(10) Identification of any businesses or residents that the county commission anticipates will be displaced because of the road construction project;

(11) A good faith estimate of the annual net county transportation sales and use tax collections to be deposited in the county’s sub-account in the County Road Improvement Account created pursuant to section fourteen of this article that will be available to finance the project, in whole or in part; and

(12) Any additional information the Commissioner of Highways may reasonably require to analyze a proposed road construction project.

§7-27-8. Application to Commissioner of Highways for approval of road construction project plans.

(a) Review of applications. — The Commissioner of Highways shall review all proposed road construction project plans for conformity to statutory and regulatory requirements, the reasonableness of the project’s budget, and the timetable for completion using the following criteria:

(1) The quality of the proposed road construction project and how it addresses transportation problems in the area in which the road construction project will be located;

(2) Whether there is credible evidence that, unless county transportation sales and use tax revenues are used to finance the
road construction project, in whole or in part, the project would not otherwise be feasible in the time line proposed by the county commission;

(3) Whether the county transportation sales and use tax revenues will leverage or be the catalyst for the effective use of state or federal funding that is available;

(4) Whether there is substantial and credible evidence that the proposed road construction project is likely to be started and completed in a timely fashion;

(5) Whether the proposed project will, directly or indirectly, improve transportation in the area where the road construction project will occur, thereby benefitting county residents and facilitating commercial business development and expansion in the county;

(6) Whether the proposed road construction project will, directly or indirectly, assist in the creation of additional long-term employment opportunities in the area and the quality of jobs created to include, but not be limited to, wages and benefits;

(7) Whether the proposed road construction project will fulfill a pressing transportation need for the county, or part of the county, in which the road construction project would be located;

(8) Whether the county commission has a strategy for road construction in the county and whether the proposed road construction project is consistent with that strategy;

(9) Whether the road construction project is consistent with the goals of this article;

(10) Whether the road construction project is economically and fiscally sound using recognized business standards of finance and accounting; and
(11) Any other additional criteria established by the Commissioner of Highways by legislative rule.

(b) Decision of Commissioner of Highways. — Within sixty days after receipt of the county commission’s proposed road construction project plan or an amendment to a previously approved project plan, the Commissioner of Highways shall either (1) approve the plan as submitted, in whole or in part; (2) reject the plan as submitted, in whole or in part; or (3) return the plan to the county commission for further development or review in accordance with instructions from the Commissioner of Highways. The decision of the commissioner is final and is not subject to judicial review.

(c) Certification of road construction project. — If the Commissioner of Highways approves a county’s road construction project application, in whole or in part, the commissioner shall issue to the county commission a written certificate evidencing approval of each approved project.

(d) Assignment of project plan and individual projects. — Upon approval of a road construction project plan or an amendment to an existing project, the Commissioner of Highways shall:

(1) Assign a name to the road construction project for identification purposes, which name may include a geographic or other designation; and

(2) Assign each project within the road construction project plan a project number that begins with the federal information processing (FIPS) code number for the county, followed by a hyphen and a consecutive number beginning with the number “01,” with each additional road construction project in the plan being assigned the next consecutive number.

(e) Rules. — The Commissioner of Highways may propose rules for legislative approval in accordance with article three,
chapter twenty-nine-a of this code to implement the county road
construction project application approval process and to further
identify and describe the criteria and procedures he or she has
established in connection therewith.

§7-27-9. Requirement for referendum on final road construction
project plan.

(a) After obtaining project certification from the
Commissioner of Highways under section eight of this article the
county commission shall submit the question of the adoption of
a road construction project plan to the voters in a county-wide
referendum to be held in conjunction with a primary or general
election. The question to be voted on in the referendum shall
identify the project plan by its name and location, its projected
cost estimate and how the cost of the road construction project
plan is to be financed. The question shall state if the road
construction plan is to be financed in whole or in part by the
imposition of a county transportation sales and use tax, including
the rate of the tax to be imposed, and if it is to be financed in
whole or in part by the issuance of special revenue bonds as
authorized by this article.

(b) No county commission may proceed with a road
construction plan which will be financed, in whole or in part, by
the imposition of a transportation sales and use tax or by the
issuance of special revenue bonds as authorized by this article
unless a majority of voters casting votes in the referendum vote
to approve the road construction project plan.

§7-27-10. Amendment of road construction project plan.

(a) General. — A road construction project plan adopted by
order of the county commission may be amended by the county
commission at any time to add one or more projects, delete one
or more projects, or redesignate the order in which projects are
to be completed as funds become available.
§7-27-11. **Termination of road construction project plan.**

(a) **General.** — No road construction project plan may be in existence for a period longer than thirty years, except as otherwise provided in this section, and no revenue bond secured by collections of the taxes imposed by a county commission may have a final maturity date more than thirty years after date of issuance of the revenue bonds.

(b) **Extension of plan.** — Each amendment of a county’s roads construction project plan approved by the Commissioner of Highways that results in execution of an intergovernmental agreement by the county commission and the Commissioner of Highways shall extend the term of the project plan for thirty years from the date on which the intergovernmental agreement is fully executed.

(c) **Termination of county transportation sales and use taxes.** — The county transportation sales and use tax imposed by a county commission pursuant to this article shall expire on the first day of the calendar quarter that begins one hundred twenty days after the following:

1. If no special revenue bonds are issued as authorized by this article, the day the county commission notifies the Tax Commissioner in writing that its road construction projects financed, in whole or in part, with transportation sales and use tax revenue have been completed; or

2. If special revenue bonds have been issued as authorized by this article, the West Virginia Economic Development
Authority certifies to the county commission and to the Tax Commissioner that all principal and interest due, or to become due, on the bonds issued under this article has been paid or is otherwise provided for.

(d) **Shorter period.** — The county commission may set an earlier termination date for the county transportation sales and use tax imposed pursuant to this article: **Provided,** That no revenue bonds may have a final maturity date later than the termination date of the county transportation sales and use tax.

(e) **Termination order.** — Prior to expiration of the county transportation sales and use tax, the county commission shall adopt an order terminating the county transportation sales and use tax on the date specified therein: **Provided,** That the order may not extinguish any person’s liability for payment of county transportation sales and use taxes that were assessed prior to termination of the taxes. With respect to any such taxes, the rights and duties of the taxpayer and of the State of West Virginia shall be fully and completely preserved.

(f) **Prohibition on termination or rate reduction.** — The county commission may not repeal the order imposing a county transportation sales and use tax pursuant to this article, or reduce the rate at which the county transportation sales and use taxes are imposed so long as any revenue bonds secured by the taxes remain outstanding, unless payment of the bonds has been secured in full.

**PART III. IMPLEMENTATION OF ROAD CONSTRUCTION PROJECT PLAN.**

§7-27-12. Order adopting road construction project plan or plan amendment.

Upon approval of a road construction project plan or an amendment to an existing project plan by the Commissioner of
Highways, and approval of the voters in the referendum provided in section nine of this article, the county commission shall enter an order that:

(1) Describes each approved road construction project sufficiently to identify with ordinary and reasonable certainty the geographic location in the county of each road construction project included in the county’s plan;

(2) Identifies the road construction project plan by the name assigned by the Commissioner of Highways, and identifies each project within the road construction project plan by the project number assigned by the Commissioner of Highways; and

(3) Establishes a county transportation sales tax and a county transportation use tax as provided in this article at rates not to exceed one percent: Provided, That the rate of the sales tax and the rate of the use tax shall at all times be identical.


(a) The Legislature hereby finds and declares that the citizens of the state would benefit from coordinated road construction efforts by county commissions funded by county transportation sales and use taxes imposed pursuant to this article.

(b) Notwithstanding any other section of this code to the contrary, any two or more county commissions may contract to share expenses and dedicate county funds or county transportation sales and use tax revenues, on a pro rata basis, to facilitate construction of one or more road construction projects: Provided, That each of the road construction projects must be a part of a road construction project plan created and approved pursuant to this article by each county commission contracting to share expenses and funds.
(c) When a road construction project begins in one county and ends in one or more other counties of this state, the county commission of each county may, by resolution, adopt a written intergovernmental agreement with each county and the Commissioner of Highways regarding the proposed multicounty road construction project.

(d) No county commission may withdraw from an intergovernmental agreement so long as revenue bonds, the proceeds of which were used by the Commissioner of Highways to finance construction of the road, remain outstanding.

(e) No county commission that withdraws from an intergovernmental agreement shall be entitled to the return of any money or property advanced to the road construction project.

(f) Notwithstanding any provision of this code to the contrary, any county commission imposing county transportation sales and use taxes pursuant to this article may enter into an intergovernmental agreement with one or more other counties that also impose transportation sales and use taxes pursuant to this article that have an interest in completion of a proposed road construction project, with respect to the pooling of county transportation sales and use tax revenues to finance construction of the road construction project either on a cash basis or to pay debt service on revenue bonds issued by the West Virginia Economic Development Authority to fund the road construction project.

(g) The obligations of the parties under any intergovernmental agreement executed pursuant to this article may not be considered debt within the meaning of sections six or eight, article X of the Constitution of West Virginia.

(h) Any intergovernmental agreement shall be approved by resolution adopted by a majority vote of the county commission.
of each county participating in the agreement and by the Commissioner of Highways. After the resolution is adopted, the agreement shall be signed by at least one member of the county commission and by the Commissioner of Highways.

(i) The Commissioner of Highways may enter into intergovernmental agreements with county commissions or other political subdivisions of the state, or with the federal government or any agency thereof, respecting the financing, planning, and construction of roads and bridges constructed pursuant to this article.

§7-27-14. Creation of County Road Improvement Account.

(a) Account created. — There is hereby created in the State Treasury a Special Revenue Revolving Fund account known as the “County Road Improvement Account” which is an interest-bearing account that shall be invested in the manner described in section nine-c, article six, chapter twelve of this code, with the interest income a proper credit to the account.

(b) County subaccount. — A separate and segregated subaccount within the account shall be established for each county that imposes a county transportation sales and use tax pursuant to this article.

(c) Additional funds. — In addition to the county transportation sales and use taxes levied and collected as provided in this article, funds paid into the account for the credit of any subaccount may also be derived from the following sources:

(1) All interest or return on the investment accruing to the subaccount;

(2) Any gifts, grants, bequests, transfers, appropriations or donations which are received from any governmental entity or unit or any person, firm, foundation or corporation; and
(3) Any appropriations by the Legislature which are made for this purpose.

(d) *Expenditures from account.* — The Commissioner of Highways may withdraw funds from a county’s subaccount only in accordance with one or more intergovernmental agreements or contracts executed by the county commission of that county.

§7-27-15. **Cash basis projects; issuance of road construction special revenue bonds by West Virginia Economic Development Authority.**

(a) *Cash basis projects.* — Each county commission that has a subaccount in the County Road Improvement Account established pursuant to this article may, in its discretion and pursuant to an intergovernmental written agreement with the county commission, authorize the Commissioner of Highways to use the moneys in its subaccount to finance the costs of road construction projects in the county on a cash basis.

(b) *Special revenue bonds.* — The county commission may, by intergovernmental written agreement, authorize the West Virginia Economic Development Authority to issue, in the manner prescribed by this article, special revenue bonds secured by county transportation sales and use taxes imposed pursuant to this article to finance or refinance all or part of a road construction project in the county and pledge all or any part of the county transportation sales and use taxes for the payment of the principal of and interest on such bonds and the reserves therefor.

§7-27-16. **Commissioner’s authority over road construction projects accepted into the state road system; use of state road funds.**

(a) Notwithstanding anything in this article to the contrary, the Commissioner of Highways has final approval of any road
construction project. However, no state road funds may be used, singly or together with funds from any other source, for any purpose or in any manner contrary to or prohibited by the Constitution and laws of this state or the federal government or where such use, in the sole discretion of the Commissioner of Highways, would jeopardize receipt of federal funds.

(b) All road construction projects that shall be accepted as part of the state road system, and all real property interests and appurtenances, are under the exclusive jurisdiction and control of the Commissioner of Highways, who may exercise the same rights and authority as he or she has over other transportation facilities in the state road system.

§7-27-17. Qualifying a transportation project as a public improvement.

All road construction projects authorized under this article are public improvements subject to article one-c, chapter twenty-one of this code, and either article twenty-two, chapter five of this code or article two-d, chapter seventeen of this code.


Each year, the Commissioner of Highways shall prepare a report giving the status of each road construction project being constructed pursuant to this article and file it by October 1 with the Governor, the Joint Committee on Government and Finance of the Legislature and with each county commission with which the Commissioner of Highways has an intergovernmental agreement executed pursuant to this article. The report shall include the following information:

(1) The identification, by county, of each road construction project for which an intergovernmental agreement has been executed pursuant to this article, and the status of the road construction project as of June 30 preceding the due date of the report;
(2) The estimated cost of each road construction project included in the report;

(3) The source or sources of funding for each road construction project included in the report;

(4) If revenue bonds have been issued by the West Virginia Economic Development Authority, the amount of the bonds issued that are outstanding as of June 30 preceding the due date of the report for each project included in the report;

(5) The balance as of June 30 preceding the due date of the report of each county’s subaccount in the County Improvement Account;

(6) The amount of county transportation sales and use taxes deposited into each county’s subaccount in the County Road Improvement Account during the fiscal year ending June 30 preceding the due date of the report; and

(7) The amount the Commissioner of Highways withdrew from each county’s subaccount in the County Road Improvement Account during the fiscal year ending June 30 preceding the due date of the report to pay debt service on revenue bonds issued pursuant to this article or to construct projects financed on a pay-as-you-go basis.

PART IV COUNTY ROAD CONSTRUCTION SPECIAL REVENUE BONDS.


Special revenue bonds may be issued by the West Virginia Economic Development Authority pursuant to an intergovernmental written agreement between the county commission and the Commissioner of Highways to finance or
refinance, in whole or in part, road construction projects in an aggregate principal amount not exceeding the amount which the county commission(s) and the Authority mutually agree can be paid as to both principal and interest and reasonable margins for a reserve, if any, therefor from county transportation sales and use tax collections. In the discretion of the Authority, special revenue bonds issued pursuant to this article may be issued for road construction projects in two or more counties.

(1) The Authority shall establish a fund to deposit county transportation sales and use tax collections to pay debt service on the bonds.

(2) The State Treasurer shall thereafter transfer from the county’s subaccount all county transportation sales and use tax revenues pledged to the payment of principal and interest of the road construction special revenue bonds into the fund established under subdivision (1) of this section.

(3) The road construction special revenue bonds shall be authorized to be issued by the Authority pursuant to this article, and shall be secured, shall bear such date and shall mature at such time, not exceeding thirty years from the date of issue, shall bear interest at such rate or rates, including variable rates, be in such denominations, be in such form, carry such registration privileges, be payable in such medium of payment and at such place or places and such time or times and be subject to such terms of redemption as the Authority may authorize. Road construction special revenue bonds may be sold by the West Virginia Economic Development Authority, at public or private sale, at or not less than the price the Authority determines. The road construction special revenue bonds shall be executed by manual or facsimile signature of an authorized officer of the West Virginia Economic Development Authority. In case any authorized officer whose signature, or a facsimile of whose signature, appears on any bond ceases to be an authorized officer
before delivery of those bonds, the signature or facsimile is
nevertheless sufficient for all purposes the same as if he or she
had remained in office until the delivery.

§7-27-20. Trustee for bondholders; contents of trust agreement;
pledge or assignment of revenues and funds.

For bonds issued pursuant to this article, any bonds,
including refunding bonds issued by the Authority, may be
secured by a trust agreement between the Authority and a
 corporate trustee, which trustee may be any bank or trust
company within or without the state. Any such trust agreement
may contain binding covenants with the holders of the bonds as
to any matter or provisions as are considered necessary or
advisable to the Authority to enhance the marketability and
security of the bonds and may also contain such other provisions
with respect thereto as the Authority may authorize and approve.
Any trust agreement may contain a pledge or assignment of
revenues to be received in connection with the financing.


Any bonds issued by the West Virginia Economic
Development Authority pursuant to the provisions of this article
or any other provision of this code and at any time outstanding
may at any time and from time to time be refunded by the
Authority by the issuance of its refunding bonds in such amount
as it may consider necessary to refund the principal of the bonds
so to be refunded, together with any unpaid interest thereon, to
provide additional funds to approved project costs and to pay any
premiums and commissions necessary to be paid in connection
therewith. Refunding may be effected by whether the bonds to
be refunded have then matured or thereafter mature, either by
sale of the refunding bonds and the application of the proceeds
thereof for the redemption of the bonds to be refunded thereby
or by exchange of the refunding bonds for the bonds to be
15 refunded thereby. Refunding bonds shall be issued in
16 conformance with the provisions of this article related to
17 issuance of bonds.

§7-27-22. Obligations of the West Virginia Economic
Development Authority undertaken pursuant to
this article not debt of state, county, municipality
or any political subdivision.

(a) Bonds, including refunding bonds, issued under this
article and any other obligations undertaken by the West
Virginia Economic Development Authority pursuant to this
article, 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, and the holders and
owners thereof have no right to have taxes levied by the
Legislature or the taxing authority of any county, municipality
or any other political subdivision of this state for the payment of
the principal thereof or interest thereon. The bonds and other
obligations are payable solely from the revenues and funds
pledged for their payment as authorized by this article unless the
bonds are refunded by refunding bonds issued under the
authority of this article, which bonds or refunding bonds shall be
payable solely from revenues and funds pledged for their
payment as authorized by this article.

(b) All bonds, and all documents evidencing any other
obligation, shall contain on the face thereof a statement to the
effect that the bonds or other obligation as to both principal and
interest are not debts of the state or any county, municipality or
political subdivision thereof, but are payable solely from
revenues and funds pledged for their payment as authorized by
this article.

§7-27-23. Negotiability of bonds issued pursuant to this article.

Whether or not the bonds issued pursuant to this article are
of the form or character as to be negotiable instruments under the
Uniform Commercial Code, the bonds are negotiable instruments within the meaning of and for all the purposes of the Uniform Commercial Code, subject only to the provisions of the bonds for registration.


All bonds issued by the Authority pursuant to this article, and all interest and income thereon, are exempt from all taxation by this state and any county, municipality, political subdivision or agency thereof, except inheritance taxes.

§7-27-25. Personal liability; persons executing bonds issued pursuant to this article.

Neither the West Virginia Economic Development Authority, nor any officer or employee of the West Virginia Economic Development Authority, or any person executing the bonds issued pursuant to the provisions of this article, are liable personally on the bonds or subject to any personal liability or accountability by reason of the issuance thereof.

§7-27-26. Cumulative authority as to powers conferred; applicability of other statutes and charters; bonds issued pursuant to this article.

The provisions of this article relating to the issuance of bonds shall be construed as granting cumulative authority for the exercise of the various powers herein conferred, and neither the powers nor any bonds issued hereunder are affected or limited by any other statutory or charter provision now or hereafter in force, other than as may be provided in this article, it being the purpose and intention of this article to create full, separate and complete additional powers. The various powers conferred herein may be exercised independently and notwithstanding that no bonds are issued hereunder.
§7-27-27. Criteria and requirements necessary to impose county transportation sales and use taxes.

As a prerequisite to imposing county transportation sales and use taxes, the county commission shall have entered into one or more intergovernmental agreements with the Commissioner of Highways pursuant to which the county commission agrees to finance one or more road construction projects in the county, in whole or in part, using collections of the county transportation sales and use taxes deposited in the county’s subaccount in the County Road Improvement Account.

§7-27-28. Counties authorized to impose county transportation sales and use taxes.

(a) In addition to all other powers and duties now conferred by law upon county commissions, said county commissions, may, after first satisfying the requirements of the preceding section, adopt an order duly entered of record imposing county transportation sales and use taxes as provided in this article.

(b) Rate of county transportation sales and use taxes. — The rate of the county transportation sales tax and the rate of the county transportation use tax shall be identical and may not exceed one percent of the purchase price subject to tax under article fifteen, chapter eleven of this code, or one percent of the value upon which the county transportation use tax is imposed.

(c) County transportation sales tax base. — In general, the tax base of the county transportation sales tax imposed pursuant to this article shall be identical to the consumer sales and service tax base of this state, except that: (1) The exemption in section nine-f, article fifteen, chapter eleven of this code may not apply;
(2) the county sales tax may not apply when taxation is prohibited by federal law; and (3) the county sales tax may not apply as provided in subsection (e) of this section.

(d) County transportation use tax base. — The base of a county transportation use tax imposed pursuant to this article shall be identical to the base of the use tax imposed pursuant to article fifteen-a, chapter eleven of this code, on the use of tangible personal property, custom software and taxable services, within the boundaries of the county, except that: (1) The exemption in section nine-f, article fifteen, chapter eleven of this code may not apply; (2) the county sales tax may not apply when taxation is prohibited by federal law; and (3) the county sales tax may not apply as provided in subsection (e) of this section.

(e) Exceptions. — County sales and use taxes may not apply to:

(1) Sales and uses of motor vehicles upon which the tax imposed by section three-c, article fifteen, chapter eleven of this code was paid or is payable;

(2) Sales and uses of motor fuel upon which or with respect to which the taxes imposed by articles fourteen-a and fourteen-c, chapter eleven of this code was paid or is payable;

(3) Any sale of tangible personal property or custom software or the furnishing of a service that is exempt from the tax imposed by article fifteen, chapter eleven of this code;

(4) Any use of tangible personal property, custom software or the results of a taxable service that is exempt from the tax imposed by article fifteen-a, chapter eleven of this code, except that this exception may not apply to any use within the county when the state consumer sales and service tax imposed by article
(5) Any sale or use of tangible personal property, custom software, taxable service that the county is prohibited from taxing by federal law or the laws of this state.

(f) Whenever tangible personal property, custom software, or a taxable service is purchased in a county of this state that does not impose county transportation sales and use taxes pursuant to this article and the tangible personal property, custom software or results of a taxable service are used in a county that does impose county transportation sales and use taxes pursuant to this article:

(1) A vendor who delivers the tangible personal property, custom software or results of a taxable service to a purchaser, or the purchaser’s donee, located in a county that imposes county transportation sales and use taxes pursuant to this article, shall collect, add the tax to the purchase price and collect the tax from the purchaser; and

(2) A person using tangible personal property or custom software in a county of this state that imposes sales and use taxes pursuant to this article, shall remit the county’s use tax to the Tax Commissioner unless the amount of sales and use taxes imposed by the county in which the tangible personal property, custom software or taxable service was purchased were lawfully paid.

§7-27-29. Notification of Tax Commissioner, Auditor and Treasurer.

(a) Any county that imposes a county transportation sales and use tax pursuant to this article, or changes the rate of the
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§7-27-30. State level administration of county transportation sales and use taxes required; fee for services.

(a) State administration required. — Any county commission that imposes a county transportation sales and use tax may not administer, collect or enforce those taxes. Authority to administer, collect and enforce county transportation sales and use taxes is vested solely in the Tax Commissioner as required by article fifteen-b, chapter eleven of this code.

(b) Fee for services. — The Tax Commissioner may assess a fee to be retained from collections authorized by this article. Said fee shall not exceed the lesser of the cost of the service provided or five percent of the net amount of the taxes imposed pursuant to this article that are collected by the Tax Commissioner during any fiscal year, notwithstanding any provision of this code or rule to the contrary. For purposes of calculating the cost of the service provided, the provisions of section eleven-c, article ten, chapter eleven of this code and the legislative rules promulgated pursuant thereto shall be utilized.

(c) Deposit of fees in special revenue account. — The fees retained by the Tax Commissioner pursuant to subsection (b) of this section shall be deposited in the Local Sales Tax and Excise Tax Administration Fund, created pursuant to section eleven-c, article ten, chapter eleven of this code.
§7-27-31. County transportation sales tax collected from purchaser.

1 A vendor selling tangible personal property or custom software or furnishing a service in a county that imposes a county transportation sales tax pursuant to this article shall for the privilege of doing business in the county collect the county transportation sales tax from the purchaser at the same time and in the same manner that the tax imposed by article fifteen, chapter eleven of this code, is collected from the customer. All sales of tangible personal property and custom software made in the county and all services furnished in the county are presumed to be subject to the county transportation sales tax unless an exemption or exception applies.

§7-27-32. Payment of county transportation use tax.

1 A county transportation use tax imposed pursuant to this article shall be paid to the Tax Commissioner by the user of tangible personal property or custom software or the results of a taxable service in the county that imposes the county transportation use tax, unless the county’s use tax is collected by a retailer located outside the county that is a retailer engaging in business in the county as defined in this article, or the retailer is an out-of-state retailer who is required to collect West Virginia state and local use taxes.

§7-27-33. County transportation sales and use taxes in addition to other taxes.

1 County transportation sales and use taxes imposed pursuant to this article shall be collected and paid in addition to:

3 (1) The state consumer sales and service tax imposed by article fifteen, chapter eleven of this code;

5 (2) The state use tax imposed by article fifteen-a, chapter eleven of this code;
(3) Any hotel occupancy tax imposed pursuant to section one, article eighteen of this chapter;

(4) Any tax imposed pursuant to article twenty-two of this chapter;

(5) Any municipal sales or use tax imposed pursuant to section five-a, article one, chapter eight of this code;

(6) Any tax imposed pursuant to sections six and seven, article thirteen, chapter eight of this code;

(7) Any tax imposed by article thirty-eight, chapter eight of this code; and

(8) The tax imposed by section twenty-one, article three-a, chapter sixty of this code.

§7-27-34. Credit for sales tax paid to another county.

(a) A person is entitled to a credit against the use tax imposed by a county commission pursuant to this article on the use of tangible personal property, custom software or the results of a taxable service in the county equal to the amount, if any, of sales tax lawfully paid to another county for the acquisition of that tangible personal property, custom software or taxable service. However, the amount of credit allowed may not exceed the amount of use tax imposed on the use of the property or service in the county of use and no credit may be allowed for payment of county special district excise taxes imposed pursuant to article twenty-two of this chapter.

(b) For purposes of this section:

(1) “County” means a county in this state or a comparable unit of local government in another state;
(2) “Sales tax” includes a sales tax, or a compensating use tax, lawfully imposed on the sale or use of tangible personal property, custom software or a taxable service by the county, as appropriate, in which the sale or first use occurred; and

(3) “State” includes the fifty states of the United States and the District of Columbia but does not include any of the several territories organized by Congress.

(c) No credit is allowed under this section for payment of any sales or use taxes imposed by this state or by any other state.

§7-27-35. Sourcing rules for county transportation sales and use taxes.

Sales, purchases and uses of tangible personal property, custom software and taxable services shall be sourced for purposes of imposition and payment of county transportation sales and use taxes imposed pursuant to this article in accordance with the sourcing rules set forth in article fifteen-b, chapter eleven of this code applicable to the taxes imposed by articles fifteen and fifteen-a, chapter eleven of this code.


(a) Application of state sales tax. — The provision of article fifteen, chapter eleven of this code, and any subsequent amendments to that article and the administrative rules of the Tax Commissioner relating to article fifteen of chapter eleven shall apply to a county transportation sales tax imposed pursuant to this article to the extent that article and the rules are applicable to the tax imposed by the county.

(b) Application of state use tax law. — The provisions of article fifteen-a, chapter eleven of this code, and any subsequent amendments to that article and the rules of the Tax
Commissioner relating to article fifteen-a of chapter eleven shall apply to a county transportation use tax imposed pursuant to this article to the extent the rules and laws are applicable.

(c) Definitions incorporated. — Any term used in this article or in an order adopted by a county commission pursuant to this article imposing county transportation sales and use taxes that is defined in articles fifteen, fifteen-a and fifteen-b, chapter eleven of this code and used in those articles in a similar context, shall have the same meaning when used in this article or in an order entered by the county commission pursuant to this article imposing county transportation sales and use taxes, unless the context in which the term is used clearly indicates that a different result is intended by the Legislature.


Every provision of the West Virginia Tax Procedure and Administration Act set forth in article ten, chapter eleven of this code, and as amended from time to time by the Legislature, applies to the taxes imposed pursuant to this article, except as otherwise expressly provided in this article, with like effect as if that act were applicable only to the taxes imposed by this article and were set forth in extensor in this article or the order entered by the county commission imposing the taxes pursuant to this article.


Every provision of the West Virginia Tax Crimes and Penalties Act set forth in article nine, chapter eleven of this code, and as amended from time to time by the Legislature, applies to the taxes imposed pursuant to this article with like effect as if that act were applicable only to the taxes imposed pursuant to
this article and were set forth in extensor in this article or the
order entered by the county commission imposing the taxes
pursuant to this article.

§7-27-39. Local rate and boundary changes.

(a) General. — New county transportation sales and use
taxes and any change in the rate of existing county transportation
sales and use taxes shall first apply and be collected and paid
only on the first day of a calendar quarter that begins at least
sixty days after the Tax Commissioner notifies sellers of the
imposition of the county taxes, or a change in the rate of those
taxes, except as provided in subsection (b) of this section.

(b) Printed catalogs. — County transportation sales and use
taxes and any change in the rate of taxation shall first apply to
purchases from printed catalogs where the purchaser computed
the tax based upon the local tax rate published in the catalog
only on and after the first day of a calendar quarter that begins
after the Tax Commissioner provides sellers at least one hundred
twenty days’ notice of imposition of the tax or a change in the
rate of taxation.

(c) County boundary changes. — A county boundary change
shall first apply for purposes of computation of a county
transportation sales and use taxes on the first day of a calendar
quarter that begins at least sixty days after the Tax
Commissioner notifies sellers of the boundary change.

§7-27-40. Deposit of county transportation sales and use taxes;
payment to Division of Highways.

(a) All county sales and use taxes collected by the Tax
Commissioner under this article shall be collected and paid to
the credit of each county commission’s subaccount in the
“County Road Improvement Account” established pursuant to
this article.
(b) The credit shall be made to the subaccount of the county commission of the county in which the taxable sales were made and services rendered or taxable uses occurred as shown by the records of the Tax Commissioner and certified by the Tax Commissioner to the State Treasurer, namely, the location of each place of business of every vendor collecting and paying sales and use taxes to the Tax Commissioner without regard to the place of possible use by the purchaser and by every person remitting county transportation use tax to the Tax Commissioner or paying the county’s use tax to the Tax Commissioner.

(c) As soon as practicable after the county transportation sales and use taxes for a particular county have been paid into the county’s subaccount of the “County Road Improvement Account” in any month for the preceding reporting period, the Commissioner of Highways or the West Virginia Economic Development Authority may issue a requisition to the Auditor requesting issuance of a state warrant for the funds of the county in its subaccount, as provided for by the intergovernmental agreement or agreements executed by the Commissioner of Highways and the county commission.

(1) Upon receipt of the requisition, the Auditor shall issue his or her warrant on the State Treasurer for the funds requested and the State Treasurer shall pay the warrant out of the subaccount.

(2) If errors are made in any payment, or adjustments are otherwise necessary, whether attributable to refunds to taxpayers or to some other fact, the errors shall be corrected and adjustments made in the payments for the next six months as follows: One sixth of the total adjustment shall be included in the payments for each month for the next six months, to be paid in full during this six months period. In addition, the payment shall include a refund of amounts erroneously not paid to the subaccount of the county commission and not previously
remitted to the county’s subaccount during the three years preceding the discovery of the error.

(3) A correction and adjustment in payments described in this subsection due to the misallocation of funds by the person remitting the tax shall be made within three years of the date of the payment error.

§7-27-41. Effective date of county transportation sales and use tax.

(a) Notwithstanding the effective date of an order of the county commission imposing a county transportation sales and use tax, or changing the rate of tax, the tax or a rate change may not become operational and no vendor may be required to collect the tax and no purchaser or user may be required to pay the tax until the first day of a calendar quarter that begins at least sixty days after the Tax Commissioner complies with the requirements of section thirty-five, article fifteen-b, chapter eleven of this code.

(b) The Tax Commissioner shall issue his or her notice to vendors and other persons required to collect sales and use taxes within thirty days after receiving notice from the county:

(1) A certified copy of the order of the county commission imposing a county transportation sales and use tax, or changing the rate of tax, notwithstanding any other provision of this code or rule to the contrary;

(2) The rate and boundary database of the county identifying all of the five digit zip codes and nine-digit zip codes located in the county in conformity with the requirements for West Virginia to maintain full membership in the Streamlined Sales Tax Governing Board pursuant to article fifteen-b, chapter eleven of this code; and

(3) Such other information as the Tax Commissioner may reasonably require.
§7-27-42. Early retirement of special revenue bonds; termination of county transportation sales and use taxes; excess funds.

(a) General. — When special revenue bonds have been issued as provided in this article and the amount of county transportation sales and use taxes collected, less costs of administration, collection and enforcement, exceeds the amount needed to pay project costs and annual debt service, including the funding of required debt service and maintenance reserves, if any, the additional amount remaining in the county’s subaccount in the County Road Improvement Account shall be used to retire outstanding revenue bonds before their maturity date in accordance with the terms of such bonds.

(b) Termination of county transportation sales and use taxes. — Once the special revenue bonds issued as provided in this article are no longer outstanding or have been defeased, and no additional road construction projects have been requested and approved by the Commissioner of Highways, the county transportation sales and use taxes shall be discontinued by order adopted by the county commission as provided in this article. Termination of the county transportation sales and use taxes as provided in this section may not bar or otherwise prevent the Tax Commissioner from collecting county transportation sales and use taxes that accrued before the termination date and the rights of the state and the taxpayers as to those taxes shall be preserved.

(c) Excess funds. — After all intergovernmental agreements with the Commissioner of Highways have ended and all debt service on special revenue bonds issued to finance, in whole or in part, the road construction projects has been paid or provided for, and county transportation sales and use taxes imposed by the county have terminated, the Commissioner of Highways shall forward the unencumbered balance of moneys remaining in the county’s subaccount in the County Road Improvement Account
PART VI. MISCELLANEOUS.


(a) County commissions. — The powers conferred by this article are in addition and supplemental to the powers conferred upon county commissions by the Legislature elsewhere in this chapter.

(b) Commissioner of Highways. — The powers conferred by this article are in addition and supplemental to the powers conferred upon the Commissioner of Highways, the Division of Highways, and the Department of Transportation by the Legislature elsewhere in this code.

(c) West Virginia Economic Development Authority. — The powers conferred by this article are in addition and supplemental to the powers conferred upon the West Virginia Economic Development Authority by the Legislature elsewhere in this code.

§7-27-44. Public officials exempt from personal liability.

No member of a county commission or other county officer may be personally liable on any contract or obligation executed pursuant to the authority contained in this article, nor may these contracts or obligations or the issuance of revenue bonds by the Authority secured by county transportation sales and use taxes imposed by county commissions under this article be considered as misfeasance in office.

invalid, unlawful or unconstitutional, that decision does not affect the validity of the remaining portions of this article or any part thereof.

CHAPTER 31. CORPORATIONS

ARTICLE 15. WEST VIRGINIA ECONOMIC DEVELOPMENT AUTHORITY.

§31-15-16c. Bonds for county capital improvements; limitations; authority to issue revenue bonds; use of funds to pay for projects.

(a) The West Virginia Economic Development Authority may, in accordance with the provisions of this article and article twenty seven, chapter seven of this code, issue special revenue bonds from time to time, to pay for a portion of the cost of constructing, equipping, improving or maintaining road projects under article twenty seven, chapter seven of this code or to refund the bonds, at the request of the county. The principal amount of the bonds issued under this section may not exceed, in the aggregate, an amount that, in the opinion of the Authority, is necessary to provide sufficient funds for achievement of the purposes of this section and article twenty seven, chapter seven of this code, and is within the limits of moneys pledged for the repayment of the principal, interest and redemption premium, if any, on any revenue bonds or refunding bonds authorized by this section and article twenty seven, chapter seven of the code. Any revenue bonds issued on or after the effective date of this section which are secured by county transportation sales and use tax shall mature at a time or times not exceeding thirty years from their respective dates except as otherwise provided in article twenty-seven, chapter seven of the code. The principal, interest and redemption premium, if any, on the bonds shall be payable solely from the county’s subaccount in the County Road Improvement Account in the State Treasury established in article twenty-seven, chapter seven of this code.
(b) All amounts deposited in the fund shall be pledged to the repayment of the principal, interest and redemption premium, if any, on any revenue bonds or refunding revenue bonds authorized by this section. The Authority may further provide in the trust agreement for priorities on the revenues paid into the county’s subaccount in the County Road Improvement Account as may be necessary for the protection of the prior rights of the holders of bonds issued at different times under the provisions of this section or article twenty seven, chapter seven of this code. The bonds issued pursuant to this section shall be separate from all other bonds which may be or have been issued from time to time under the provisions of this article or article twenty seven, chapter seven of this code. The debt service fund established for each bond issue shall be pledged solely for the repayment of bonds issued pursuant to this section and article twenty seven, chapter seven of this code. On or prior to May 1 of each year, commencing May 1, 2017, the Authority shall certify to each county commission the principal and interest and coverage ratio requirements for the following fiscal year on any revenue bonds or refunding revenue bonds issued pursuant to this section, and for which moneys deposited in the debt service fund have been pledged, or will be pledged, for repayment pursuant to this section.

(c) After the Authority has issued bonds authorized by this section, and after the requirements of all funds have been satisfied, including coverage and reserve funds established in connection with the bonds issued pursuant to this section, any balance remaining in the debt service fund may be used for the redemption of any of the outstanding bonds issued under this section which, by their terms, are then redeemable or for the purchase of the outstanding bonds at the market price, but not to exceed the price, if any, at which redeemable, and all bonds redeemed or purchased shall be immediately canceled and shall not again be issued. Any funds not used as provided in this subsection shall be returned to the county commission of the county for which the bonds were issued.
CHAPTER 52

(Com. Sub. for H. B. 2801 - By Delegates Rowe, Pushkin, Lynch, Guthrie and Byrd)

[Passed March 8, 2016; in effect ninety days from passage.]
[Approved by the Governor on March 16, 2016.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §7-1-3pp; and to amend said code by adding thereto a new section, designated §8-12-16d, all relating to permitting county commissions and municipalities to designate areas of special interest which will not affect the use of property in those areas; and setting forth their additional powers and responsibilities.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §7-1-3pp; and that said code be amended by adding thereto a new section, designated §8-12-16d, all to read as follows:

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 1. COUNTY COMMISSIONS GENERALLY.

§7-1-3pp. Additional powers and duties of commission; areas of special or unique interest.

A county commission may designate areas of special or unique interest, with sites, buildings and structures within those areas, which are of local, regional, statewide or national significance. An area that has been so designated does not limit the use of nor require any alteration of any privately owned
A municipality may designate areas of special or unique interest, with sites, buildings and structures within those areas, which are of local, regional, statewide or national significance. An area that has been so designated does not limit the use of nor require any alteration of any privately owned property in the area for any purpose. The municipality may also publish a register setting forth information concerning those areas; place markers on private property only with the consent of the property owners; place markers on public property and along highways or streets designating those areas; seek and accept gifts, bequests, endowments and funds to accomplish the purpose of this section; sell, lease or alter property it owns in or near the designated areas; seek the advice and assistance of individuals, groups and departments and governmental agencies; and seek codesignation of areas with a municipality where an area is to be designated in each jurisdiction.
areas; seek the advice and assistance of individuals, groups and departments and governmental agencies; and seek codeignation of areas with a county commission where an area is to be designated in each jurisdiction.

CHAPTER 53

(Com. Sub. for H. B. 4612 - By Delegates E. Nelson, Mr. Speaker (Mr. Armstead), Gearheart, Hamrick, Householder, Anderson, Shott, Storch, Espinosa, Howell and Boggs)

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

AN ACT to amend and reenact §7-11B-3, §7-11B-4, §7-11B-14, §7-11B-21 and §7-11B-22 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto two new sections, designated §7-11B-29 and §7-11B-30; to amend and reenact §7-22-5, §7-22-7, §7-22-9, §7-22-12 and §7-22-14 of said code; to amend said code by adding thereto two new sections, designated §7-22-23 and §7-22-24; to amend and reenact §8-38-5, §8-38-7, §8-38-8, §8-38-12 and §8-38-14 of said code; to amend said code by adding thereto two new sections, designated §8-38-23 and §8-38-24; and to amend and reenact §11-10-11a of said code, all relating generally to tax increment financing; authorizing tax increment financing for funding road projects in West Virginia; permitting certain agreements between the Division of Highways and counties or municipalities regarding development districts; permitting financing of certain projects by proceeds of tax increment financing obligations; permitting road construction projects be done jointly by counties and municipalities under certain circumstances; establishing procedures and requirements
for applications and the management of projects and districts; providing that projects are public improvements and subject to certain requirements; permitting the Division of Highways to propose certain projects; establishing procedures for the West Virginia Development Office and the Tax Commissioner regarding applications and their review; permitting audits in certain circumstances; establishing a procedure for adding or removing property from an economic opportunity development district; requiring procedures relating to taxpayers; providing for confidentiality; providing that roads to be part of the state road system; requiring legislative rulemaking; permitting a fee to be assessed; making findings; and defining terms.

Be it enacted by the Legislature of West Virginia:

That §7-11B-3, §7-11B-4, §7-11B-14, §7-11B-21 and §7-11B-22 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that said code be amended by adding thereto two new sections, designated §7-11B-29 and §7-11B-30; that §7-22-5, §7-22-7, §7-22-8, §7-22-12 and §7-22-14 of said code be amended and reenacted; that said code be amended by adding thereto two new sections, designated §7-22-23 and §7-22-24; that §8-38-5, §8-38-7, §8-38-8, §8-38-12 and §8-38-14 of said code be amended and reenacted; that said code be amended by adding thereto two new sections, designated §8-38-23 and §8-38-24; and that §11-10-11a of said code be amended and reenacted, all to read as follows:

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 11B. WEST VIRGINIA TAX INCREMENT FINANCING ACT.

§7-11B-3. Definitions.

1. (a) General. — When used in this article, words and phrases defined in this section have the meanings ascribed to them in this
section unless a different meaning is clearly required either by
the context in which the word or phrase is used or by specific
definition in this article.

(b) Words and phrases defined. —

“Agency” includes a municipality, a county or municipal
development agency established pursuant to authority granted in
section one, article twelve of this chapter, a port authority, an
airport authority or any other entity created by this state or an
agency or instrumentality of this state that engages in economic
development activity or the Division of Highways.

“Base assessed value” means the taxable assessed value of
all real and tangible personal property, excluding personal motor
vehicles, having a tax situs within a development or
redevelopment district as shown upon the landbooks and
personal property books of the assessor on July 1 of the calendar
year preceding the effective date of the order or ordinance
creating and establishing the development or redevelopment
district: Provided, That for any development or redevelopment
district approved after the effective date of the amendments to
this section enacted during the regular session of the Legislature
in 2014, personal trailers, personal boats, personal campers,
personal motor homes, personal ATVs and personal motorcycles
having a tax situs within a development or redevelopment
district are excluded from the base assessed value.

“Blighted area” means an area within the boundaries of a
development or redevelopment district located within the
territorial limits of a municipality or county in which the
structures, buildings or improvements, by reason of dilapidation,
deterioration, age or obsolescence, inadequate provision for
access, ventilation, light, air, sanitation, open spaces, high
density of population and overcrowding or the existence of
conditions which endanger life or property, are detrimental to the
public health, safety, morals or welfare. “Blighted area” includes any area which, by reason of the presence of a substantial number of substandard, slum, deteriorated or deteriorating structures, predominance of defective or inadequate street layout, faulty lot layout in relation to size, adequacy, accessibility or usefulness, unsanitary or unsafe conditions, deterioration of site or other improvements, diversity of ownership, defective or unusual conditions of title or the existence of conditions which endanger life or property by fire and other causes, or any combination of such factors, substantially impairs or arrests the sound growth of a municipality, retards the provision of housing accommodations or constitutes an economic or social liability and is a menace to the public health, safety, morals or welfare in its present condition and use, or any area which is predominantly open and which because of lack of accessibility, obsolete platting, diversity of ownership, deterioration of structures or of site improvements, or otherwise, substantially impairs or arrests the sound growth of the community.

“Commissioner of Highways” means the Commissioner of the Division of Highways.

“Conservation area” means any improved area within the boundaries of a development or redevelopment district located within the territorial limits of a municipality or county in which fifty percent or more of the structures in the area have an age of thirty-five years or more. A conservation area is not yet a blighted area but is detrimental to the public health, safety, morals or welfare and may become a blighted area because of any one or more of the following factors: Dilapidation; obsolescence; deterioration; illegal use of individual structures; presence of structures below minimum code standards; abandonment; excessive vacancies; overcrowding of structures and community facilities; lack of ventilation, light or sanitary facilities; inadequate utilities; excessive land coverage; deleterious land use or layout; depreciation of physical
maintenance; and lack of community planning. A conservation area shall meet at least three of the factors provided in this subdivision.

“County commission” means the governing body of a county of this state and, for purposes of this article only, includes the governing body of a Class I or II municipality in this state.

“Current assessed value” means the annual taxable assessed value of all real and tangible personal property, excluding personal motor vehicles, having a tax situs within a development or redevelopment district as shown upon the landbook and personal property records of the assessor: Provided, That for any development or redevelopment district approved after the effective date of the amendments to this section enacted during the regular session of the Legislature in 2014, personal trailers, personal boats, personal campers, personal motor homes, personal ATVs and personal motorcycles having a tax situs within a development or redevelopment district are excluded from the current assessed value.

“Development office” means the West Virginia Development Office created in section one, article two, chapter five-b of this code.

“Development project” or “redevelopment project” means a project undertaken in a development or redevelopment district for eliminating or preventing the development or spread of slums or deteriorated, deteriorating or blighted areas, for discouraging the loss of commerce, industry or employment, for increasing employment or for any combination thereof in accordance with a tax increment financing plan. A development or redevelopment project may include one or more of the following:

(A) The acquisition of land and improvements, if any, within the development or redevelopment district and clearance of the land so acquired; or
(B) The development, redevelopment, revitalization or conservation of the project area whenever necessary to provide land for needed public facilities, public housing or industrial or commercial development or revitalization, to eliminate unhealthful, unsanitary or unsafe conditions, to lessen density, mitigate or eliminate traffic congestion, reduce traffic hazards, eliminate obsolete or other uses detrimental to public welfare or otherwise remove or prevent the spread of blight or deterioration;

(C) The financial or other assistance in the relocation of persons and organizations displaced as a result of carrying out the development or redevelopment project and other improvements necessary for carrying out the project plan, together with those site improvements that are necessary for the preparation of any sites and making any land or improvements acquired in the project area available, by sale or lease, for public housing or for development, redevelopment or rehabilitation by private enterprise for commercial or industrial uses in accordance with the plan;

(D) The construction of capital improvements within a development or redevelopment district designed to increase or enhance the development of commerce, industry or housing within the development project area; or

(E) Any other projects the county commission or the agency deems appropriate to carry out the purposes of this article.

“Development or redevelopment district” means an area proposed by one or more agencies as a development or redevelopment district which may include one or more counties, one or more municipalities or any combination thereof, that has been approved by the county commission of each county in which the project area is located if the project is located outside the corporate limits of a municipality, or by the governing body
of a municipality if the project area is located within a municipality, or by both the county commission and the governing body of the municipality when the development or redevelopment district is located both within and without a municipality.

“Division of Highways” means the state Department of Transportation, Division of Highways.

“Economic development area” means any area or portion of an area within the boundaries of a development or redevelopment district located within the territorial limits of a municipality or county that is neither a blighted area nor a conservation area and for which the county commission finds that development or redevelopment will not be solely used for development of commercial businesses that will unfairly compete in the local economy and that development or redevelopment is in the public interest because it will:

(A) Discourage commerce, industry or manufacturing from moving their operations to another state;

(B) Result in increased employment in the municipality or county, whichever is applicable; or

(C) Result in preservation or enhancement of the tax base of the county or municipality.

“Governing body of a municipality” means the city council of a Class I or Class II municipality in this state.

“Incremental value”, for any development or redevelopment district, means the difference between the base assessed value and the current assessed value. The incremental value will be positive if the current value exceeds the base value and the incremental value will be negative if the current value is less than the base assessed value.
“Includes” and “including”, when used in a definition contained in this article, shall not exclude other things otherwise within the meaning of the term being defined.

“Intergovernmental agreement” means any written agreement that may be entered into by and between two or more county commissions, or between two or more municipalities, or between a county commission and a municipality, in the singular and the plural, or between two or more government entities and the Commissioner of Highways: Provided, That any intergovernmental agreement shall not be subject to provisions governing intergovernmental agreements set forth in other provisions of this code, including, but not limited to, article twenty-three, chapter eight of this code, but shall be subject to the provisions of this article.

“Local levying body” means the county board of education and the county commission and includes the governing body of a municipality when the development or redevelopment district is located, in whole or in part, within the boundaries of the municipality.

“Obligations” or “tax increment financing obligations” means bonds, loans, debentures, notes, special certificates or other evidences of indebtedness issued by a county commission or municipality pursuant to this article to carry out a development or redevelopment project or to refund outstanding obligations under this article.

“Order” means an order of the county commission adopted in conformity with the provisions of this article and as provided in this chapter.

“Ordinance” means a law adopted by the governing body of a municipality in conformity with the provisions of this article and as provided in chapter eight of this code.
“Payment in lieu of taxes” means those estimated revenues from real property and tangible personal property having a tax situs in the area selected for a development or redevelopment project which revenues, according to the development or redevelopment project or plan, are to be used for a private use, which levying bodies would have received had a county or municipality not adopted one or more tax increment financing plans and which would result from levies made after the date of adoption of a tax increment financing plan during the time the current assessed value of all taxable real and tangible personal property in the area selected for the development or redevelopment project exceeds the total base assessed value of all taxable real and tangible personal property in the development or redevelopment district until the designation is terminated as provided in this article.

“Person” means any natural person, and any corporation, association, partnership, limited partnership, limited liability company or other entity, regardless of its form, structure or nature, other than a government agency or instrumentality.

“Private project” means any project that is subject to ad valorem property taxation in this state or to a payment in lieu of tax agreement that is undertaken by a project developer in accordance with a tax increment financing plan in a development or redevelopment district.

“Project” means any capital improvement, facility or both, as specifically set forth and defined in the project plan, requiring an investment of capital including, but not limited to, extensions, additions or improvements to existing facilities, including water or wastewater facilities, and the remediation of contaminated property as provided for in article twenty-two, chapter twenty-two of this code, but does not include performance of any governmental service by a county or municipal government.
“Project area” means an area within the boundaries of a development or redevelopment district in which a development or redevelopment project is undertaken as specifically set forth and defined in the project plan.

“Project costs” means expenditures made in preparation of the development or redevelopment project plan and made, or estimated to be made, or monetary obligations incurred, or estimated to be incurred, by the county commission which are listed in the project plan as capital improvements within a development or redevelopment district, plus any costs incidental thereto. “Project costs” include, but are not limited to:

(A) Capital costs, including, but not limited to, the actual costs of the construction of public works or improvements, capital improvements and facilities, new buildings, structures and fixtures, the demolition, alteration, remodeling, repair or reconstruction of existing buildings, structures and fixtures, environmental remediation, parking and landscaping, the acquisition of equipment and site clearing, grading and preparation;

(B) Financing costs, including, but not limited to, an interest paid to holders of evidences of indebtedness issued to pay for project costs, all costs of issuance and any redemption premiums, credit enhancement or other related costs;

(C) Real property assembly costs, meaning any deficit incurred resulting from the sale or lease as lessor by the county commission of real or personal property having a tax situs within a development or redevelopment district for consideration that is less than its cost to the county commission;

(D) Professional service costs including, but not limited to, those costs incurred for architectural planning, engineering and legal advice and services;
(E) Imputed administrative costs including, but not limited
to, reasonable charges for time spent by county employees or
municipal employees in connection with the implementation of
a project plan;

(F) Relocation costs including, but not limited to, those
relocation payments made following condemnation and job
training and retraining;

(G) Organizational costs including, but not limited to, the
costs of conducting environmental impact and other studies and
the costs of informing the public with respect to the creation of
a development or redevelopment district and the implementation
of project plans;

(H) Payments made, in the discretion of the county
commission or the governing body of a municipality, which are
found to be necessary or convenient to creation of development
or redevelopment districts or the implementation of project
plans; and

(I) That portion of costs related to the construction of
environmental protection devices, storm or sanitary sewer lines,
water lines, amenities or streets or the rebuilding or expansion of
streets, or the construction, alteration, rebuilding or expansion of
which is necessitated by the project plan for a development or
redevelopment district, whether or not the construction,
alteration, rebuilding or expansion is within the area or on land
contiguous thereto.

“Project developer” means any person who engages in the
development of projects in the state.

“Project plan” means the plan for a development or
redevelopment project that is adopted by a county commission
or governing body of a municipality in conformity with the
requirements of this article and this chapter or chapter eight of
this code.

“Real property” means all lands, including improvements
and fixtures on them and property of any nature appurtenant to
them or used in connection with them and every estate, interest
and right, legal or equitable, in them, including terms of years
and liens by way of judgment, mortgage or otherwise, and
indebtedness secured by the liens.

“Redevelopment area” means an area designated by a
county commission or the governing body of a municipality in
respect to which the commission or governing body has made a
finding that there exist conditions which cause the area to be
classified as a blighted area, a conservation area, an economic
development area or a combination thereof, which area includes
only those parcels of real property directly and substantially
benefitted by the proposed redevelopment project located within
the development or redevelopment district or land contiguous
thereto.

“Redevelopment plan” means the comprehensive program
under this article of a county or municipality for redevelopment
intended by the payment of redevelopment costs to reduce or
eliminate those conditions, the existence of which qualified the
redevelopment area as a blighted area, conservation area,
economic development area or combination thereof, and to
thereby enhance the tax bases of the levyng bodies which extend
into the redevelopment area. Each redevelopment plan shall
conform to the requirements of this article.

“Tax increment” means the amount of regular levy property
taxes attributable to the amount by which the current assessed
value of real and tangible personal property having a tax situs in
a development or redevelopment district exceeds the base
assessed value of the property.
“Tax increment financing fund” means a separate fund for a development or redevelopment district established by the county commission or governing body of the municipality into which all tax increment revenues and other pledged revenues are deposited and from which projected project costs, debt service and other expenditures authorized by this article are paid.

“This code” means the Code of West Virginia, 1931, as amended by the Legislature.

“Total ad valorem property tax regular levy rate” means the aggregate levy rate of all levying bodies on all taxable property having a tax situs within a development or redevelopment district in a tax year but does not include excess levies, levies for general obligation bonded indebtedness or any other levies that are not regular levies.

§7-11B-4. Powers generally.

In addition to any other powers conferred by law, a county commission or governing body of a Class I or II municipality may exercise any powers necessary and convenient to carry out the purpose of this article, including the power to:

1. Create development and redevelopment areas or districts and to define the boundaries of those areas or districts;

2. Cause project plans to be prepared, to approve the project plans, and to implement the provisions and effectuate the purposes of the project plans;

3. Establish tax increment financing funds for each development or redevelopment district;

4. Issue tax increment financing obligations and pledge tax increments and other revenues for repayment of the obligations;
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(5) Deposit moneys into the tax increment financing fund for any development or redevelopment district;

(6) Enter into any contracts or agreements, including, but not limited to, agreements with project developers, consultants, professionals, financing institutions, trustees and bondholders determined by the county commission to be necessary or convenient to implement the provisions and effectuate the purposes of project plans;

(7) Receive from the federal government or the state loans and grants for, or in aid of, a development or redevelopment project and to receive contributions from any other source to defray project costs;

(8) Exercise the right of eminent domain to condemn property for the purposes of implementing the project plan. The rules and procedures set forth in chapter fifty-four of this code shall govern all condemnation proceedings authorized in this article;

(9) Make relocation payments to those persons, businesses, or organizations that are displaced as a result of carrying out the development or redevelopment project;

(10) Clear and improve property acquired by the county commission pursuant to the project plan and construct public facilities on it or contract for the construction, development, redevelopment, rehabilitation, remodeling, alteration or repair of the property;

(11) Cause parks, playgrounds or water, sewer or drainage facilities or any other public improvements, including, but not limited to, fire stations, community centers and other public buildings, which the county commission is otherwise authorized to undertake to be laid out, constructed or furnished in
connection with the development or redevelopment project. When the public improvement of the county commission is to be located, in whole or in part, within the corporate limits of a municipality, the county commission shall consult with the mayor and the governing body of the municipality regarding the public improvement and shall pay for the cost of the public improvement from the tax increment financing fund;

(12) Lay out and construct, alter, relocate, change the grade of, make specific repairs upon or discontinue public ways and construct sidewalks in, or adjacent to, the project area: Provided, That when the public way or sidewalk is located within a municipality, the governing body of the municipality shall consent to the same and if the public way is a state road, the consent of the commissioner of highways shall be necessary;

(13) Cause private ways, sidewalks, ways for vehicular travel, playgrounds or water, sewer or drainage facilities and similar improvements to be constructed within the project area for the particular use of the development or redevelopment district or those dwelling or working in it;

(14) Construct, or cause to be constructed, any capital improvements of a public nature;

(15) Construct capital improvements to be leased or sold to private entities in connection with the goals of the development or redevelopment project;

(16) Cause capital improvements owned by one or more private entities to be constructed within the development or redevelopment district;

(17) Designate one or more official or employee of the county commission to make decisions and handle the affairs of development and redevelopment project areas or districts created by the county commission pursuant to this article;
(18) Adopt orders, ordinances or bylaws or repeal or modify such ordinances or bylaws or establish exceptions to existing ordinances and bylaws regulating the design, construction and use of buildings within the development or redevelopment district created by a county commission or governing body of a municipality under this article;

(19) Enter orders, adopt bylaws or repeal or modify such orders or bylaws or establish exceptions to existing orders and bylaws regulating the design, construction and use of buildings within the development or redevelopment district created by a county commission or governing body of a municipality under this article;

(20) Sell, mortgage, lease, transfer or dispose of any property or interest therein, by contract or auction, acquired by it pursuant to the project plan for development, redevelopment or rehabilitation in accordance with the project plan;

(21) Expend project revenues as provided in this article;

(22) Enter into one or more intergovernmental agreements or memorandums of understanding with the Commissioner of Highways or with other county commissions or municipalities regarding development or redevelopment districts;

(23) Designate one or more officials or employees of the county commission or municipality that created the development or redevelopment district to sign documents, to make decisions and handle the affairs of the development or redevelopment district. When two or more county commissions, or municipalities, or any combination thereof, established the development or redevelopment district, the government entities shall enter into one or more intergovernmental agreements regarding administration of the development or redevelopment district and the handling of its affairs; and
(24) Do all things necessary or convenient to carry out the powers granted in this article.

§7-11B-14. Projects financed by tax increment financing considered to be public improvements subject to prevailing wage, local labor preference and competitive bid requirements.

(a) Any project acquired, constructed, or financed, in whole or in part, by a county commission or municipality under this article shall be considered to be a “public improvement” within the meaning of the provisions of articles one-c, chapter twenty-one of this code.

(b) The county commission or municipality shall, except as provided in subsection (c) of this section, solicit or require solicitation of competitive bids and require compliance with article one-c, chapter twenty-one of this code for every project or infrastructure project funded pursuant to this article exceeding $25,000 in total cost: Provided, That the provisions of article two-d, chapter seventeen of this code may apply where applicable to projects subject to an intergovernmental agreement with the Commissioner of Highways.

(c) Following the solicitation of the bids, the construction contract shall be awarded to the lowest qualified responsible bidder, who shall furnish a sufficient performance and payment bond: Provided, That the county commission, municipality or other person soliciting the bids may reject all bids and solicit new bids on the project.

(d) No officer or employee of this state or of any public agency, public authority, public corporation, or other public entity, and no person acting or purporting to act on behalf of such officer or employee or public entity shall require that any performance bond, payment bond, or bid bond required or
permitted by this section be obtained from any particular surety company, agent, broker or producer.

(e) This section does not:

(1) Apply to work performed on construction projects not exceeding a total cost of $50,000 by regular full-time employees of the county commission or the municipality: Provided, That no more than $50,000 shall be expended on an individual project in a single location in a twelve-month period;

(2) Prevent students enrolled in vocational educational schools from being used in construction or repair projects when such use is a part of the students’ training program;

(3) Apply to emergency repairs to building components and systems: Provided, That the term “emergency repairs” means repairs that, if not made immediately, will seriously impair the use of the building components and systems or cause danger to those persons using the building components and systems; or

(4) Apply to any situation where the county commission or municipality comes to an agreement with volunteers, or a volunteer group, by which the governmental body will provide construction or repair materials, architectural, engineering, technical or any other professional services and the volunteers will provide the necessary labor without charge to, or liability upon, the governmental body: Provided, That the total cost of the construction or repair projects does not exceed $50,000.

(f) The provisions of subsections (a) and (b) of this section apply to any specific project, whether privately or publicly owned or constructed on private or public lands, that are financed or to be financed, in whole or in part, with tax increment or proceeds of tax increment financing obligations: Provided, That, the provisions of subsections (a) and (b) of this
section do not apply to any project or part of a project that is privately owned and financed without any tax increment or proceeds of tax increment financing obligations.

§7-11B-21. Tax increment financing obligations — authorizing order or ordinance.

1. (a) Issuance of tax increment financing obligations shall be authorized by order of the county commission, or ordinance of the municipality, that created the development or redevelopment district.

2. (b) The order, or ordinance, shall state the name of the development or redevelopment district, the amount of tax increment financing obligations authorized, the type of obligation authorized and the interest rate or rates to be borne by the bonds, notes or other tax increment financing obligations.

3. (c) The order or ordinance may prescribe the terms, form and content of the tax increment financing obligations and other particulars or information the county commission, or governing body of the municipality, issuing the obligations deems useful or it may include by reference the terms and conditions set forth in a trust indenture or other document securing the development or redevelopment project tax increment financing obligations.

§7-11B-22. Tax increment financing obligations — terms, conditions.

1. (a) Tax increment financing obligations may not be issued in an amount exceeding the estimated aggregate project costs, including all costs of issuance of the tax increment financing obligations.

2. (b) Tax increment financing obligations shall not be included in the computation of the Constitutional debt limitation of the
counties and municipality issuing the tax increment financing obligations.

c) Tax increment financing obligations shall mature over a period not exceeding thirty years from the date of entry of the county commission’s order, or the effective date of the municipal ordinance, creating the development or redevelopment district and approving the development or redevelopment plan, or a period terminating with the date of termination of the development or redevelopment district, whichever period terminates earlier.

d) Tax increment financing obligations may contain a provision authorizing their redemption, in whole or in part, at stipulated prices, at the option of the county commission or municipality issuing the obligations, and, if so, the obligations shall provide the method of selecting the tax increment financing obligations to be redeemed.

e) The principal and interest on tax increment financing obligations may be payable at any place set forth in the resolution, trust indenture or other document governing the obligations.

f) Bonds or notes shall be issued in registered form.

g) Bonds or notes may be issued in any denomination.

h) Each tax increment financing obligation issued under this article is declared to be a negotiable instrument.

i) The tax increment financing obligations may be sold at public or private sale.

j) Insofar as they are consistent with subsections (a), (b) and (c) of this section, the procedures for issuance, form, contents, execution, negotiation and registration of county and municipal
industrial or commercial revenue bonds set forth in article two-c, chapter thirteen of this code are incorporated by reference herein.

(k) The bonds may be refunded or refinanced and refunding bonds may be issued in any principal amount: Provided, That the last maturity of the refunding bonds shall not be later than the last maturity of the bonds being refunded.

§7-11B-29. Joint development or redevelopment districts.

(a) The Legislature hereby finds and declares that the citizens of the state would benefit from coordinated road construction efforts by county commissions, municipalities and the Division of Highways.

(b) Notwithstanding any other section of this code to the contrary, any two or more county commissions, any two or more municipalities, or any combination thereof, may: (1) Create a combined development or redevelopment district; (2) propose joint project plans; (3) propose joint amendments to an existing project plan for combined development or redevelopment district; and (4) enter into one or more intergovernmental agreements between themselves and/or the Commissioner of Highways to share: (A) Project expenses; and (B) certain property tax collections, on a pro rata or other basis, to facilitate construction of projects within the combined development or redevelopment district and to jointly take such other actions as are authorized in this article.

(c) When a project begins in one county and ends in another county of this state, the county commission of each county included in a multicounty project may, by resolution, adopt a written intergovernmental agreement with each county and/or the Commissioner of Highways regarding the proposed multicounty project. When the project begins or passes through
the corporate limits of a municipality, the governing body of that
municipality may by resolution adopt a written
intergovernmental agreement with the county or counties in
which the project is located.

(d) No county commission or municipality may withdraw
from an intergovernmental agreement as long as tax increment
financing obligations remain outstanding for which the proceeds
were used by any party to the intergovernmental agreement to
finance construction of the project for which the written
intergovernmental agreement was executed.

(e) No withdrawing county commission or municipality shall
be entitled to the return of any money or property advanced to
the project.

(f) Notwithstanding any provision of this code to the
contrary, any county commission or municipality that creates a
development or redevelopment district may enter into one or
more intergovernmental agreements with one or more other
counties or municipalities that also create a development or
redevelopment district to finance, in whole or in part, one or
more projects, to pool tax increment and other revenues to
finance, in whole or in part, contiguous projects on a cash basis
or to pay debt service on tax increment financing obligations.

(g) The obligations of the parties under any
intergovernmental agreement executed pursuant to this article
are not debt within the meaning of sections six or eight, article
X of the Constitution of West Virginia.

(h) Any intergovernmental agreement must be approved by
resolution adopted by a majority vote of the county commission
of each county participating in the agreement, by a majority vote
of the governing body of each municipality participating in the
agreement and by the Commissioner of Highways.
(i) The Commissioner of Highways is authorized to enter into intergovernmental agreements with county commissions and municipalities of this state, or with the federal government or any agency thereof, respecting the financing, planning, and construction of state roads and bridges, including related infrastructure if any, constructed, in whole or in part, pursuant to this article.

§7-11B-30. Application by Division of Highways.

(a) The Commissioner of Highways may propose creation by a county commission or municipality of development or redevelopment areas or districts and project plans, or propose amendments to an existing project plans. This plan may include related infrastructure that is necessary or convenient to economic development adjacent to the proposed project.

(b) Project plans proposed by the Commissioner of Highways are limited to those related to the construction, reconstruction, improvement or modernization of state roads, as defined in article four, chapter seventeen of this code, that are part of the state road system, as defined in that article or that will become part of the state road system upon completion of the construction. All construction, reconstruction, improvement or modernization and maintenance of state roads shall be done by or under the supervision of the Commissioner of Highways.

(c) All road projects that are accepted as part of the state road system, and all real property interests and appurtenances, is under the exclusive jurisdiction and control of the Commissioner of Highways, who may exercise the same rights and authority as he or she has over other transportation facilities in the state road system.

(d) Except as provided in an intergovernmental agreement executed by one or more county commissions, municipalities
and/or the Commissioner of Highways and as provided in this article, a county commission or municipality may not be required to pay for the cost of constructing, reconstructing, improving, maintaining a road that is part of the state road system as defined in article four, chapter seventeen of this code or to pay any other expense fairly related to that road.

(e) The powers conferred by this article on the Commissioner of Highways or the Division of Highways are in addition and supplemental to the powers conferred upon the Commissioner of Highways, the Division of Highways, and the Department of Transportation by the Legislature elsewhere in this code.

ARTICLE 22. COUNTY ECONOMIC OPPORTUNITY DEVELOPMENT DISTRICTS.


Any county commission that has established an economic opportunity development district under this article may make, or authorize to be made by a district board and other public or private parties, development expenditures as will promote the economic vitality of the district and the general welfare of the county, including, but not limited to, expenditures for the following purposes:

(1) Beautification of the district by means including landscaping and construction and erection of fountains, shelters, benches, sculptures, signs, lighting, decorations and similar amenities;

(2) Provision of special or additional public services such as sanitation, security for persons and property and the construction and maintenance of public facilities, including, but not limited to, sidewalks, parking lots, parking garages and other public areas;
(3) Making payments for principal, interest, issuance costs, any of the costs described in section twenty of this article and appropriate reserves for bonds and other instruments and arrangements issued or entered into by the county commission for financing the expenditures of the district described in this section and to otherwise implement the purposes of this article;

(4) Providing financial support for public transportation and vehicle parking facilities open to the general public, whether physically situate within the district’s boundaries or on adjacent land;

(5) Acquiring, building, demolishing, razing, constructing, repairing, reconstructing, refurbishing, renovating, rehabilitating, expanding, altering, otherwise developing, operating and maintaining real property generally, parking facilities, commercial structures and other capital improvements to real property, fixtures and tangible personal property, whether or not physically situate within the district’s boundaries, including, but not limited to, state road improvements pursuant to an intergovernmental agreement with the Commissioner of Highways: Provided, That the expenditure directly benefits the district;

(6) Developing plans for the architectural design of the district and portions thereof and developing plans and programs for the future development of the district;

(7) Developing, promoting and supporting community events and activities open to the general public that benefit the district;

(8) Providing the administrative costs for a district management program;

(9) Providing for the usual and customary maintenance and upkeep of all improvements and amenities in the district as are
commercially reasonable and necessary to sustain its economic viability on a permanent basis;

(10) Providing any other services that the county commission or district board is authorized to perform and which the county commission does not also perform to the same extent on a countywide basis;

(11) Making grants to the owners or tenants of economic opportunity development district for the purposes described in this section;

(12) Making grants to the Division of Highways for road projects benefitting an economic opportunity development district;

(13) Acquiring an interest in any entity or entities that own any portion of the real property situate in the district and contributing capital to any entity or entities;

(14) Remediation of publicly or privately owned landfills, former coal or other mining sites, solid waste facilities or hazardous waste sites to facilitate commercial development which would not otherwise be economically feasible; and

(15) To do any and all things necessary, desirable or appropriate to carry out and accomplish the purposes of this article notwithstanding any provision of this code to the contrary.

§7-22-7. Application to Development Office for approval of an economic opportunity development district project.

(a) General. — The Development Office shall receive and act on applications filed with it by county commissions pursuant to section six of this article. Each application must include:
(1) A true copy of the notice described in section six of this article;

(2) The total cost of the project;

(3) A reasonable estimate of the number of months needed to complete the project;

(4) A general description of the capital improvements, additional or extended services and other proposed development expenditures to be made in the district as part of the project;

(5) A description of the proposed method of financing the development expenditures, together with a description of the reserves to be established for financing ongoing development expenditures necessary to permanently maintain the optimum economic viability of the district following its inception: Provided, That the amounts of the reserves may not exceed the amounts that would be required by prevailing commercial capital market considerations;

(6) A description of the sources and anticipated amounts of all financing, including, but not limited to, proceeds from the issuance of any bonds or other instruments, revenues from the special district excise tax and enhanced revenues from property taxes and fees;

(7) A description of the financial contribution of the county commission to the funding of development expenditures;

(8) Identification of any businesses that the county commission expects to relocate their business locations from the district to another place in the state in connection with the establishment of the district or from another place in this state to the district: Provided, That for purposes of this article, any entities shall be designated “relocated entities”;
(9) Identification of any businesses currently conducting business in the proposed economic opportunity development district that the county commission expects to continue doing business there after the district is created;

(10) A good faith estimate of the aggregate amount of consumers sales and service tax that was actually remitted to the Tax Commissioner by all business locations identified as provided in subdivisions (8) and (9) of this subsection with respect to their sales made and services rendered from their then current business locations that will be relocated from, or to, or remain in the district, for the twelve full calendar months next preceding the date of the application: Provided, That for purposes of this article, the aggregate amount is designated as “the base tax revenue amount”;

(11) A good faith estimate of the gross annual district tax revenue amount;

(12) The proposed application of any surplus from all funding sources to further the objectives of this article; and

(13) Any additional information the Development Office may require.

(b) *Review of applications.* — The Development Office shall review all project proposals for conformance to statutory and regulatory requirements, the reasonableness of the project’s budget and timetable for completion and the following criteria:

(1) The quality of the proposed project and how it addresses economic problems in the area in which the project will be located;

(2) The merits of the project determined by a cost-benefit analysis that incorporates all costs and benefits, both public and private;
(3) Whether the project is supported by significant private sector investment and substantial credible evidence that, but for the existence of sales tax increment financing, the project would not be feasible;

(4) Whether the economic opportunity district excise tax dollars will leverage or be the catalyst for the effective use of private, other local government, state or federal funding that is available;

(5) Whether there is substantial and credible evidence that the project is likely to be started and completed in a timely fashion;

(6) Whether the project will, directly or indirectly, improve the opportunities in the area where the project will be located for the successful establishment or expansion of other industrial or commercial businesses;

(7) Whether the project will, directly or indirectly, assist in the creation of additional long-term employment opportunities in the area and the quality of jobs created in all phases of the project, to include, but not be limited to, wages and benefits;

(8) Whether the project will fulfill a pressing need for the area, or part of the area, in which the economic opportunity district is located;

(9) Whether the county commission has a strategy for economic development in the county and whether the project is consistent with that strategy;

(10) Whether the project helps to diversify the local economy;

(11) Whether the project is consistent with the goals of this article;
(12) Whether the project is economically and fiscally sound using recognized business standards of finance and accounting; and

(13) (A) The ability of the county commission and the project developer or project team to carry out the project: Provided, That no project may be approved by the Development Office unless the amount of all development expenditures proposed to be made in the first twenty-four months following the creation of the district results in capital investment of more than $75 million in the district and the county submits clear and convincing information, to the satisfaction of the Development Office, that the investment will be made if the Development Office approves the project and the Legislature authorizes the county commission to levy an excise tax on sales of goods and services made within the economic opportunity district as provided in this article: Provided, however, That such minimum capital investment does not apply to projects proposed by the Commissioner of Highways in accordance with section twenty-three, article twenty-two, chapter seven of this code.

(B) Notwithstanding any provision of paragraph (A) of this subdivision to the contrary, no project involving remediation may be approved by the Development Office unless the amount of all development expenditures proposed to be made in the first forty-eight months following the creation of the district results in capital investment of more than $75 million in the district. In addition to the remaining provisions of paragraph (A) of this subdivision the Development Office may not approve a project involving remediation authorized under section five of this article unless the county commission submits clear and convincing information, to the satisfaction of the Development Office, that the proposed remediation expenditures to be financed by the issuance of bonds or notes pursuant to section sixteen of this article do not constitute more than twenty-five
percent of the total development expenditures associated with the project.

(c) Additional criteria. — The Development Office may establish other criteria for consideration when approving the applications.

(d) Action on the application. — Upon receipt of an application, the Development Office shall promptly request a certification from the Tax Commissioner of the base tax revenue amount and the Tax Commissioner shall provide the certification to the Development Office within thirty days. The Executive Director of the Development Office shall act to approve or not approve any application within thirty days following the receipt of the application and the certification from the Tax Commissioner required by this subsection or the receipt of any additional information requested by the Development Office, whichever is the later.

(e) Certification of project. — If the Executive Director of the Development Office approves a county’s economic opportunity district project application, he or she shall issue to the county commission a written certificate evidencing the approval.

The certificate shall expressly state a base tax revenue amount, the gross annual district tax revenue amount and the estimated net annual district tax revenue amount which, for purposes of this article, is the difference between the gross annual district tax revenue amount and the base tax revenue amount, all of which the Development Office has determined with respect to the district’s application based on any investigation it considers reasonable and necessary, including, but not limited to, any relevant information the Development Office requests from the Tax Commissioner and the Tax Commissioner provides to the Development Office: Provided,
That in determining the net annual district tax revenue amount, the Development Office may not use a base tax revenue amount less than that amount certified by the Tax Commissioner but, in lieu of confirmation from the Tax Commissioner of the gross annual district tax revenue amount, the Development Office may use the estimate of the gross annual district tax revenue amount provided by the county commission pursuant to subsection (a) of this section.

(f) Certification of enlargement or reduction of geographic boundaries of previously certified district. — If the Executive Director of the Development Office approves a county’s economic opportunity district project application to expand or reduce the geographic boundaries of a previously certified district, he or she shall issue to the county commission a written certificate evidencing the approval.

The certificate shall expressly state a base tax revenue amount, the gross annual district tax revenue amount and the estimated net annual district tax revenue amount which, for purposes of this article, is the difference between the gross annual district tax revenue amount and the base tax revenue amount, all of which the Development Office has determined with respect to the district’s application based on any investigation it considers reasonable and necessary, including, but not limited to, any relevant information the Development Office requests from the Tax Commissioner and the Tax Commissioner provides to the Development Office: Provided, That in determining the net annual district tax revenue amount, the Development Office may not use a base tax revenue amount less than that amount certified by the Tax Commissioner but, in lieu of confirmation from the Tax Commissioner of the gross annual district tax revenue amount, the Development Office may use the estimate of the gross annual district tax revenue amount provided by the county commission pursuant to subsection (a) of this section.
Promulgation of rules. — The Executive Director of the Development Office may promulgate rules to implement the economic opportunity development district project application approval process and to describe the criteria and procedures it has established in connection therewith. These rules are not subject to the provisions of chapter twenty-nine-a of this code but shall be filed with the Secretary of State.

§7-22-8. Establishment of the economic opportunity development district fund.

(a) General. — There is hereby created a special revenue account in the State Treasury designated the “Economic Opportunity Development District Fund” which is an interest-bearing account and shall be invested in the manner described in section nine-c, article six, chapter twelve of this code with the interest income a proper credit to the Fund.

(b) District subaccount. — A separate and segregated subaccount within the account shall be established for each economic opportunity development district and each joint economic opportunity development district that is approved by the Executive Director of the Development Office. In addition to the economic opportunity district excise tax levied and collected as provided in this article, funds paid into the account for the credit of any subaccount may also be derived from the following sources:

(1) All interest or return on the investment accruing to the subaccount;

(2) Any gifts, grants, bequests, transfers, appropriations or donations which are received from any governmental entity or unit or any person, firm, foundation or corporation; and

(3) Any appropriations by the Legislature which are made for this purpose.
§7-22-12. Special district excise tax authorized.

(a) General. — The county commission of a county, authorized by the Legislature to levy a special district excise tax for the benefit of an economic opportunity development district, may, by order entered of record, impose that tax on the privilege of selling tangible personal property and rendering select services in the district in accordance with this section.

(b) Tax base. — The base of a special district excise tax imposed pursuant to this section shall be identical to the base of the consumers sales and service tax imposed pursuant to article fifteen, chapter eleven of this code on sales made and services rendered within the boundaries of the district. Sales of gasoline and special fuel are not subject to special district excise tax but remain subject to the tax levied by article fifteen, chapter eleven of this code. Except for the exemption provided in section nine-f of that article, all exemptions and exceptions from the consumers sales and service tax also apply to the special district excise tax.

(c) Tax rate. — The rate or rates of a special district excise tax levied pursuant to this section shall be identical to the rate or rates of the consumer sales and service tax imposed pursuant to article fifteen, chapter eleven of this code on sales made and services rendered within the boundaries of the district authorized by this section.

(d) Collection by Tax Commissioner. — The order of the county commission imposing a special district excise tax shall provide for the tax to be collected by the Tax Commissioner in the same manner as the tax levied by section three, article fifteen, chapter eleven of this code is administered, assessed, collected and enforced.

(1) The Tax Commissioner may require the electronic filing of returns related to the special district excise tax imposed
pursuant to this section, and also may require the electronic
payment of the special district excise tax imposed pursuant to
this section. The Tax Commissioner may prescribe by rules
adopted or proposed pursuant to article three, chapter
twenty-nine-a of this code, administrative notices, and forms and
instructions, the procedures and criteria to be followed to
electronically file those returns and to electronically pay the
special district excise tax imposed pursuant to this section.

(2) Any rules filed by the State Tax Commissioner relating
to the special district excise tax imposed pursuant to this section
shall set forth the following:

(A) Acceptable indicia of timely payment;

(B) Which type of electronic filing method or methods a
particular type of taxpayer may or may not use;

(C) What type of electronic payment method or methods a
particular type of taxpayer may or may not use;

(D) What, if any, exceptions are allowable, and alternative
methods of payment that may be used for any exceptions;

(E) Procedures for making voluntary or mandatory electronic
payments or both;

(F) Procedures for ensuring that taxpayers new to an
economic opportunity development district are included within
the Tax Commissioner’s database;

(G) Procedures for ensuring that taxpayers with multiple
locations properly allocate their special district excise taxes to
the appropriate economic opportunity development district and
reflect the allocation of their returns; and

(H) Any other provisions necessary to ensure the timely
electronic filing of returns related to the special district excise
(3)(A) Notwithstanding the provisions of section five-d, article ten, chapter eleven of this code: (i) So long as bonds are outstanding pursuant to this article, the Tax Commissioner shall provide on a monthly basis to the trustee for bonds issued pursuant to this article information on returns submitted pursuant to this article; and (ii) the trustee may share the information so obtained with the county commission that established the economic opportunity development district that issued the bonds pursuant to this article and with the bondholders and with bond counsel for bonds issued pursuant to this article. The Tax Commissioner and the trustee may enter into a written agreement in order to accomplish exchange of the information.

(B) Any confidential information provided pursuant to this subdivision shall be used solely for the protection and enforcement of the rights and remedies of the bondholders of bonds issued pursuant to this article. Any person or entity that is in possession of information disclosed by the Tax Commissioner or shared by the trustee pursuant to subdivision (a) of this subsection is subject to the provisions of section five-d, article ten, chapter eleven of this code as if the person or entity that is in possession of the tax information is an officer, employee, agent or representative of this state or of a local or municipal governmental entity or other governmental subdivision.

(C) Notwithstanding any provision of this code to the contrary, so long as bonds are outstanding pursuant to this article, the Tax Commissioner shall allow a designated representative of the county commission that established the economic opportunity development district for which the bonds were issued to audit the returns filed by the taxpayers in the economic opportunity development district no less often than once each quarter of the fiscal year. The Tax Commissioner may
require the audit to be conducted at the Tax Commissioner’s office, may prohibit copying of any returns, and may require the representatives to enter into a written confidentiality agreement. The Tax Commissioner shall promptly investigate any questions raised by an audit, shall promptly take all actions required to correct any errors, and shall report to the applicable county commission the results of its investigation and actions.

(e) Deposit of net tax collected. —

(1) The order of the county commission imposing a special district excise tax shall provide that the Tax Commissioner deposit the net amount of tax collected in the Special Economic Opportunity Development District Fund to the credit of the county commission’s subaccount therein for the economic opportunity development district and that the money in the subaccount may only be used to pay for development expenditures as provided in this article except as provided in subsection (f) of this section.

(2) The State Treasurer shall withhold from the county commission’s subaccount in the Economic Opportunity Development District Fund and shall deposit in the General Revenue Fund of this state, on or before the twentieth day of each calendar month next following the effective date of a special district excise tax, a sum equal to one twelfth of the base tax revenue amount last certified by the Development Office pursuant to section seven of this article.

(f) Effective date of special district excise tax. — Any taxes imposed pursuant to the authority of this section are effective on the first day of the calendar month that begins sixty days after the date of adoption of an order entered of record imposing the tax or the first day of any later calendar month expressly designated in the order.
124 (g) **Copies of order.** — Upon entry of an order levying a special district excise tax, a certified copy of the order shall be mailed to the State Auditor, as ex officio the chief inspector and supervisor of public offices, the State Treasurer and the Tax Commissioner.

§7-22-14. **Modification of included area; notice; hearing.**

1 (a) **General.** — The order creating an economic opportunity development district may not be amended to include additional contiguous property until after the amendment is approved by the executive director of the Development Office in the same manner as an application to approve the establishment of the district is acted upon under section seven of this article and the amendment is authorized by the Legislature. The order creating an economic opportunity development district may not be amended to remove property until after the amendment is approved by the executive director of the Development Office in the same manner as an application to approve the establishment of the district is acted upon under section seven of this article: *Provided, That any amendment for the purpose of removing property from an economic opportunity development district may not require authorization from the Legislature and shall ensure that any such district after such an amendment remains contiguous. The order which is entered for the purpose of removing parcels from an existing economic opportunity development district may not be effective any earlier than the first day of the calendar month which begins at least thirty days following the entry of the order or such later date as may be specified by the county commission in the order.*

23 (b) **Limitations.** — Additional property may not be included in the district unless it is situated within the boundaries of the county and is contiguous to the then current boundaries of the district.
(c) Public hearing required. —

(1) The county commission of any county desiring to amend its order shall designate a time and place for a public hearing upon the proposal to include additional property. The notice shall meet the requirements set forth in section six of this article.

(2) At the time and place set forth in the notice, the county commission shall afford the opportunity to be heard to any owners of real property either currently included in or proposed to be added to the existing district and to any other residents of the county.

(d) Application to West Virginia Development Office. —

Following the hearing, the county commission may, by resolution, approve the filing of an application with the Development Office for the inclusion of the additional property in the district or for the removal of the applicable parcels from the district.

(e) Consideration by the Executive Director of the Development Office. — Before the executive director of the Development Office approves inclusion of the additional property in the district, the Development Office shall determine the amount of taxes levied by article fifteen, chapter eleven of this code that were collected by businesses located in the area the county commission proposes to add to the district in the same manner as the base amount of tax was determined when the district was first created. The State Treasurer shall also deposit one twelfth of this additional tax base amount into the General Revenue Fund each month, as provided in section twelve of this article.

(f) Legislative action required to include additional property. — After the Executive Director of the Development Office approves amending the boundaries of the district to
include additional property, the Legislature must amend section nine of this article to allow levy of the special district excise tax on business located in geographic area to be included in the district. After the Legislature amends said section, the county commission may then amend its order: Provided, That the order may not be effective any earlier than the first day of the calendar month that begins sixty days after the effective date of the act of the Legislature authorizing the levy on the special district excise tax on businesses located in the geographic area to be added to the boundaries of the district for which the tax is levied or a later date as set forth in the order of the county commission.

(g) Collection of special district excise tax. — All businesses included in a district because of the boundary amendment shall on the effective date of the order, determined as provided in subsection (f) of this section, collect the special district excise tax on all sales on tangible property or services made from locations in the district on or after the effective date of the county commission’s order or a later date as set forth in the order.

(h) Minor Modifications. — Notwithstanding any provision of this article to contrary, a county commission may amend the order creating an economic opportunity development district to make, and may make, modifications to the boundaries of the economic opportunity development district without holding a public hearing or receiving approval of the executive director of the West Virginia Development Office or authorization by the Legislature if the modifications do not increase the total acreage of the economic opportunity development district or result in a change to the base tax revenue amount. The county commission is authorized to levy special district excise taxes on sales of tangible personal property and services made from business locations within the modified boundaries of the economic opportunity development district.
§7-22-23. Joint economic opportunity development districts.

(a) The Legislature hereby finds and declares that the citizens of the state would benefit from coordinated road construction efforts by county commissions and municipalities.

(b) Notwithstanding any other section of this code to the contrary, any two or more county commissions, any two or more municipalities, or any combination thereof, may: (1) Create a combined economic opportunity development district; (2) propose joint applications for the districts; (3) enter into one or more intergovernmental agreements between themselves and/or the Commissioner of Highways to share: (A) Project expenses; and (B) certain excise tax collections, on a pro rata or other basis, to facilitate construction of projects within the combined economic opportunity development district and to jointly take such other actions as are authorized in the County Economic Opportunity Development District Act.

(c) When a project begins in one county and ends in another county of this state, the county commission of each county included in a multicounty project may, by resolution, adopt a written intergovernmental agreement with each county and/or the Commissioner of Highways regarding the proposed multicounty project. When the project begins or passes through the corporate limits of a municipality, the governing body of that municipality may by resolution adopt a written intergovernmental agreement with the county or counties in which the project is located.

(d) No county commission or municipality may withdraw from an intergovernmental agreement if bonds or notes, remain outstanding the proceeds of which were used to finance construction of the project for which the written intergovernmental agreement was executed.
(e) No withdrawing county commission or municipality is entitled to the return of any money or property advanced to the project.

(f) Notwithstanding any provision of this code to the contrary, any county commission or municipality that creates an economic opportunity development district may enter into one or more intergovernmental agreements with one or more other counties or municipalities that also create an economic opportunity development district to finance, in whole or in part, one or more projects, to pool tax increment and other revenues to finance, in whole or in part, contiguous projects on a cash basis or to pay debt service on bonds or notes.

(g) The obligations of the parties under any intergovernmental agreement executed pursuant to this article is not debt within the meaning of sections six or eight, article X of the Constitution of West Virginia.

(h) Any intergovernmental agreement must be approved by resolution adopted by a majority vote of the county commission of each county participating in the agreement, by a majority vote of the governing body of each municipality participating in the agreement and by the Commissioner of Highways.

(i) The Commissioner of Highways is authorized to enter into intergovernmental agreements with county commissions and municipalities of this state, or with the federal government or any agency thereof, respecting the financing, planning, and construction of state roads and bridges, including related infrastructure if any, constructed, in whole or in part, pursuant to this article.


(a) The Commissioner of Highways may propose the creation by a county commission of an economic opportunity
development district and project plans, or propose amendments to existing project plans. This plan may include related infrastructure that is necessary or convenient to economic development adjacent to the proposed project.

(b) Projects proposed by the Commissioner of Highways are limited to those related to the construction, reconstruction, improvement or modernization of state roads, as defined in article four, chapter seventeen of this code, that are part of the state road system, as defined in that article, or that will become part of the state road system upon completion of the construction. All construction, reconstruction, improvement or modernization and maintenance of state roads shall be done by or under the supervision of the Commissioner of Highways.

(c) All road projects that are accepted as part of the state road system, and all real property interests and appurtenances, shall be under the exclusive jurisdiction and control of the Commissioner of Highways, who may exercise the same rights and authority as he or she has over other transportation facilities in the state road system.

(d) Except as provided in an intergovernmental agreement executed by one or more county commissions, municipalities and/or the Commissioner of Highways and as provided in this article, a county commission or municipality may not be required to pay for the cost of constructing, reconstructing, improving, maintaining a road that is part of the state road system as defined in article four, chapter seventeen of this code or to pay any other expense fairly related to that road.

(e) The powers conferred by this article on the Commissioner of Highways or the Division of Highways are in addition and supplemental to the powers conferred upon the Commissioner of Highways, the Division of Highways, and the
CHAPTER 8. MUNICIPAL CORPORATIONS.

ARTICLE 38. MUNICIPAL ECONOMIC OPPORTUNITY DEVELOPMENT DISTRICTS.


Any municipality that has established an economic opportunity development district under this article may make, or authorize to be made by a district board and other public or private parties, development expenditures as will promote the economic vitality of the district and the general welfare of the municipality, including, but not limited to, expenditures for the following purposes:

(1) Beautification of the district by means including landscaping and construction and erection of fountains, shelters, benches, sculptures, signs, lighting, decorations and similar amenities;

(2) Provision of special or additional public services such as sanitation, security for persons and property and the construction and maintenance of public facilities, including, but not limited to, sidewalks, parking lots, parking garages and other public areas;

(3) Making payments for principal, interest, issuance costs, any of the costs described in section twenty of this article and appropriate reserves for bonds and other instruments and arrangements issued or entered into by the municipality for financing the expenditures of the district described in this section and to otherwise implement the purposes of this article;

(4) Providing financial support for public transportation and vehicle parking facilities open to the general public, whether
physically situate within the district’s boundaries or on adjacent land;

(5) Acquiring, building, demolishing, razing, constructing, repairing, reconstructing, refurbishing, renovating, rehabilitating, expanding, altering, otherwise developing, operating and maintaining real property generally, parking facilities, commercial structures and other capital improvements to real property, fixtures and tangible personal property, whether or not physically situate within the district’s boundaries including, but not limited to, state road improvements pursuant to an intergovernmental agreement with the Commissioner of Highways: Provided, That the expenditure directly benefits the district;

(6) Developing plans for the architectural design of the district and portions thereof and developing plans and programs for the future development of the district;

(7) Developing, promoting and supporting community events and activities open to the general public that benefit the district;

(8) Providing the administrative costs for a district management program;

(9) Providing for the usual and customary maintenance and upkeep of all improvements and amenities in the district as are commercially reasonable and necessary to sustain its economic viability on a permanent basis;

(10) Providing any other services that the municipality or district board is authorized to perform and which the municipality does not also perform to the same extent on a countywide basis;
(11) Making grants to the owners or tenants of economic opportunity development district for the purposes described in this section;

(12) Making grants to the Division of Highways for road projects benefitting an economic opportunity development district;

(13) Acquiring an interest in any entity or entities that own any portion of the real property situate in the district and contributing capital to any entity or entities;

(14) Remediation of publicly or privately owned landfills, former coal or other mining sites, solid waste facilities or hazardous waste sites to facilitate commercial development which would not otherwise be economically feasible; and

(15) To do any and all things necessary, desirable or appropriate to carry out and accomplish the purposes of this article notwithstanding any provision of this code to the contrary.

§8-38-7. Application to Development Office for approval of an economic opportunity development district project.

(a) General. — The Development Office shall receive and act on applications filed with it by municipalities pursuant to section six of this article. Each application must include:

(1) A true copy of the notice described in section six of this article;

(2) The total cost of the project;

(3) A reasonable estimate of the number of months needed to complete the project;
9 (4) A general description of the capital improvements, additional or extended services and other proposed development expenditures to be made in the district as part of the project;

12 (5) A description of the proposed method of financing the development expenditures, together with a description of the reserves to be established for financing ongoing development expenditures necessary to permanently maintain the optimum economic viability of the district following its inception: Provided, That the amounts of the reserves may not exceed the amounts that would be required by prevailing commercial capital market considerations;

20 (6) A description of the sources and anticipated amounts of all financing, including, but not limited to, proceeds from the issuance of any bonds or other instruments, revenues from the special district excise tax and enhanced revenues from property taxes and fees;

25 (7) A description of the financial contribution of the municipality to the funding of development expenditures;

27 (8) Identification of any businesses that the municipality expects to relocate their business locations from the district to another place in the state in connection with the establishment of the district or from another place in this state to the district: Provided, That for purposes of this article, any entities shall be designated “relocated entities”;  

33 (9) Identification of any businesses currently conducting business in the proposed economic opportunity development district that the municipality expects to continue doing business there after the district is created;

37 (10) A good faith estimate of the aggregate amount of consumers sales and service tax that was actually remitted to the
Tax Commissioner by all business locations identified as provided in subdivisions (8) and (9) of this subsection with respect to their sales made and services rendered from their then current business locations that will be relocated from, or to, or remain in the district for the twelve full calendar months next preceding the date of the application: Provided, That for purposes of this article, the aggregate amount is designated as “the base tax revenue amount”;

(11) A good faith estimate of the gross annual district tax revenue amount;

(12) The proposed application of any surplus from all funding sources to further the objectives of this article; and

(13) Any additional information the Development Office may require.

(b) Review of applications. — The Development Office shall review all project proposals for conformance to statutory and regulatory requirements, the reasonableness of the project’s budget and timetable for completion and the following criteria:

(1) The quality of the proposed project and how it addresses economic problems in the area in which the project will be located;

(2) The merits of the project determined by a cost-benefit analysis that incorporates all costs and benefits, both public and private;

(3) Whether the project is supported by significant private sector investment and substantial credible evidence that, but for the existence of sales tax increment financing, the project would not be feasible;

(4) Whether the economic opportunity development district excise tax dollars will leverage or be the catalyst for the effective
(5) Whether there is substantial and credible evidence that the project is likely to be started and completed in a timely fashion;

(6) Whether the project will, directly or indirectly, improve the opportunities in the area where the project will be located for the successful establishment or expansion of other industrial or commercial businesses;

(7) Whether the project will, directly or indirectly, assist in the creation of additional long-term employment opportunities in the area and the quality of jobs created in all phases of the project, to include, but not be limited to, wages and benefits;

(8) Whether the project will fulfill a pressing need for the area, or part of the area, in which the economic opportunity district is located;

(9) Whether the municipality has a strategy for economic development in the municipality and whether the project is consistent with that strategy;

(10) Whether the project helps to diversify the local economy;

(11) Whether the project is consistent with the goals of this article;

(12) Whether the project is economically and fiscally sound using recognized business standards of finance and accounting; and

(13)(A) The ability of the municipality and the project developer or project team to carry out the project: Provided, That
no project may be approved by the Development Office unless the amount of all development expenditures proposed to be made in the first twenty-four months following the creation of the district results in capital investment of more than $75 million in the district and the municipality submits clear and convincing information, to the satisfaction of the Development Office, that the investment will be made if the Development Office approves the project and the Legislature authorizes the municipality to levy an excise tax on sales of goods and services made within the economic opportunity development district as provided in this article: Provided, however, That such minimum capital investment does not apply to projects proposed by the Commissioner of Highways in accordance with section twenty-three, article twenty-two, chapter seven of this code.

(B) Notwithstanding any provision of paragraph (A) of this subdivision to the contrary, no project involving remediation may be approved by the Development Office unless the amount of all development expenditures proposed to be made in the first forty-eight months following the creation of the district results in capital investment of more than $75 million in the district. In addition to the remaining provisions of paragraph (A) of this subdivision the Development Office may not approve a project involving remediation authorized under section five of this article unless the municipality submits clear and convincing information, to the satisfaction of the Development Office, that the proposed remediation expenditures to be financed by the issuance of bonds or notes pursuant to section sixteen of this article do not constitute more than twenty-five percent of the total development expenditures associated with the project.

(c) Additional criteria. — The Development Office may establish other criteria for consideration when approving the applications.
(d) *Action on the application.* — The Executive Director of the Development Office shall act to approve or not approve any application within thirty days following the receipt of the application or the receipt of any additional information requested by the Development Office, whichever is the later.

(e) *Certification of project.* — If the Executive Director of the Development Office approves a municipality’s economic opportunity district project application, he or she shall issue to the municipality a written certificate evidencing the approval.

The certificate shall expressly state a base tax revenue amount, the gross annual district tax revenue amount and the estimated net annual district tax revenue amount which, for purposes of this article, is the difference between the gross annual district tax revenue amount and the base tax revenue amount, all of which the Development Office has determined with respect to the district’s application based on any investigation it considers reasonable and necessary, including, but not limited to, any relevant information the Development Office requests from the Tax Commissioner and the Tax Commissioner provides to the Development Office: Provided, that in determining the net annual district tax revenue amount, the Development Office may not use a base tax revenue amount less than that amount certified by the Tax Commissioner but, in lieu of confirmation from the Tax Commissioner of the gross annual district tax revenue amount, the Development Office may use the estimate of the gross annual district tax revenue amount provided by the municipality pursuant to subsection (a) of this section.

(f) *Certification of enlargement or reduction of geographic boundaries of previously certified district.* — If the Executive Director of the Development Office approves a municipality’s economic opportunity district project application to expand or reduce the geographic boundaries of a previously certified
district, he or she shall issue to the municipality a written certificate evidencing the approval.

The certificate shall expressly state a base tax revenue amount, the gross annual district tax revenue amount and the estimated net annual district tax revenue amount which, for purposes of this article, is the difference between the gross annual district tax revenue amount and the base tax revenue amount, all of which the Development Office has determined with respect to the district’s application based on any investigation it considers reasonable and necessary, including, but not limited to, any relevant information the Development Office requests from the Tax Commissioner and the Tax Commissioner provides to the Development Office: Provided, That in determining the net annual district tax revenue amount, the Development Office may not use a base tax revenue amount less than that amount certified by the Tax Commissioner, but, in lieu of confirmation from the Tax Commissioner of the gross annual district tax revenue amount, the Development Office may use the estimate of the gross annual district tax revenue amount provided by the municipality pursuant to subsection (a) of this section.

(g) Promulgation of rules. — The Executive Director of the Development Office may promulgate rules to implement the economic opportunity development district project application approval process and to describe the criteria and procedures it has established in connection therewith. These rules are not subject to the provisions of chapter twenty-nine-a of this code but shall be filed with the Secretary of State.


(a) General. — There is hereby created a special revenue account in the State Treasury designated the “Economic
Opportunity Development District Fund” which is an interest-bearing account and shall be invested in the manner described in section nine-c, article six, chapter twelve of this code with the interest income a proper credit to the Fund.

(b) *District subaccount.* — A separate and segregated subaccount within the account shall be established for each economic opportunity development district and each joint economic opportunity development district that is approved by the Executive Director of the Development Office. In addition to the economic opportunity district excise tax levied and collected as provided in this article, funds paid into the account for the credit of any subaccount may also be derived from the following sources:

(1) All interest or return on the investment accruing to the subaccount;

(2) Any gifts, grants, bequests, transfers, appropriations or donations which are received from any governmental entity or unit or any person, firm, foundation or corporation; and

(3) Any appropriations by the Legislature which are made for this purpose.

§8-38-12. Special district excise tax authorized.

(a) *General.* — The council of a municipality, authorized by the Legislature to levy a special district excise tax for the benefit of an economic opportunity development district, may, by ordinance, impose that tax on the privilege of selling tangible personal property and rendering select services in the district in accordance with this section.

(b) *Tax base.* — The base of a special district excise tax imposed pursuant to this section shall be identical to the base of the consumers sales and service tax imposed pursuant to article
fifteen, chapter eleven of this code on sales made and services rendered within the boundaries of the district. Sales of gasoline and special fuel are not subject to special district excise tax, but remain subject to the tax levied by article fifteen, chapter eleven of this code. Except for the exemption provided in section nine-f of article fifteen, chapter eleven of this code, all exemptions and exceptions from the consumers sales and service tax also apply to the special district excise tax.

(c) Tax rate. — The rate or rates of a special district excise tax levied pursuant to this section shall be stated in an ordinance enacted by the municipality and identical to the rate or rates of the consumers sales and service tax imposed pursuant to article fifteen, chapter eleven of this code on sales rendered within the boundaries of the district authorized by this section.

(d) Collection by Tax Commissioner. — The ordinance of the municipality imposing a special district excise tax shall provide for the tax to be collected by the Tax Commissioner in the same manner as the tax levied by section three, article fifteen, chapter eleven of this code is administered, assessed, collected and enforced.

(1) The State Tax Commissioner may require the electronic filing of returns related to the special district excise tax imposed pursuant to this section and may require the electronic payment of the special district excise tax imposed pursuant to this section. The State Tax Commissioner may prescribe by rules adopted or proposed pursuant to article three, chapter twenty-nine-a of this code, administrative notices, and forms and instructions, the procedures and criteria to be followed to electronically file those returns and to electronically pay the special district excise tax imposed pursuant to this section.

(2) Any rules filed by the State Tax Commissioner relating to the special district excise tax imposed pursuant to this section shall set forth the following:
(A) Acceptable indicia of timely payment;

(B) Which type of electronic filing method or methods a particular type of taxpayer may or may not use;

(C) What type of electronic payment method or methods a particular type of taxpayer may or may not use;

(D) What, if any, exceptions are allowable and alternative methods of payment that may be used for any exceptions;

(E) Procedures for making voluntary or mandatory electronic payments or both;

(F) Procedures for ensuring that taxpayers new to an economic opportunity development district are included within the Tax Commissioner’s database;

(G) Procedures for ensuring that taxpayers with multiple locations properly allocate their special district excise taxes to the appropriate economic opportunity development district and reflect the allocation of their returns; and

(H) Any other provisions necessary to ensure the timely electronic filing of returns related to the special district excise tax and the making of payments electronically of the special district excise tax imposed pursuant to this section.

(3)(A) Notwithstanding the provisions of section five-d, article ten, chapter eleven of this code: (i) So long as bonds are outstanding pursuant to this article, the Tax Commissioner shall provide on a monthly basis to the trustee for bonds issued pursuant to this article information on returns submitted pursuant to this article; and (ii) the trustee may share the information so obtained with the municipality that established the economic opportunity development district that issued the bonds pursuant to this article and with the bondholders and with bond counsel
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for bonds issued pursuant to this article. The Tax Commissioner and the trustee may enter into a written agreement in order to accomplish exchange of the information.

(B) Any confidential information provided pursuant to this subdivision shall be used solely for the protection and enforcement of the rights and remedies of the bondholders of bonds issued pursuant to this article. Any person or entity that is in possession of information disclosed by the Tax Commissioner or shared by the trustee pursuant to subdivision (a) of this subsection is subject to the provisions of section five-d, article ten, chapter eleven of this code as if the person or entity that is in possession of the tax information is an officer, employee, agent or representative of this state or of a local or municipal governmental entity or other governmental subdivision.

(C) Notwithstanding any provision of this code to the contrary, so long as bonds are outstanding pursuant to this article, the Tax Commissioner shall allow a designated representative of the municipality that established the economic opportunity development district for which the bonds were issued to audit the returns filed by the taxpayers in the economic opportunity development district no less often than once each quarter of the fiscal year. The Tax Commissioner may require the audit to be conducted at the Tax Commissioner’s office, may prohibit copying of any returns, and may require the representatives to enter into a written confidentiality agreement. The Tax Commissioner shall promptly investigate any questions raised by an audit, shall promptly take all actions required to correct any errors, and shall report to the applicable municipality the results of its investigation and actions.

(e) Deposit of net tax collected. —

(1) The ordinance of the municipality imposing a special district excise tax shall provide that the Tax Commissioner
deposit the net amount of tax collected in the special Economic
Opportunity Development District Fund to the credit of the
municipality’s subaccount therein for the economic opportunity
development district and that the money in the subaccount may
only be used to pay for development expenditures as provided in
this article except as provided in subsection (f) of this section.

(2)(A) The State Treasurer shall withhold from the
municipality’s subaccount in the Economic Opportunity
Development District Fund and shall deposit in the General
Revenue Fund of this state, on or before the twentieth day of
each calendar month next following the effective date of a
special district excise tax, a sum equal to one twelfth of the base
tax revenue amount last certified by the Development Office
pursuant to section seven of this article.

(B) In addition to the amounts described in paragraph (A) of
this subdivision, the Tax Commissioner shall deposit in the
General Revenue Fund of this state on the dates specified in
paragraph (A) not less than twenty percent nor more than fifty
percent of the excess of the special district excise taxes collected
during the preceding month above one twelfth of the base tax
revenue, said percentage to be fixed by the Development Office
in conjunction with its approval of an application in accordance
with section seven of this article based on the amount of state
funds, if any, to be expended in conjunction with the respective
economic opportunity development district project for items
including, but not limited to, the acquisition, construction,
reconstruction, improvement, enlargement or extension of
roadways, rights-of-way, sidewalks, traffic signals, water or
sewer lines and other public infrastructure and such other
expenditures of state funds identified by the Development
Office: Provided, That the Development Office has the
discretion to reduce the minimum percentage of the excess
special district excise taxes deposited by the Tax Commissioner
in the General Revenue Fund as outlined above from twenty
percent to ten percent in conjunction with its approval of an
application in accordance with section seven of this article based
on its determination that:

   (i) The economic development project provides for
   expenditures in excess of $100 million;

   (ii) The economic opportunity development district project
does not require the state to expend any additional state funds for
   items within the district including, but not limited to, the
   acquisition, construction, reconstruction, improvement,
   enlargement or extension of roadways, rights-of-way, sidewalks,
   traffic signals, water or sewer lines and other public
   infrastructure; and

   (iii) The economic development project contains a provision
   for a mixed use development with a housing component with at
   least ten percent of housing units in the district allocated as
   affordable housing.

   (f) **Effective date of special district excise tax.** — Any taxes
   imposed pursuant to the authority of this section are effective on
   the first day of the calendar month that begins at least sixty days
   after the date of enactment of the ordinance imposing the tax or
   at any later date expressly designated in the ordinance that
   begins on the first day of a calendar month.

   (g) **Copies of ordinance.** — Upon enactment of an ordinance
   levying a special district excise tax, a certified copy of the
   ordinance shall be mailed to the State Auditor, as ex officio the
   chief inspector and supervisor of public offices, the State
   Treasurer and the Tax Commissioner.

§8-38-14. Modification of included area; notice; hearing.

(a) **General.** — The ordinance creating an economic
opportunity development district may not be amended to include
additional contiguous property until after the amendment is approved by the Executive Director of the Development Office in the same manner as an application to approve the establishment of the district is acted upon under section seven of this article. The order creating an economic opportunity development district may not be amended to remove property until after the amendment is approved by the executive director of the Development Office in the same manner as an application to approve the establishment of the district is acted upon under section seven of this article: Provided, That any such amendment for the purpose of removing property from an economic opportunity development district shall not require authorization from the Legislature and shall ensure that any such district after such an amendment remains contiguous. The order which is entered for the purpose of removing parcels from an existing economic opportunity development district may not be effective any earlier than the first day of the calendar month which begins at least thirty days following the entry of the order or such later date as may be specified by the county commission in the order.

(b) Limitations. — Additional property may not be included in the district unless it is situated within the boundaries of the municipality and is contiguous to the then current boundaries of the district.

(c) Public hearing required. —

(1) The council of any municipality desiring to amend its ordinance shall designate a time and place for a public hearing upon the proposal to include additional property. The notice shall meet the requirements set forth in section six of this article.

(2) At the time and place set forth in the notice, the municipality shall afford the opportunity to be heard to any owners of real property either currently included in or proposed to be added to the existing district and to any other residents of the municipality.
(d) **Application to West Virginia Development Office.** — Following the hearing, the municipality may, by resolution, approve the filing of an application with the Development Office for the inclusion of the additional property in the district or for the removal of the applicable parcels from the district.

(e) **Consideration by the Executive Director of the Development Office.** — Before the Executive Director of the Development Office approves inclusion of the additional property in the district, the Development Office shall determine the amount of taxes levied by article fifteen, chapter eleven of this code that were collected by businesses located in the area the municipality proposes to add to the district in the same manner as the base amount of tax was determined when the district was first created. The State Treasurer shall also deposit one twelfth of this additional tax base amount into the General Revenue Fund each month, as provided in section twelve of this article.

(f) **Legislative action required to include additional property.** — After the Executive Director of the Development Office approves amending the boundaries of the district to include additional property, the Legislature must amend section nine of this article to allow levy of the special district excise tax on business located in geographic area to be included in the district. After the Legislature amends said section, the municipality may then amend its ordinance: Provided, That the ordinance may not be effective any earlier than the first day of the calendar month that begins sixty days after the effective date of the amended ordinance imposing the levy of the special district excise tax on businesses located in the geographic area to be added to the boundaries of the district for which the tax is levied or the first day of a later calendar month as set forth in the ordinance of the municipality.

(g) **Collection of special district excise tax.** — All businesses included in a district because of the boundary amendment shall
on the effective date of the ordinance, determined as provided in subsection (f) of this section, collect the special district excise tax on all sales on tangible property or services made from locations in the district on or after the effective date of the municipality’s ordinance or a later date as set forth in the ordinance.

(h) Minor modifications. — Notwithstanding any provision of this article to contrary, a municipality may amend the ordinance creating an economic opportunity development district to make, and may make, modifications to the boundaries of the economic opportunity development district without holding a public hearing or receiving approval of the executive director of the West Virginia Development Office or authorization by the Legislature if the modifications do not increase the total acreage of the economic opportunity development district or result in a change to the base tax revenue amount. The municipality is authorized to levy special district excise taxes on sales of tangible personal property and services made from business locations within the modified boundaries of the economic opportunity development district.

§8-38-23. Joint economic opportunity development districts.

(a) The Legislature hereby finds and declares that the citizens of the state would benefit from coordinated road construction efforts by county commissions and municipalities.

(b) Notwithstanding any other section of this code to the contrary, any two or more county commissions, any two or more municipalities, or any combination thereof, may: (1) Create a combined economic opportunity development district; (2) propose joint applications for the districts; and (3) enter into one or more intergovernmental agreements between themselves and/or the Commissioner of Highways to share: (A) Project expenses; and (B) certain excise tax collections, on a pro rata or
other basis, to facilitate construction of projects within the combined economic opportunity development district and to jointly take such other actions as are authorized in the County Economic Opportunity Development District Act.

(c) When a project begins in one county and ends in another county of this state, the county commission of each county included in a multicounty project may, by resolution, adopt a written intergovernmental agreement with each county and/or the Commissioner of Highways regarding the proposed multicounty project. When the project begins or passes through the corporate limits of a municipality, the governing body of that municipality may by resolution adopt a written intergovernmental agreement with the county or counties in which the project is located.

(d) No county commission or municipality may withdraw from an intergovernmental agreement as long as bonds or notes, remain outstanding the proceeds of which were used to finance construction of the project for which the written intergovernmental agreement was executed.

(e) No withdrawing county commission or municipality is entitled to the return of any money or property advanced to the project.

(f) Notwithstanding any provision of this code to the contrary, any county commission or municipality that creates an economic opportunity development district may enter into one or more intergovernmental agreements with one or more other counties or municipalities that also create an economic opportunity development district to finance, in whole or in part, one or more projects, to pool tax increment and other revenues to finance, in whole or in part, contiguous projects on a cash basis or to pay debt service on bonds or notes.
(g) The obligations of the parties under any intergovernmental agreement executed pursuant to this article is not debt within the meaning of sections six or eight, article X of the Constitution of West Virginia.

(h) Any intergovernmental agreement must be approved by resolution adopted by a majority vote of the county commission of each county participating in the agreement, by a majority vote of the governing body of each municipality participating in the agreement and by the Commissioner of Highways.

(i) The Commissioner of Highways is authorized to enter into intergovernmental agreements with county commissions and municipalities of this state, or with the federal government or any agency thereof, respecting the financing, planning, and construction of state roads and bridges, including related infrastructure if any, constructed, in whole or in part, pursuant to this article.


(a) The Commissioner of Highways may propose the creation by a county commission of an economic opportunity development district and project plans, or propose amendments to existing project plans.

(b) Projects proposed by the Commissioner of Highways are limited to those related to the construction, reconstruction, improvement or modernization of state roads, as defined in article four, chapter seventeen of this code, that are part of the state road system, as defined in that article or that will become part of the state road system upon completion of the construction. All construction, reconstruction, improvement or modernization and maintenance of state roads shall be done by or under the supervision of the Commissioner of Highways.
(c) All road projects that are accepted as part of the state road system, and all real property interests and appurtenances, shall be under the exclusive jurisdiction and control of the Commissioner of Highways, who may exercise the same rights and authority as he or she has over other transportation facilities in the state road system.

(d) Except as provided in an intergovernmental agreement executed by one or more county commissions, municipalities and/or the Commissioner of Highways and as provided in this article, a county commission or municipality may not be required to pay for the cost of constructing, reconstructing, improving, maintaining a road that is part of the state road system as defined in article four, chapter seventeen of this code or to pay any other expense fairly related to that road.

(e) The powers conferred by this article on the Commissioner of Highways or the Division of Highways are in addition and supplemental to the powers conferred upon the Commissioner of Highways, the Division of Highways, and the Department of Transportation by the Legislature elsewhere in this code.

CHAPTER 11. TAXATION.

ARTICLE 10. WEST VIRGINIA TAX PROCEDURE AND ADMINISTRATION ACT.

§11-10-11a. Administration of special district excise tax; commission authorized.

(a) Any municipality or county commission which, pursuant to section twelve, article twenty-two, chapter seven of this code, or section twelve, article thirty-eight, chapter eight of this code imposes a special district excise tax shall, by express provision in the order or ordinance imposing that tax, authorize the State
Tax Commissioner to administer, assess, collect and enforce that
tax on behalf of and as its agent.

(1) The county commission or municipality shall make such
authorization by the adoption of a provision in its order or
ordinance levying a special district excise tax stating its purpose
and referring to this section and providing that the order or
ordinance shall be effective on the first day of a month at least
sixty days after its adoption.

(2) A certified copy of the order or ordinance shall be
forwarded to the State Auditor, the State Treasurer and the Tax
Commissioner so that it will be received within five days after
its adoption or enactment.

(b) Any special district excise tax administered under this
section shall be administered and collected by the Tax
Commissioner in the same manner and subject to the same
interest, additions to tax and penalties as provided for the tax
imposed in article fifteen of this chapter.

(c) All special district excise tax moneys collected by the
Tax Commissioner under this section shall be paid into the State
Treasury to the credit of each county commission’s subaccount
in the economic opportunity development district fund created
pursuant to section nine, article twenty-two, chapter seven of this
code, or to the credit of each municipality’s subaccount in the
economic opportunity development district fund created
pursuant to section nine, article thirty-eight, chapter eight of this
code, for the particular economic opportunity development
district. The special district excise tax moneys shall be credited
to the subaccount of each particular county commission or
municipality levying a special district excise tax being
administered under this section. The credit shall be made to the
subaccount of the county commission or municipality for the
economic opportunity development district in which the taxable
sales were made and taxable services rendered as shown by the records of the Tax Commissioner and certified by him or her monthly to the State Treasurer, namely, the location of each place of business of every vendor collecting and paying the tax to the Tax Commissioner without regard to the place of possible use by the purchaser.

(d) As soon as practicable after the special district excise tax moneys have been paid into the State Treasury in any month for the preceding reporting period, the district board or the county commission or municipality imposing the tax may issue a requisition to the State Auditor requesting issuance of a state warrant for the proper amount in favor of each county commission or municipality entitled to the monthly remittance of its special district excise tax moneys.

(1) Upon receipt of the requisition, the Auditor shall issue his or her warrant on the State Treasurer for the funds requested and the State Treasurer shall pay the warrant out of the subaccount.

(2) If errors are made in any payment, or adjustments are otherwise necessary, whether attributable to refunds to taxpayers or to some other fact, the errors shall be corrected and adjustments made in the payments for the next six months as follows: One sixth of the total adjustment shall be included in the payments for the next six months. In addition, the payment shall include a refund of amounts erroneously not paid to the county commission or the municipality and not previously remitted during the three years preceding the discovery of the error.

(3) A correction and adjustment in payments described in this subsection due to the misallocation of funds by the vendor shall be made within three years of the date of the payment error.

(e) Notwithstanding any other provision of this code to the contrary, the Tax Commissioner shall deduct and retain for the
benefit of his or her office for expenditure pursuant to appropriation of the Legislature from each payment into the State Treasury, as provided in subsection (c) of this section, one percent thereof as a commission to compensate his or her office for the discharge of the duties described in this section.

CHAPTER 54

(Com. Sub. for S. B. 339 - By Senators Trump, Kessler, Woelfel, Palumbo, Romano, Plymale and Yost)

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

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §4-2C-1, §4-2C-2 and §4-2C-3, all relating to establishing a judicial compensation commission; establishing as an advisory commission to the Legislature; setting responsibilities for commission; establishing membership of commission; setting terms of service for appointed members; setting eligibility requirements for certain commission members; providing that members of commission are ineligible for appointment to state judicial position while serving on commission; providing for reimbursement of expenses incurred in carrying out responsibilities of commission; providing for filling of vacancies on commission; giving commission authority to make salary recommendations for certain judicial officers to the Legislature; providing for location of commission meetings; setting meeting notice requirements; directing election of a chairperson; setting quorum requirements; permitting commission to request staff assistance from Joint Committee on Government and Finance; permitting commission to request assistance and information from administrative office of Supreme Court of
Appeals; requiring meetings be conducted pursuant to open meetings laws; directing commission to study compensation structure for certain judicial officers for purposes of preparing recommendations; setting forth required factors to be considered in making recommendations regarding compensation; establishing certain dates for preparation and submission of recommendations; providing for filing of commission reports and recommendations with certain offices and entities; allowing a bill enacting commission’s salary recommendations to be introduced by the presiding officers of the Senate and House of Delegates in the legislative session following receipt of report; providing for continued study and preparation of recommendations by the commission if the recommendations are not adopted; and providing that commission be adjourned for three years if the complete recommendations of the commission are adopted by the Legislature.

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

ARTICLE 2C. JUDICIAL COMPENSATION COMMISSION.

§4-2C-1. Judicial Compensation Commission established; membership.

1 (a) The Judicial Compensation Commission is hereby established as an advisory commission to the West Virginia Legislature. The commission shall be responsible for studying the compensation structure for justices of the Supreme Court of Appeals, circuit court judges, family court judges, magistrates and any other judicial officer subject to election and which office requires the judge to hold a professional license to serve in that position. The commission shall also be responsible for
determining and making recommendation as to the adequate compensation for those positions to ensure that highly qualified persons will be attracted to serve on the bench.

(b) The commission shall be comprised of the following five members:

(1) The Dean of the West Virginia University College of Law;

(2) Two individuals appointed by the President of the Senate; and

(3) Two individuals appointed by the Speaker of the House of Delegates.

(c) Any person appointed to serve on the commission pursuant to subdivisions (2) and (3), subsection (b) of this section shall serve for four years: Provided, That no public employee, elected public official, person receiving a pension from the State of West Virginia, member of the West Virginia State Bar or officer of a state or county political party executive committee established pursuant to W.Va. Code §3-1-9 may be appointed pursuant to subdivision (2) or (3) subsection (b) of this section to serve on the commission. The initial appointments to the commission shall be made by July 1, 2016. Upon expiration of any term, the person previously appointed shall continue to serve until his or her successor is duly appointed and qualified to serve on the commission.

(d) A member of the commission is not eligible for appointment to a state judicial position as long as he or she is serving as a member of the commission.

(e) The members of the commission shall serve without compensation but shall be reimbursed by the Joint Committee on Government and Finance for reasonable expenses incurred in
carrying out the responsibilities of the commission. Commission members shall be reimbursed at the same rate established for public employees.

(f) In the event of a vacancy on the commission, the unexpired term shall be filled in the same manner used to make the original appointment within sixty days of the vacancy.

§4-2C-2. Commission meetings; where held; how conducted.

(a) The commission shall meet in Charleston, West Virginia, at the place and time designated by the chairperson with at least ten days’ written notice to the members of the commission.

(b) The commission shall meet at the call of the chairperson or at the request of a majority of the members.

(c) For purposes of calling the first meeting, the Dean of the West Virginia University College of Law shall serve as the initial chairperson. At its first meeting, the members of the commission will select a chairperson. In the event that the member selected to serve as chairperson ceases to be a member of the commission, the Dean of West Virginia University College of Law shall serve as the chairperson for purposes of calling the next meeting.

(d) A majority of the commission members shall constitute a quorum.

(e) The commission shall meet as often as is necessary to conduct a thorough review of judicial compensation and prepare the report and recommendations provided for in section three of this article.

(f) In furtherance of its duties, the commission may request staff assistance from the Joint Committee on Government and Finance. The Commission may additionally seek assistance and
information from the administrative office of the Supreme Court of Appeals as may be necessary in the collection of data and research.

(g) All meetings of the commission and all business conducted by the commission shall be subject to the open meetings provisions of article nine-a, chapter six of this code.

§4-2C-3. Judicial Compensation Commission reports and recommendations; legislative action.

(a) During any time it is convened, the commission shall study the compensation structure for justices of the Supreme Court of Appeals, circuit court judges, family court judges, magistrates and any other judicial officer subject to election and which office requires the judge to hold a professional license to serve in that position for purposes of making a recommendation concerning appropriate compensation for those judicial officers.

(b) In recommending the appropriate salaries of the state’s judicial officers, the commission shall consider the following factors:

(1) The skill and experience required of the particular judgeship at issue;

(2) The value of comparable service performed by justices and judges, as determined by reference to judicial compensation in other states and in the federal government;

(3) The value of comparable service performed in the private sector including, but not limited to, private judging, arbitration, and mediation;

(4) The compensation of attorneys in the private sector;

(5) The cost of living;
(6) The compensation presently received by other public officials in the state;

(7) The level of overall compensation adequate to attract the most highly qualified individuals in the state, from a diversity of life and professional experiences, to serve the judiciary without unreasonable hardship and with judicial independence unaffected by financial concerns; and

(8) Any other information the commission may find relevant in its mission to determine the appropriate compensation for the state’s judicial officers.

(c) The commission shall prepare and submit its first report containing its recommendations no later than September 1, 2017. The commission shall then prepare and submit subsequent reports on or before September 1 of each year thereafter, except during those years that the commission is adjourned pursuant to the provisions of subsection (f) of this section.

(d) The commission shall send a copy of its recommendations to the Governor, the Joint Committee on Government and Finance, the Chief Justice of the Supreme Court of Appeals and the Administrative Director of the Supreme Court of Appeals.

(e) In the immediate legislative session following the year in which a recommendation is received from the commission, a bill adopting the salary recommendations made by the commission may be introduced by the presiding officer in both the Senate and the House of Delegates.

(f) The commission shall continue to meet and prepare updated recommendations in accordance with the following schedule:

(1) If the bill introduced pursuant to subsection (e) of this section is enacted adopting the complete recommendations of the
commission, the commission shall then be adjourned for three years from the effective date of the increase.

(2) If the bill introduced pursuant to subsection (e) of this section is not enacted or, if that bill is enacted, but adopts salaries less than those which were recommended by the commission, the commission shall continue to meet annually to prepare updated recommendations to provide to the parties identified in subsection (d) of this section.

CHAPTER 55

(Com. Sub. for S. B. 274 - By Senator Walters)

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

AN ACT to amend and reenact §50-2-1 of the Code of West Virginia, 1931, as amended, relating to increasing the civil jurisdictional amount in magistrate courts from $5,000 to $10,000.

Be it enacted by the Legislature of West Virginia:

That §50-2-1 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2. JURISDICTION AND AUTHORITY.

§50-2-1. Civil jurisdiction.

Except as limited herein and in addition to jurisdiction granted elsewhere to magistrate courts, such courts shall have jurisdiction of all civil actions wherein the value or amount in controversy or the value of property sought, exclusive of interest
and cost, is not more than $10,000. Magistrate courts shall have jurisdiction of all matters involving unlawful entry or detainer of real property or involving wrongful occupation of residential rental property, so long as the title to such property is not in dispute. Except as the same may be in conflict with the provisions of this chapter, the provisions of article three, chapter fifty-five of this code, regarding unlawful entry and detainer, shall apply to such actions in magistrate court. Magistrate courts shall have jurisdiction of actions on bonds given pursuant to the provisions of this chapter. Magistrate courts shall have continuing jurisdiction to entertain motions in regard to post-judgment process issued from magistrate court and decisions thereon may be appealed in the same manner as judgments.

Magistrate courts do not have jurisdiction of actions in equity, of matters in eminent domain, of matters in which the title to real estate is in issue, of proceedings seeking satisfaction of liens through the sale of real estate, of actions for false imprisonment, of actions for malicious prosecution or of actions for slander or libel or of any of the extraordinary remedies set forth in chapter fifty-three of this code.

Magistrates, magistrate court clerks, magistrate court deputy clerks and magistrate assistants shall have the authority to administer any oath or affirmation, to take any affidavit or deposition, unless otherwise expressly provided by law, and to take, under such regulations as are prescribed by law, the acknowledgment of deeds and other writings.
AN ACT to amend and reenact §52-1-11 of the Code of West Virginia, 1931, as amended, relating to excuses from jury service; and permitting that current members of the National Guard or reserves may be excused from jury duty.

Be it enacted by the Legislature of West Virginia:

That §52-1-11 of the Code of West Virginia, 1931, as amended, be amended and reenacted, to read as follows:

ARTICLE 1. PETIT JURIES.

§52-1-11. Excuses from jury service.

1 (a) The court, upon request of a prospective juror or on its own initiative, shall determine on the basis of information provided on the juror qualification form or interview with the prospective juror or other competent evidence whether the prospective juror should be excused from jury service. The clerk shall enter this determination in the space provided on the juror qualification form.

8 (b) A person who is not disqualified for jury service under section eight of this article may be excused from jury service by the court upon a showing of undue hardship, extreme
inconvenience, or public necessity, for a period the court deems necessary, at the conclusion of which the person shall reappear for jury service in accordance with the court’s direction.

(c) A person who is not disqualified for jury service under section eight of this article may be excused from jury service by the court if the person is a current member of the National Guard or reserves.

CHAPTER 57

(H. B. 4644 - By Delegates Miller, Border, D. Evans, Statler, Moffatt, McCuskey, Sobonya and Rohrbach)

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

AN ACT to amend and reenact §52-1-17 of the Code of West Virginia, 1931, as amended, relating to deleting subsection (e) therein which provides the sheriff to pay into the State Treasury all jury costs received from the court clerks and that the sheriff shall be held to account in the sheriff’s annual settlement for all the moneys.

Be it enacted by the Legislature of West Virginia:

That §52-1-17 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 1. PETIT JURIES.

§52-1-17. Reimbursement of jurors.

(a) A juror shall be paid mileage, at the rate set by the Secretary of the Department of Administration, for travel
expenses to and from the juror’s residence to the courthouse or other place where the court is convened and shall be reimbursed for other expenses incurred as a result of his or her required attendance at sessions of the court at a rate of not less than $15 nor more than $40, set at the discretion of the circuit court or the chief judge of the circuit court, for each day of required attendance. The reimbursement shall be based on vouchers submitted to the sheriff and shall be paid out of the State Treasury.

(b) When a jury in any case is placed in the custody of the sheriff, he or she shall provide the jury with meals and lodging while they are in the sheriff’s custody at a reasonable cost to be determined by an order of the court. The costs of the meals and lodging shall be paid out of the State Treasury.

(c) Any time a panel of prospective jurors has been required to report to court for the selection of a petit jury in any scheduled matter, the court shall, by specific provision in a court order, assess a jury cost. In both magistrate and circuit court cases the jury cost shall be the actual cost of the jurors’ service: Provided, That the actual cost of a magistrate jury can only be assessed where the jury request or demand occurs on or after July 1, 2007. For any magistrate court case in which the jury request or demand occurred prior to July 1, 2007, the jury cost assessed shall be $200. The jury costs shall be assessed against the parties as follows:

(1) In every criminal case, against the defendant upon conviction, whether by plea, by bench trial or by jury verdict;

(2) In every civil case, against either party or prorated against both parties, at the court’s discretion, if the parties settle the case or elect for a bench trial; and

(3) In the discretion of the court, and only when fairness and justice so require, a circuit court or magistrate court may forego
assessment of the jury fee, but shall set out the reasons for waiving the fee in a written order: *Provided*, That a waiver of the assessment of a jury fee in a case tried before a jury in magistrate court may only be permitted after the circuit court, or the chief judge of the circuit court, has reviewed the reasons set forth in the order by the magistrate and has approved the waiver.

(d)(1) The circuit or magistrate court clerk shall by the tenth day of the month following the month of collection remit to the State Treasurer for deposit as described in subdivision (2) of this subsection all jury costs collected and the clerk and the clerk’s surety are liable for the collection on the clerk’s official bond as for other money coming into the clerk’s hands by virtue of the clerk’s office. When the amount of the jury costs collected in a magistrate court case exceeds $200, the magistrate court clerk shall separately delineate the portion of the collected jury costs which exceeds $200.

(2) The jury costs described in subdivision (1) of this subsection shall upon receipt by the State Treasurer be deposited as follows:

(A) All jury costs collected in a magistrate court case which exceed $200 shall be deposited in the State’s General Revenue Fund; and

(B) The remaining balance of the collected jury costs shall be deposited as follows:

(i) One-half shall be deposited into the Parent Education and Mediation Fund created in section six hundred four, article nine, chapter forty-eight of this code; and

(ii) One-half shall be deposited into the Domestic Violence Legal Services Fund created in section six hundred three, article twenty-six of chapter forty-eight of this code.
AN ACT to amend and reenact §31C-2-6 of the Code of West Virginia, 1931, as amended, relating to eliminating the need for a public hearing when no objection is filed on an application from an out of state state-chartered credit union to establish a branch in West Virginia; requiring public notice to be given of application; setting forth requirements for the public notice; and providing for notice to banking institutions and credit unions when requested for in writing.

Be it enacted by the Legislature of West Virginia:

That §31C-2-6 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2. FORMATION OF CREDIT UNION.

§31C-2-6. Out-of-state credit unions.

1 (a) A credit union organized under the laws of another state or territory of the United States may conduct business as a credit union through a branch or service facility in this state with the approval by written order of the commissioner, provided credit unions incorporated under this chapter are allowed to do business in the other state under conditions similar to these provisions. Unless the context clearly requires otherwise, the
term “territory of the United States”, as used in this chapter, includes the District of Columbia. The commissioner shall, after filing a public notice of the application, hold a public hearing to consider the application: Provided, That a hearing may be waived by the commissioner if no objection to the application is received within ten days after the filing of the public notice. Public notice of the application shall be provided by posting it on the division’s website, filing it with the secretary of state for inclusion in the state register, and mailing or electronically providing a copy to all banking institutions and credit unions who have requested notice of any such application. The request by any such banking institution or credit union to receive such notice shall be in writing and shall request the commissioner to notify it of the receipt by the commissioner of any application to conduct business by a credit union pursuant to this section.

(b) Before granting approval, the commissioner shall enter an order finding that the applicant out-of-state credit union:

(1) Is a credit union organized and operating under standards recognized as appropriate pursuant to the provisions of this chapter;

(2) Is financially solvent and has an adequate capital structure;

(3) Has account insurance as required for credit unions incorporated under this chapter;

(4) Has a board of directors and supervisory committee with the reputation, character and abilities to provide assurance that the credit union’s affairs will be properly administered;

(5) Has in connection with any office of operations in this state made provision for suitable quarters from which to conduct the business of a credit union;
(6) Is examined and supervised by a regulatory agency of the state or territory in which it is organized; and

(7) Needs to conduct business in this state to adequately serve its members in this state.

(c) No out-of-state credit union may conduct business in this state unless it:

(1) Complies with the limits on finance charges applicable to credit unions set forth in section two, article seven of this chapter when making loans in this state;

(2) Complies with the consumer protection statutes and rules applicable to credit unions incorporated under this chapter;

(3) Agrees to furnish the commissioner a copy of the report of examination of its regulatory agency, and if deemed necessary by the commissioner, to submit to an examination by the commissioner, the cost of which shall be paid for by the credit union; and

(4) Designates and maintains an agent for the service of process in this state.

(d) The commissioner may revoke the approval of a credit union to conduct business in this state if the commissioner finds that:

(1) The credit union no longer meets the requirements of subsection (a) of this section;

(2) The credit union has violated the laws of this state or lawful rules or orders issued by the commissioner;

(3) The credit union has engaged in a pattern of unsafe or unsound credit union practices; or
65 (4) Continued operation by the credit union is likely to have
66 a substantially adverse impact on the financial, economic or
67 other interests of residents of this state.

CHAPTER 59

(Com. Sub. for S. B. 43 - By Senators Williams, Beach,
Blair, Leonhardt and Miller)

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

AN ACT to amend and reenact §20-2-8 of the Code of West Virginia,
1931, as amended; and to amend and reenact §61-3B-1 of said code, all relating to posted land; and allowing boundaries be posted
with certain clearly visible paint markings.

Be it enacted by the Legislature of West Virginia:

That §20-2-8 of the Code of West Virginia, 1931, as amended, be
amended and reenacted; and that §61-3B-1 of said code be amended
and reenacted, all to read as follows:

CHAPTER 20. NATURAL RESOURCES.

ARTICLE 2. WILDLIFE RESOURCES.

§20-2-8. Posting unenclosed lands; hunting, etc., on posted land.

1 The owner, lessee or other person entitled to possession of
2 unenclosed lands may have erected and maintained signs or
3 placards legibly printed, easily discernible, conspicuously posted
4 and reasonably spaced or, alternatively, may mark the posted
5 land as set forth in section one, article three-b, chapter sixty-one
of this code, so as to indicate the territory in which hunting, trapping or fishing is prohibited.

Any person who enters upon the unenclosed lands of another which have been lawfully posted, for the purpose of hunting, trapping or fishing, shall be guilty of a misdemeanor. The officers charged with the enforcement of the provisions of this chapter shall have the duty to enforce the provisions of this section if requested to do so by such owner, lessee, person or agent, but not otherwise.

CHAPTER 61. CRIMES AND THEIR PUNISHMENTS.

ARTICLE 3B. TRESPASS.

§61-3B-1. Definitions.

As used in this article:

(1) “Structure” means any building of any kind, either temporary or permanent, which has a roof over it, together with the curtilage thereof.

(2) “Conveyance” means any motor vehicle, vessel, railroad car, railroad engine, trailer, aircraft or sleeping car, and “to enter a conveyance” includes taking apart any portion of the conveyance.

(3) An act is committed “in the course of committing” if it occurs in an attempt to commit the offense or in flight after the attempt or commission.

(4) “Posted land” is land that has:

(A) Signs placed not more than five hundred feet apart, along and at each corner of the boundaries of the land. The signs shall be reasonably maintained, with letters of not less than two
(B) Boundaries marked with a clearly visible purple painted marking, consisting of one vertical line no less than eight inches in length and two inches in width, and the bottom of the mark not less than three nor more than six feet from the ground or normal water surface. Such marks shall be affixed to immovable, permanent objects that are no more than one hundred feet apart and readily visible to any person approaching the property. Signs shall also be posted at all roads, driveways or gates of entry onto the posted land so as to be clearly noticeable from outside the boundary line.

(C) It is not necessary to give notice by posting on any enclosed land or place not exceeding five acres in area on which there is a dwelling house or property that by its nature and use is obviously private in order to obtain the benefits of this article pertaining to trespass on enclosed lands.

(5) “Cultivated land” is that land which has been cleared of its natural vegetation and is presently planted with a crop, orchard, grove, pasture or trees or is fallow land as part of a crop rotation.

(6) “Fenced land” is that land which has been enclosed by a fence of substantial construction, whether with rails, logs, post and railing, iron, steel, barbed wire, other wire or other material, which stands at least three feet in height. For the purpose of this article, it shall not be necessary to fence any boundary or part of a boundary of any land which is formed by water and is posted with signs pursuant to the provisions of this article.
(7) Where lands are posted, cultivated or fenced as described herein, then such lands, for the purpose of this article, shall be considered as enclosed and posted.

(8) “Trespass” under this article is the willful unauthorized entry upon, in or under the property of another, but shall not include the following:

(A) Entry by the state, its political subdivisions or by the officers, agencies or instrumentalities thereof as authorized and provided by law.

(B) The exercise of rights in, under or upon property by virtue of rights-of-way or easements by a public utility or other person owning such right-of-way or easement whether by written or prescriptive right.

(C) Permissive entry, whether written or oral, and entry from a public road by the established private ways to reach a residence for the purpose of seeking permission shall not be trespass unless signs are posted prohibiting such entry.

(D) Entry performed in the exercise of a property right under ownership of an interest in, under or upon such property.

(E) Entry where no physical damage is done to property in the performance of surveying to ascertain property boundaries, and in the performance of necessary work of construction, maintenance and repair of a common property line fence, or buildings or appurtenances which are immediately adjacent to the property line and maintenance of which necessitates entry upon the adjoining owner’s property.
AN ACT to amend and reenact §60-1-5 of the Code of West Virginia, 1931, as amended; to amend and reenact §60-3-11 of said code; to amend and reenact §60-6-7 and §60-6-8 of said code; and to amend said code by adding thereto a new section, designated §61-10-33, all relating to prohibiting the sale of powdered or crystalline alcohol and pure caffeine products; defining terms; prohibiting the commissioner from listing or stocking powdered alcohol in inventory; creating a criminal offense for anyone who manufactures or sells, aids or abets in the manufacture or sale of powdered alcohol, or possesses, uses or in any other manner provides or furnishes powdered alcohol; making a second and subsequent offense a felony and providing for increased penalties; creating a criminal offense for any licensee who sells, possesses, possesses for sale, furnishes or provides any powdered alcohol; making a second and subsequent offense a felony and providing for increased penalties; creating a criminal offense for the sale and possession of pure caffeine products; defining relevant terms; providing exclusions; and providing penalties.

Be it enacted by the Legislature of West Virginia:

That §60-1-5 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §60-3-11 of said code be amended and reenacted; that §60-6-7 and §60-6-8 of said code be amended and reenacted; and that said code be amended by adding thereto a new section, designated §61-10-33, all to read as follows:
CHAPTER 60. STATE CONTROL OF ALCOHOLIC LIQUORS.

ARTICLE 1. GENERAL PROVISIONS.

§60-1-5. Definitions.

For the purposes of this chapter:

1. “Alcohol” means ethyl alcohol whatever its origin and shall include synthetic ethyl alcohol but not denatured alcohol.

2. “Beer” means any beverage obtained by the fermentation of barley, malt, hops or any other similar product or substitute, and containing more alcohol than that of nonintoxicating beer.

3. “Nonintoxicating beer” means any beverage obtained by the fermentation of barley, malt, hops or similar products or substitute and containing not more alcohol than that specified by section two, article sixteen, chapter eleven of this code.

4. “Wine” means any alcoholic beverage obtained by the fermentation of the natural content of fruits, or other agricultural products, containing sugar.

5. “Spirits” means any alcoholic beverage obtained by distillation and mixed with potable water and other substances in solution and includes brandy, rum, whiskey, cordials and gin.

6. “Alcoholic liquor” includes alcohol, beer, wine and spirits and any liquid or solid capable of being used as a beverage, but shall not include nonintoxicating beer.

7. “Original package” means any closed or sealed container or receptacle used for holding alcoholic liquor.

8. “Sale” means any transfer, exchange or barter in any manner or by any means, for a consideration, and shall include all sales made by principal, proprietor, agent or employee.
“Selling” includes solicitation or receipt of orders; possession for sale; and possession with intent to sell.

“Person” means an individual, firm, partnership, limited partnership, corporation or voluntary association.

“Manufacture” means to distill, rectify, ferment, brew, make, mix, concoct, process, blend, bottle or fill an original package with any alcoholic liquor.

“Manufacturer” means any person engaged in the manufacture of any alcoholic liquor, and among others includes a distiller, a rectifier, a wine maker and a brewer.

“Brewery” means an establishment where beer is manufactured or in any way prepared.

“Winery” means an establishment where wine is manufactured or in any way prepared.

“Distillery” means an establishment where alcoholic liquor other than wine or beer is manufactured or in any way prepared.

“Public place” means any place, building or conveyance to which the public has, or is permitted to have access, including restaurants, soda fountains, hotel dining rooms, lobbies and corridors of hotels and any highway, street, lane, park or place of public resort or amusement: Provided, That the term “public place” shall not mean or include any of the above-named places or any portion or portions thereof which qualify and are licensed under the provisions of this chapter to sell alcoholic liquors for consumption on the premises: Provided, however, That the term “public place” shall not mean or include any legally demarcated area designated solely for the consumption of beverages and freshly prepared food that directly connects and adjoins any portion or portions of a premises that qualifies and is licensed
under the provisions of this chapter to sell alcoholic liquors for consumption thereupon: Provided further, That the term “public place” shall also not include a facility constructed primarily for the use of a Division I college that is a member of the National Collegiate Athletic Association, or its successor, and used as a football, basketball, baseball, soccer or other Division I sports stadium which holds a special license to sell wine pursuant to the provisions of section three, article eight of this chapter, in the designated areas of sale and consumption of wine and other restrictions established by that section and the terms of the special license issued thereunder.

“State liquor store” means a store established and operated by the commission under this chapter for the sale of alcoholic liquor in the original package for consumption off the premises.

“An agency” means a drugstore, grocery store or general store designated by the commission as a retail distributor of alcoholic liquor for the West Virginia Alcohol Beverage Control Commissioner.

“Department” means the organization through which the commission exercises powers imposed upon it by this chapter.

“Commissioner” or “commission” means the West Virginia Alcohol Beverage Control Commissioner.

“Intoxicated” means having one's faculties impaired by alcohol or other drugs to the point where physical or mental control or both are markedly diminished.

“Powdered alcohol” means an alcohol manufactured in a powder or crystalline form for either direct use or reconstitution as an alcoholic liquor or food. For purposes of this chapter, powdered alcohol excludes any material intended for industrial purposes.
ARTICLE 3. SALES BY COMMISSIONER.

§60-3-11. Stock or inventory control.

The commission shall prescribe a method of stock or inventory control that will show the amount of each variety, class and brand of alcoholic liquor on hand in each state store, agency, and warehouse at any time. The commissioner shall not list or stock powdered alcohol in inventory.

ARTICLE 6. MISCELLANEOUS PROVISIONS.

§60-6-7. Specific acts forbidden; indictment.

A person shall not:

(1) Manufacture or sell in this state without a license any alcoholic liquor except as permitted by this article;

(2) Aid or abet in the manufacture or sale of alcoholic liquor without a license except as permitted by this article;

(3) Sell without a license any alcoholic liquor other than permitted by this article;

(4) Adulterate any alcoholic liquor by the addition of any drug, methyl alcohol, crude, unrectified or impure form of ethyl alcohol, or other foreign or deleterious substance or liquid;

(5) Refill, with alcoholic liquor, any bottle or other container in which alcoholic liquor has been sold at retail in this state;

(6) Advertise any alcoholic liquor in this state except in accordance with the rules and regulations of the commissioner; or

(7) Distribute, deal in, process, or use crowns, stamps or seals required under the authority of this chapter, except in
accordance with the rules and regulations prescribed by the commissioner; or

(8) Manufacture or sell, aid or abet in the manufacture or sale, possess, use or in any other manner provide or furnish powdered alcohol.

A person who violates any provision of this section shall be guilty of a misdemeanor and, upon conviction shall be fined not less than $50 nor more than $500, or confined in jail not less than thirty days nor more than one year or both such fine and imprisonment, for the first offense. A person who violates any provision of this section for the second or any subsequent offense under this section, is guilty of a felony, and upon conviction thereof, shall be imprisoned in a state correction facility for a period not to exceed three years.

An indictment for any first violation of subdivisions (1), (2) and (3) of this section, or any of them, shall be sufficient if in form or effect as follows:

State of West Virginia

County of ........................., to wit:

The Grand Jurors of the State of West Virginia, in and for the body of the County of ..........., upon their oaths present that ............, on the ...... day of ......., 20...., in the said County of ..........., did unlawfully, without a State license and without authorization under the Alcohol Beverage Control Act, manufacture and sell, and aid and abet in the manufacture and sale of a quantity of alcoholic liquor, against the peace and dignity of the state.

Any indictment under this section shall otherwise be in conformity with section one, article nine, chapter sixty-two of the code.
§60-6-8. Unlawful sale or possession by licensee.

A licensed person shall not:

1. Sell alcoholic liquors of a kind other than that which such license or this chapter authorizes him or her to sell;

2. Sell beer to which wine, spirits, or alcohol has been added;

3. Sell wine to which other alcoholic spirits have been added, otherwise than as required in the manufacture thereof under regulations of the commission;

4. Sell alcoholic liquors to a person specified in section twenty-two, article three of this chapter;

5. Sell alcoholic liquors except as authorized by his or her license;

6. Sell any alcoholic liquor when forbidden by the provisions of this chapter;

7. Sell, possess, possess for sale, furnish or provide any powdered alcohol;

8. Keep on the premises covered by his or her license alcoholic liquor other than that which he or she is authorized to sell by such license or by this chapter.

A person who violates any provision of this section shall be guilty of a misdemeanor and, upon conviction shall be fined not less than $50 nor more than $500, or confined in jail not less than thirty days nor more than one year, or both such fine and imprisonment for the first offense. A person who violates any provision of this section for the second or any subsequent offense under this section, is guilty of a felony, and upon
conviction thereof, shall be imprisoned in a state correction
facility for a period not to exceed three years.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 10. CRIMES AGAINST PUBLIC POLICY.

§61-10-33. Prohibition against selling a pure caffeine product.

(a) “Pure caffeine product” means a product that is
comprised of ninety percent or more caffeine and is
manufactured into a crystalline, liquid, or powdered form. “Pure
caffeine product” does not include any of the following that
contains caffeine and is formulated, manufactured, and labeled
in accordance with the laws and regulations enforced by the
United States Food and Drug Administration:

(1) Coffee, tea, soft drink, energy drink, or any other
caffeine-containing beverage;

(2) Any energy product.

(b) Except as provided in subsection (c), no person shall
knowingly possess, sell or offer for sale a pure caffeine product.

(c) Subsection (b) does not prohibit a person from
possessing, selling or offering for sale any product manufactured
in a unit-dose form such as a pill, tablet, or caplet, but only if
each unit dose of the product contains not more than two
hundred fifty milligrams of caffeine.

(d) Nothing in this section prohibits either of the following:

(1) Possession of a product described in subsection (c);

(2) Possession of a pure caffeine product by any of the
following:
(A) A food processing establishment;

(B) A manufacturer of a drug that is available without a prescription;

(C) A laboratory that is licensed by the Board of Pharmacy;

(D) A laboratory of any agency or department of this state that performs testing, analysis, and other laboratory services on behalf of the state; and

(E) A postal or delivery service that transports or delivers a pure caffeine product to an entity specified in subsections (A) to (D) of this section.

(e) A person who violates subsection (b) is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $100.

CHAPTER 61

(H. B. 4362 - By Delegates Kurcaba, Fleischauer, Statler, Householder, Espinosa, Overington, Weld, Summers, Blair, Byrd and Upson)

[Passed March 5, 2016; in effect ninety days from passage.]
[Approved by the Governor on March 9, 2016.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §61-2-9d, relating to crimes against the person; establishing the felony offense of strangulation; defining terms; and providing 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 §61-2-9d, to read as follows:

**ARTICLE 2. CRIMES AGAINST THE PERSON.**

§61-2-9d. Strangulation; definitions; penalties.

1 (a) As used in this section:

2 (1) “Bodily injury” means substantial physical pain, illness or any impairment of physical condition;

3 (2) “Strangle” means knowingly and willfully restricting another person’s air intake or blood flow by the application of pressure on the neck or throat;

4 (b) Any person who strangles another without that person’s consent and thereby causes the other person bodily injury or loss of consciousness is guilty of a felony and, upon conviction thereof, shall be fined not more than $2,500 or imprisoned in a state correctional facility not less than one year or more than five years, or both fined and imprisoned.

**CHAPTER 62**

(Com. Sub. for S. B. 361 - By Senators Gaunch, Boso, Mullins, Palumbo, Walters, Williams and Prezioso)

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

AN ACT to amend and reenact §61-2-10a of the Code of West Virginia, 1931, as amended, relating to prohibiting persons who
have committed crimes against the elderly from performing any court-ordered public service involving the elderly.

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

That §61-2-10a of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 2. CRIMES AGAINST THE PERSON.**

§61-2-10a. Violent crimes against the elderly; sentence not subject to suspension or probation.

(a) If any person be convicted and sentenced for an offense defined under the provisions of section nine or ten of this article, and if the person shall have committed such offense against a person who is sixty-five years of age or older, then the sentence shall be mandatory and shall not be subject to suspension or probation: *Provided,* That the court may, in its discretion, suspend the sentence and order probation to any person so convicted upon condition that such person perform public service for a period of time deemed appropriate by the court: *Provided, however,* That the public service may not be rendered in or about facilities or programs providing care or services for the elderly: *Provided further,* That the court may apply the provisions of article eleven-a, chapter sixty-two of this code to a person committed to a term of one year or less.

(b) The existence of any fact which would make any person ineligible for probation under subsection (a) of this section because of the commission or attempted commission of a felony against a victim sixty-five years of age or older shall not be applicable unless such fact is: (i) Found by the court upon a plea of guilty or nolo contendere; or (ii) found by the jury, if the matter is tried before a jury; or (iii) found by the court, if the matter is tried by the court, without a jury.
AN ACT to amend and reenact §61-2-10b of the Code of West Virginia, 1931, as amended, relating to protection of utility workers and law-enforcement officers from crimes against the person; defining terms; adding law-enforcement officers and utility workers among the list of professionals the malicious assault, unlawful assault, battery or assault of which carries increased criminal penalties; clarifying the criminal offense of battery to require that the perpetrator have knowledge that the victim was acting in his or her official capacity; and clarifying the criminal offense of assault to require that the perpetrator have knowledge that the victim was acting in his or her official capacity.

Be it enacted by the Legislature of West Virginia:

That §61-2-10b of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2. CRIMES AGAINST THE PERSON.

§61-2-10b. Malicious assault; unlawful assault; battery; and assault on governmental representatives, health care providers, utility workers, law-enforcement officers and emergency medical service personnel; definitions; penalties.
(a) For purposes of this section:

(1) “Government representative” means any officer or employee of the state or a political subdivision thereof, or a person under contract with a state agency or political subdivision thereof.

(2) “Health care worker” means any nurse, nurse practitioner, physician, physician assistant or technician practicing at, and all persons employed by or under contract to a hospital, county or district health department, long-term care facility, physician’s office, clinic or outpatient treatment facility.

(3) “Emergency service personnel” means any paid or volunteer firefighter, emergency medical technician, paramedic, or other emergency services personnel employed by or under contract with an emergency medical service provider or a state agency or political subdivision thereof.

(4) “Utility worker” means any individual employed by a public utility or electric cooperative or under contract to a public utility, electric cooperative or interstate pipeline.

(5) “Law-enforcement officer” has the same definition as this term is defined in W.Va. Code §30-29-1, except for purposes of this section, “law-enforcement officer” shall additionally include those individuals defined as “chief executive” in W.Va. Code §30-29-1.

(b) Malicious assault. — Any person who maliciously shoots, stabs, cuts or wounds or by any means causes bodily injury with intent to maim, disfigure, disable or kill a government representative, health care worker, utility worker, emergency service personnel or law-enforcement officer acting in his or her official capacity, and the person committing the malicious assault knows or has reason to know that the victim is
(c) **Unlawful assault.** — Any person who unlawfully but not maliciously shoots, stabs, cuts or wounds or by any means causes a government representative, health care worker, utility worker, emergency service personnel or law-enforcement officer acting in his or her official capacity bodily injury with intent to maim, disfigure, disable or kill him or her and the person committing the unlawful assault knows or has reason to know that the victim is acting in his or her official capacity is guilty of a felony and, upon conviction thereof, shall be confined in a correctional facility for not less than two nor more than five years.

(d) **Battery.** — Any person who unlawfully, knowingly and intentionally makes physical contact of an insulting or provoking nature with a government representative, health care worker, utility worker, emergency service personnel or law-enforcement officer acting in his or her official capacity and the person committing the battery knows or has reason to know that the victim is acting in his or her official capacity, or unlawfully and intentionally causes physical harm to that person acting in such capacity and the person committing the battery knows or has reason to know that the victim is acting in his or her official capacity, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $500 or confined in jail not less than one month nor more than twelve months or both fined and confined. If any person commits a second such offense, he or she is guilty of a felony and, upon conviction thereof, shall be fined not more than $1,000 or imprisoned in a state correctional facility not less than one year nor more than three years, or both fined and imprisoned. Any person who commits a third violation of this subsection is guilty of a felony and, upon conviction thereof, shall be fined not more than $2,000 or
imprisoned in a state correctional facility not less than two years
nor more than five years, or both fined and imprisoned.

(e) Assault. — Any person who unlawfully attempts to
commit a violent injury to the person of a government
representative, health care worker, utility worker, emergency
service personnel or law-enforcement officer, acting in his or her
official capacity and the person committing the battery knows or
has reason to know that the victim is acting in his or her official
capacity, or unlawfully commits an act which places that person
acting in his or her official capacity in reasonable apprehension
of immediately receiving a violent injury and the person
committing the battery knows or has reason to know that the
victim is acting in his or her official capacity, is guilty of a
misdemeanor and, upon conviction thereof, shall be confined in
jail for not less than twenty-four hours nor more than six months,
fined not more than $200, or both fined and confined.

CHAPTER 64

(H. B. 4309 - By Delegates Rowan, Border,
Fast, Stansbury, Moye, Campbell, Overington, Romine,
Duke, Pethel and Ferro)

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

AN ACT to amend the Code of West Virginia, 1931, by adding thereto
a new article, designated §55-7J-1, §55-7J-2, §55-7J-3, §55-7J-4,
§55-7J-5 and §55-7J-6; and to amend and reenact §61-2-29b of
said code, all relating generally to protections against financial
exploitation of elderly persons, protected persons and incapacitated
adults; establishing a cause of action against a person who
commits an act of financial exploitation against an elderly person, protected person or incapacitated adult; defining terms; restricting certain defenses which, standing alone, are based on legal relationship to an elderly person, protected person or incapacitated adult; providing for court-authorized remedies; authorizing the award of increased damages in certain circumstances; providing for award of costs and attorneys’ fees; establishing the standard of proof; establishing the statute of limitations for actions brought under the article; authorizing the court to freeze assets and order injunctive relief; providing options the court may exercise upon a formal finding of exploitation; authorizing the court to require posting security, or additional security, under certain circumstances; clarifying criminal penalties for conviction of certain offenses of financial exploitation of an elderly person, protected person or incapacitated adult; and increasing the criminal penalty for the offense of financial exploitation of $1,000 or more.

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 §55-7J-1, §55-7J-2, §55-7J-3, §55-7J-4, §55-7J-5 and §55-7J-6; and to amend and reenact §61-2-29b of said code, all to read as follows:

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

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

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

1 (a) Any elderly person, protected person or incapacitated adult against whom an act of financial exploitation has been
committed may bring an action under this article against any
person who has committed an act of financial exploitation
against him or her.

(b) For the purposes of this article:

(1) “Incapacitated adult” has the same meaning as prescribed
under section twenty-nine, article two, chapter sixty-one of this
code;

(2) “Elderly person” means a person who is sixty-five years
or older;

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

(4) “Protected person” means any person who is defined as
a “protected person” in section four, article one, chapter
forty-four-a of this code and who is subject to the protections of
chapter forty-four-a or forty-four-c of this code.

§55-7J-2. Restriction of defenses, standing alone, based on legal
relationship.

Notwithstanding any provision of this code to the contrary,
acting in a position of trust and confidence, including, but not
limited to, as guardian, conservator, trustee or attorney for or
holding power of attorney for an elderly person, protected person
or incapacitated adult shall not, standing alone, constitute a
defense to an action brought under this article.

§55-7J-3. Court authorized remedies.
(a) In an action brought against a person under this article upon a finding that an elderly person, protected person or incapacitated adult has been financially exploited, the court may order:

(1) The return of property or assets improperly obtained, controlled or used; and

(2) An award of actual damages to the person who brought the action for any damages incurred or for the value of the property or assets lost as a result of the violation or violations of this article.

(b) In addition to the remedies provided in subsection (a) of this section, a court may order the following:

(1) For violations committed by a person who is not in a position of trust and confidence, payment of two times the amount of damages incurred or value of property or assets lost; and

(2) For violations committed by a person in a position of trust and confidence, payment of treble damages.

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

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

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

(c) An action under this article shall be brought within two years from the date of the violation or from the date of discovery, whichever is later in time.
§55-7J-5. Action to freeze assets; burden of proof; options the court may exercise.

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

(1) Grant injunctive relief;

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

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

(4) Provide for the appointment of a receiver;

(b) In an action under section one of this article, the court may void or limit the application of contracts or clauses resulting from the financial exploitation.

(c) In an action brought under this article, upon the filing of the complaint or on the appearance of any defendant, claimant or other party, or at any later time, the court may require the plaintiff, defendant, claimant or other party or parties to post
29 security, or additional security, in a sum the court directs to pay
30 all costs, expenses and disbursements that are awarded against
31 that party or that the party may be directed to pay by any
32 interlocutory order, by the final judgment or after appeal.

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

1 Any person who violates the terms of an order issued under
2 section five of this article shall be subject to proceeding for
3 contempt of court. The court issuing the injunction may retain
4 jurisdiction if, in its discretion, it determines that to do so is in
5 the best interest of the elderly person, protected person or
6 incapacitated adult. Whenever the court determines that an
7 injunction issued under section five of this article has been
8 violated, the court may award reasonable costs to the party
9 asserting that a violation has occurred.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 2. CRIMES AGAINST THE PERSON.

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

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

6 (b) Any person who financially exploits an elderly person,
7 protected person or an incapacitated adult in the amount of
8 $1,000 or more is guilty of a felony and, upon conviction
9 thereof, shall be fined not more than $10,000 and imprisoned in
10 a state correctional facility not less than two nor more than
11 twenty years.
(c) Any person convicted of a violation of this section shall, in addition to any other penalties at law, be subject to an order of restitution.

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

(e) Financial institutions and their employees, as defined by section one, article two-a, chapter thirty-one-a of this code and as permitted by subsection (13) section four of said article, others engaged in financially related activities, as defined by section one, article eight-c, chapter thirty-one-a of this code, caregivers, relatives and other concerned persons are permitted to report suspected cases of financial exploitation to state or federal law-enforcement authorities, the county prosecuting attorney and to the Department of Health and Human Resources, Adult Protective Services Division or Medicaid Fraud Division, as appropriate. Public officers and employees are required to report suspected cases of financial exploitation to the appropriate entities as stated above. The requisite agencies shall investigate or cause the investigation of the allegations.

(f) When financial exploitation is suspected and to the extent permitted by federal law, financial institutions and their employees or other business entities required by federal law or regulation to file suspicious activity reports and currency transaction reports shall also be permitted to disclose suspicious activity reports or currency transaction reports to the prosecuting attorney of any county in which the transactions underlying the suspicious activity reports or currency transaction reports occurred.
(g) Any person or entity that in good faith reports a suspected case of financial exploitation pursuant to this section is immune from civil liability founded upon making that report.

(h) For the purposes of this section:

(1) “Incapacitated adult” means a person as defined by section twenty-nine of this article;

(2) “Elderly person” means a person who is sixty-five years or older;

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

(4) “Protected person” means any person who is defined as a “protected person” in section four, article one, chapter forty-four-a of this code and who is subject to the protections of chapter forty-four-a or forty-four-c of this code.

(i) Notwithstanding any provision of this code to the contrary, acting as guardian, conservator, trustee or attorney for or holding power of attorney for an elderly person, protected person or incapacitated adult shall not, standing alone, constitute a defense to a violation of subsection (a) of this section.
CHAPTER 65

(Com. Sub. for S. B. 567 - By Senators Boso, Ashley, Blair, Gaunch, Kirkendoll, Maynard, Miller, Mullins, Romano, Williams, Stollings, Plymale and Ferns)

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

AN ACT to amend and reenact §61-3-29 of the Code of West Virginia, 1931, as amended, relating to property crimes committed against property owned by a railroad company or public utility company, or other certain real or personal property; adding oil, timber and timber operations to the list of entities protected under this statute; clarifying that the applicable property covered under this statute be commercial or industrial real or personal property of a railroad company or public utility company; adding storage to the list of uses of certain property covered under this statute; creating a felony offense for knowingly and willfully damaging or destroying any commercial or industrial real or personal property owned by a railroad company, or public utility company, or any real or personal property used for producing, generating, transmitting, distributing, treating, storing or collecting electricity, natural gas, oil, coal, timber, timber processing, water, wastewater, stormwater, telecommunications or cable service and thereby hindering, impairing or disrupting, directly or indirectly, the normal operation of any equipment, device, system or service put in place, in whole or in part, to protect, promote or facilitate the health or safety of any person; providing criminal penalties; and providing that a railroad company, public utility, business, or owner of property that is damaged, destroyed or disrupted may be deemed a victim and entitled to restitution, should the court so order, from any person convicted of an offense under this section, pursuant to the Victim Protection Act of 1984.
Be it enacted by the Legislature of West Virginia:

That §61-3-29 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 3. CRIMES AGAINST PROPERTY.

§61-3-29. Damage or destruction of railroad or public utility company property, or real or personal property used for producing, generating, transmitting, distributing, treating or collecting electricity, natural gas, coal, water, wastewater, stormwater, telecommunications or cable service; penalties; restitution.

(a) Any person who knowingly and willfully damages or destroys any commercial or industrial real or personal property owned by a railroad company, or public utility company, or any real or personal property used for producing, generating, transmitting, distributing, treating storing or collecting electricity, natural gas, oil, coal, timber, timber processing, water, wastewater, stormwater, telecommunications or cable service, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $2,000, or confined in jail not more than one year, or both fined and confined.

(b) Any person who knowingly and willfully damages or destroys any commercial or industrial real or personal property owned by a railroad company, or public utility company, or any real or personal property used for producing, generating, transmitting, distributing, treating, storing or collecting electricity, natural gas, oil, coal, timber, timber processing, water, wastewater, stormwater, telecommunications or cable service and thereby creates a substantial risk of serious bodily injury to another or results in the interruption of service to the public is guilty of a felony and, upon conviction thereof, shall be fined not more than $5,000, or imprisoned in a state correctional
facility not less than one nor more than three years, or both fined and imprisoned.

(c) Any person who knowingly and willfully damages or destroys any commercial or industrial real or personal property owned by a railroad company, or public utility company, or any real or personal property used for producing, generating, transmitting, distributing, treating, storing or collecting electricity, natural gas, oil, coal, timber, timber processing, water, wastewater, stormwater, telecommunications or cable service and thereby causes serious bodily injury to another is guilty of a felony and, upon conviction thereof, shall be fined not less than $5,000 nor more than $50,000, or imprisoned in a state correctional facility not less than one nor more than five years, or both fined and imprisoned.

(d) Any person who knowingly and willfully damages or destroys any commercial or industrial real or personal property owned by a railroad company, or public utility company, or any real or personal property used for producing, generating, transmitting, distributing, treating, storing or collecting electricity, natural gas, oil, coal, timber, timber processing, water, wastewater, stormwater, telecommunications or cable service and thereby hinders, impairs or disrupts, directly or indirectly, the normal operation of any equipment, device, system or service put in place, in whole or in part, to protect, promote or facilitate the health or safety of any person is guilty of a felony and, upon conviction thereof, shall be fined not less than $5,000 nor more than $10,000, or imprisoned in a state correctional facility for not less than one nor more than five years, or both fined and imprisoned.

(e) For purposes of restitution under article eleven-a of this article, a railroad company, public utility, business, or owner of property that is damaged, destroyed or disrupted may be deemed a victim and entitled to restitution, should the court so order, from any person convicted of an offense under this section.
AN ACT to amend and reenact §61-3B-3 of the Code of West Virginia, 1931, as amended, relating to correcting subsection designations in the statute regarding trespass on property; relettering certain subsections to avoid duplication of subsection designations; and making other stylistic and technical changes.

Be it enacted by the Legislature of West Virginia:

That §61-3B-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 3B. TRESPASS.

§61-3B-3. Trespass on property other than structure or conveyance.

1 (a) It is an unlawful trespass for any person to knowingly, and without being authorized, licensed or invited, to enter or remain on any property, other than a structure or conveyance, as to which notice against entering or remaining is either given by
actual communication to such person or by posting, fencing or
cultivation.

(b) First offense conviction. — Upon a first trespassing
conviction pursuant to subsection (a) of this section, the person
is guilty of a misdemeanor and shall be fined not less than $100
nor more than $500.

(c) Second offense conviction. — Upon a second trespassing
conviction pursuant to subsection (a) of this section, the person
is guilty of a misdemeanor and shall be fined not less than $500
nor more than $1,000.

(d) Third offense conviction. — Upon a third and subsequent
trespassing conviction pursuant to subsection (a) of this section,
the person is guilty of a misdemeanor and shall be fined not less
than $1,000 nor more than $1,500.

(e) If the offender defies an order to leave, personally
communicated to him or her by the owner, tenant or agent of
such owner or tenant, or if the offender opens any door, fence or
gate, and thereby exposes animals, crops or other property to
waste, destruction or freedom, or causes any damage to property
by such trespassing on property other than a structure or
conveyance, he or she is guilty of a misdemeanor and, upon
conviction, shall be fined not less than $100 nor more than $500,
confined in jail for not more than six months, or both fined and
confined.

(f) If the offender is armed with a firearm or other dangerous
weapon with the unlawful and felonious intent to do bodily
injury to a human being during his or her commission of the
offense of trespass on property other than a structure or
conveyance, such offender, notwithstanding section one, article
seven, chapter sixty-one of this code, is guilty of a misdemeanor
and, upon conviction, shall be confined in jail for not more than
six months, fined not more than $100, or both confined and
fined.

(g) Notwithstanding and in addition to any other penalties
provided by law, any person who performs or causes damage to
property in the course of a willful trespass shall be liable to the
property owner in the amount of twice the amount of such
damage. However, this article shall not apply in a labor dispute.

CHAPTER 67
(Com. Sub. for H. B. 4448 - By Delegates Walters,
McCuskey, Frich and Westfall)
[Passed March 12, 2016; in effect ninety days from passage.]
[Approved by the Governor on March 24, 2016.]

AN ACT to amend and reenact §61-3C-14a of the Code of West
Virginia, 1931, as amended, relating to violations of the West
Virginia Computer Crime and Abuse Act; providing an exception
to the prohibition against making contact with a person after being
requested by the person to desist from contacting them; and
providing that communications made by a lender or debt collector
to a consumer regarding an overdue debt of the consumer that do
not violate the West Virginia Consumer Credit and Protection Act
are not a violation of the West Virginia Computer Crime and
Abuse Act.

Be it enacted by the Legislature of West Virginia:

That §61-3C-14a of the Code of West Virginia, 1931, as amended,
be amended and reenacted to read as follows:
ARTICLE 3C. WEST VIRGINIA COMPUTER CRIME AND ABUSE ACT.

§61-3C-14a. Obscene, anonymous, harassing and threatening communications by computer, cell phones and electronic communication devices; penalty.

(a) It is unlawful for any person, with the intent to harass or abuse another person, to use a computer, mobile phone, personal digital assistant or other electronic communication device to:

1. Make contact with another person without disclosing his or her identity with the intent to harass or abuse;

2. Make contact with a person after being requested by the person to desist from contacting them: Provided, That a communication made by a lender or debt collector to a consumer, regarding an overdue debt of the consumer that does not violate chapter forty-six-a of this code, does not violate this subsection;

3. Threaten to commit a crime against any person or property; or

4. Cause obscene material to be delivered or transmitted to a specific person after being requested to desist from sending such material.

(b) For purposes of this section:

1. “Electronic communication device” means and includes a telephone, wireless phone, computer, pager or any other electronic or wireless device which is capable of transmitting a document, image, voice, e-mail or text message using such device in an electronic, digital or analog form from one person or location so it may be viewed or received by another person or persons at other locations.
(2) “Use of a computer, mobile phone, personal digital assistant or other electronic communication device” includes, but is not limited to, the transmission of text messages, electronic mail, photographs, videos, images or other nonvoice data by means of an electronic communication system, and includes the transmission of such data, documents, messages and images to another’s computer, e-mail account, mobile phone, personal digital assistant or other electronic communication device.

(3) “Obscene material” means material that:

(A) An average person, applying contemporary adult community standards, would find, taken as a whole, appeals to the prurient interest, is intended to appeal to the prurient interest, or is pandered to a prurient interest;

(B) An average person, applying contemporary adult community standards, would find, depicts or describes, in a patently offensive way, sexually explicit conduct consisting of an ultimate sexual act, normal or perverted, actual or simulated, an excretory function, masturbation, lewd exhibition of the genitals, or sadomasochistic sexual abuse; and

(C) A reasonable person would find, taken as a whole, lacks literary, artistic, political or scientific value.

(c) It is unlawful for any person to knowingly permit a computer, mobile phone or personal digital assistant or other electronic communication device under his or her control to be used for any purpose prohibited by this section.

(d) Any offense committed under this section may be determined to have occurred at the place at which the contact originated or the place at which the contact was received or intended to be received.

(e) Any person who violates a provision of this section is guilty of a misdemeanor and, upon conviction thereof, shall be
56 fined not more than $500 or confined in jail not more than six
57 months, or both fined and confined. For a second or subsequent
58 offense, the person is guilty of a misdemeanor and, upon
59 conviction thereof, shall be fined not more than $1,000 or
60 confined in jail for not more than one year, or both fined and
61 confined.

CHAPTER 68

(Com. Sub. for H. B. 2366 - By Delegates Rowan, Miller,
Sobonya, P. Smith, Border, Arvon and Storch)

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

AN ACT to amend and reenact §61-3C-14b of the Code of West
Virginia, 1931, as amended; and to amend and reenact §61-8A-4
of said code, all relating generally to the solicitation of minors by
use of a computer; clarifying the law pertaining to the use of a
computer to solicit a minor for sexual activity; removing
controlled substance violations as an alleged purpose; creating a
new felony offense of soliciting a minor through use of a computer
for specified illegal sexual acts and committing any overt act
designed to bringing himself or herself within the physical
presence of the minor or someone believed to be a minor to engage
in prohibited sexual activity with the minor or person believed to
be a minor; requiring a four year age difference between an adult
and minor; establishing penalties; establishing the offense as a
lesser included crime; and prohibiting the use or distribution of
obscene materials by an adult to solicit or seduce a person who is
or is believed to be a minor at least four years younger than the
adult for unlawful sexual activity.
Be it enacted by the Legislature of West Virginia:

That §61-3C-14b of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §61-8A-4 of said code be amended and reenacted, all to read as follows:

ARTICLE 3C. WEST VIRGINIA COMPUTER CRIME AND ABUSE ACT.

§61-3C-14b. Soliciting, etc. a minor via computer; soliciting a minor and traveling to engage the minor in prohibited sexual activity; penalties.

(a) Any person over the age of eighteen, who knowingly uses a computer to solicit, entice, seduce or lure, or attempt to solicit, entice, seduce or lure, a minor known or believed to be at least four years younger than the person using the computer or a person he or she believes to be such a minor, in order to engage in any illegal act proscribed by the provisions of article eight, eight-b, eight-c or eight-d of this chapter, is guilty of a felony and, upon conviction thereof, shall be fined not more than $5,000 or imprisoned in a state correctional facility not less than two nor more than ten years, or both.

(b) Any person over the age of eighteen who uses a computer in the manner proscribed by the provisions of subsection (a) of this section and who additionally engages in any overt act designed to bring himself or herself into the minor’s, or the person believed to be a minor’s, physical presence with the intent to engage in violations of article eight, eight-b, eight-c or eight-d of this chapter with such a minor is guilty of a felony and shall be fined not more than $25,000 or imprisoned in a state correctional facility for a determinate sentence of not less than five nor more than fifteen years, or both fined and imprisoned: Provided, That subsection (a) of this section shall be deemed a lesser included offense to that created by this subsection.
ARTICLE 8A. PREPARATION, DISTRIBUTION OR EXHIBITION OF OBSCENE MATTER TO MINORS.

§61-8A-4. Use of obscene matter with intent to seduce minor.

Any adult, having knowledge of the character of the matter, who knows or believes that a person is a minor at least four years younger than the adult, who distributes, offers to distribute or displays by any means any obscene matter to the minor of person he or she believes to be a minor at least four years younger than the adult, and such distribution, offer to distribute, or display is undertaken with the intent or for the purpose of engaging in a violation of the provisions of article eight, eight-b, eight-c or eight-d of this chapter with the minor or person whom he or she believes is a minor at least four years younger than he or she, is guilty of a felony and, upon conviction thereof, shall be fined not more than $25,000, or imprisoned in a state correctional facility for not more than five years, or both. For a second and each subsequent commission of such offense, such person is guilty of a felony and, upon conviction, shall be fined not more than $50,000 or imprisoned in a state correctional facility for not more than ten years, or both.
the likelihood of imminent lawless action of a violent nature that could cause bodily harm to the prerequisites for the crime of intimidation and retaliation.

Be it enacted by the Legislature of West Virginia:

That §61-5-27 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 5. CRIMES AGAINST PUBLIC JUSTICE.

§61-5-27. Intimidation of and retaliation against public officers and employees, jurors and witnesses; fraudulent official proceedings and legal processes against public officials and employees; penalties.

(a) Definitions. — As used in this section:

(1) “Fraudulent” means not legally issued or sanctioned under the laws of this state or of the United States, including forged, false and materially misstated;

(2) “Legal process” means an action, appeal, document instrument or other writing issued, filed or recorded to pursue a claim against person or property, exercise jurisdiction, enforce a judgment, fine a person, put a lien on property, authorize a search and seizure, arrest a person, incarcerate a person or direct a person to appear, perform or refrain from performing a specified act. “Legal process” includes, but is not limited to, a complaint, decree, demand, indictment, injunction, judgment, lien, motion, notice, order, petition, pleading, sentence, subpoena, summons, warrant or writ;

(3) “Official proceeding” means a proceeding involving a legal process or other process of a tribunal of this state or of the United States;
“Person” means an individual, group, association, corporation or any other entity;

“Public official or employee” means an elected or appointed official or employee, of a state or federal court, commission, department, agency, political subdivision or any governmental instrumentality;

“Recorder” means a clerk or other employee in charge of recording instruments in a court, commission or other tribunal of this state or of the United States; and

“Tribunal” means a court or other judicial or quasi-judicial entity, or an administrative, legislative or executive body, or that of a political subdivision, created or authorized under the constitution or laws of this state or of the United States.

(b) Intimidation; harassment. — It is unlawful for a person to use intimidation, physical force, harassment or a fraudulent legal process or official proceeding, or to threaten to do so where such threat is directed at inciting or producing imminent lawless action of a violent nature that could cause bodily harm and is likely to incite or produce such action or to attempt to do so, with the intent to:

(1) Impede or obstruct a public official or employee from performing his or her official duties;

(2) Impede or obstruct a juror or witness from performing his or her official duties in an official proceeding;

(3) Influence, delay or prevent the testimony of any person in an official proceeding; or

(4) Cause or induce a person to: (A) Withhold testimony, or withhold a record, document or other object from an official
proceeding; (B) alter, destroy, mutilate or conceal a record, document or other object impairing its integrity or availability for use in an official proceeding; (C) evade an official proceeding summoning a person to appear as a witness or produce a record, document or other object for an official proceeding; or (D) be absent from an official proceeding to which such person has been summoned.

(c) Retaliation. — It is unlawful for a person to cause injury or loss to person or property, or to threaten to do so where such threat is directed at inciting or producing imminent lawless action of a violent nature that could cause bodily harm and is likely to incite or produce such action or to attempt to do so, with the intent to:

(1) Retaliate against a public official or employee for the performance or nonperformance of an official duty;

(2) Retaliate against a juror or witness for performing his or her official duties in an official proceeding; or

(3) Retaliate against any other person for attending, testifying or participating in an official proceeding, or for the production of any record, document or other object produced by a person in an official proceeding.

(d) Subsection (b) offense. — A person who is convicted of an offense under subsection (b) is guilty of a misdemeanor and shall be confined in jail for not more than one year or fined not more than $1,000, or both.

(e) Subsection (c) or subsequent offense. — A person convicted of an offense under subsection (c) or a second offense under subsection (b) is guilty of a felony and, shall be confined in a correctional facility not less than one nor more than ten years or fined not more than $2,000, or both.
(f) Civil cause of action. — A person who violates this section is liable in a civil action to any person harmed by the violation for injury or loss to person or property incurred as a result of the commission of the offense and for reasonable attorney’s fees, court costs and other expenses incurred as a result of prosecuting a civil action commenced under this subsection, which is not the exclusive remedy of a person who suffers injury or loss to person or property as a result of a violation of this section.

(g) Civil sanctions. — In addition to the criminal and civil penalties set forth in this section, any fraudulent official proceeding or legal process brought in a tribunal of this state in violation of this section shall be dismissed by the tribunal and the person may be ordered to reimburse the aggrieved person for reasonable attorney’s fees, court costs and other expenses incurred in defending or dismissing such action.

(1) Refusal to record. — A recorder may refuse to record a clearly fraudulent lien or other legal process against a public official or employee or his or her property. The recorder does not have a duty to inspect or investigate whether a lien or other legal process is fraudulent nor is the recorder liable for refusing to record a lien or other legal process that the recorder believes is in violation of this section.

(2) If a fraudulent lien or other legal process against a public official or employee or his or her property is recorded then:

(A) Request to release lien. — The public official or employee may send a written request by certified mail to the person who filed the fraudulent lien or legal process, requesting the person to release or dismiss the lien or legal process. If such lien or legal process is not properly released or dismissed within twenty-one days, then it shall be inferred that the person
intended to harass the public official or employee in violation of subsection (b) of this section and shall be subject to the criminal penalties in subsection (d) of this section and any other remedies provided in this section; or

(B) Notice of fraudulent lien. — A government attorney on behalf of the public official or employee may record a notice of fraudulent lien or legal process with the recorder who accepted the lien or legal process for filing. Such notice shall invalidate the fraudulent lien or legal process and cause it to be removed from the records. No filing fee shall be charged for the filing of the notice.

(h) A person’s lack of belief in the jurisdiction or authority of this state or of the United States is no defense to prosecution of a civil or criminal action under this section.

(i)(1) Nothing in this section prohibits or in any way limits the lawful acts of legitimate public officials or employees.

(2) Nothing in this section prohibits or in any way limits a person’s lawful and legitimate right to freely assemble, express opinions or designate group affiliation.

(3) Nothing in this section prohibits or in any way limits a person’s lawful and legitimate access to a tribunal of this state or prevents a person from instituting or responding to a lawful action.
CHAPTER 70

(Com. Sub. for H. B. 4201 - By Delegates Overington, Hanshaw, Blair, Shott, Statler, Sobonya, Summers, Weld, Kessinger, B. White and Fleischauer)

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

AN ACT to amend and reenact §61-8-19a and §61-8-19b of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §61-8-19c, all relating to increasing the criminal penalties for participating in an animal fighting venture; defining terms; adding conducting, financing, managing, supervising, directing, or knowingly allowing property under one’s control to be used for an animal fighting venture to types of prohibited conduct; making unlawful the possession of an animal for the purpose of engaging the animal in an animal fighting venture; providing for penalties; providing for divesting a convicted person of ownership of such animals and making a convicted person liable for all costs of the such animals care and maintenance; making it unlawful to knowingly cause an individual under the age of eighteen to attend an animal fighting venture; providing for penalties; providing penalties for third or subsequent offenses; providing that wagering at an animal fighting venture is a crime; providing for penalties; and providing increased penalties for third or subsequent offenses.

Be it enacted by the Legislature of West Virginia:

That §61-8-19a and §61-8-19b 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 §61-8-19c, all to read as follows:
ARTICLE 8. CRIMES AGAINST CHASTITY, MORALITY AND DECENCY.


(a) For the purpose of this article, “animal fighting venture” means any event that involves a fight conducted or to be conducted between at least two animals for purposes of sport, wagering, or entertainment: Provided, That it shall not be deemed to include any lawful activity the primary purpose of which involves the use of one or more animals in racing or in hunting another animal: Provided, however, That “animal fighting venture” does not include the lawful use of livestock as such is defined in section two, article ten-b, chapter nineteen of this code or exotic species of animals bred or possessed for exhibition purposes when such exhibition purposes do not include animal fighting or training therefor.

(b) It is unlawful for any person to conduct, finance, manage, supervise, direct, engage in, be employed at, or sell an admission to any animal fighting venture or to knowingly allow property under his care, custody or control to be so used.

(c) It is unlawful for any person to possess an animal with the intent to engage the animal in an animal fighting venture.

(d) Any person who violates the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $300 and not more than $2,000, or confined in the county jail not exceeding one year, or both so fined and confined: Provided, That if the animal is a wild animal, game animal or fur-bearing animal, as defined in section two, article one, chapter twenty of this code, or wildlife not indigenous to West Virginia, or of a canine, feline, porcine, bovine, or equine species whether wild or domesticated, the person who violates the provisions of this section is guilty of a felony and, upon
conviction thereof, shall be fined not less than $2,500 and not more than $5,000, and imprisoned in a state correctional facility for not less than two nor more than five years, or both fined and imprisoned.

(e) Any person convicted of a violation of this section shall be divested of ownership and control of such animals and liable for all costs of their care and maintenance pursuant to section four, article ten, chapter seven of this code.

§61-8-19b. Attendance at animal fighting ventures prohibited; penalty.

(a) It is unlawful for any person to knowingly attend or knowingly cause an individual who has not attained the age of eighteen to attend, an animal fighting venture involving animals as defined in section nineteen-a, article eight of this chapter.

(b) Any person who violates the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $300 and not more than $2,000, or confined in the county or regional jail not more than one year, or both fined and imprisoned.

(c) Notwithstanding the provisions of subsection (b) of this section, any person convicted of a third or subsequent violation of subsection (a) of this section is guilty of a felony and, shall be fined not less than $2,500 and not more than $5,000, imprisoned in a state correctional facility not less than one year nor more than five years, or both fined and imprisoned.

§61-8-19c. Wagering at animal fighting venture prohibited; penalty.

(a) It is unlawful for any person to bet or wager money or any other thing of value in any location or place where an animal fighting venture occurs.
(b) Any person who violates the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $300 and not more than $2,000, or confined in jail not more than one year, or both fined and imprisoned.

(c) Notwithstanding the provisions of subsection (b) of this section, any person who is convicted of a third or subsequent violation of this section is guilty of a felony and, upon conviction thereof, shall be fined not less than $2,500 and not more than $5,000, or imprisoned in a state correctional facility not less than one year nor more than five years, or both fined and imprisoned.

CHAPTER 71

(Com. Sub. for H. B. 2122 - By Delegates Ambler, Cooper, Householder, Walters, R. Smith, Canterbury and Gearheart)

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

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §61-8-30, relating to making it illegal for first responders to photograph, film, videotape, record or otherwise reproduce in any manner the image of a human corpse or person being provided medical care or assistance except for enumerated purposes; defining terms; creating a criminal offense for first responders to photograph, film, videotape, record or otherwise reproduce in any manner the image of a human corpse or person being provided public safety services, medical care or assistance unless it is for a legitimate purpose associated with his or her employment; creating a criminal offense for first responders to knowingly disclose any photograph, film,
videotape, record or other reproduction of the image of a human corpse or person being provided public safety services, medical care or assistance unless disclosure is for a legitimate cause associated with his or her employment; providing for exceptions to the criminal offenses; providing for criminal penalties; providing for enhanced penalties for subsequent offenses; and designating provision as “Jonathan’s Law”.

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 §61-8-30, to read as follows:

ARTICLE 8. CRIMES AGAINST CHASTITY, MORALITY AND DECENCY.

§61-8-30. Photography of a corpse or person being provided medical care or assistance; prohibitions; exceptions; Jonathan’s Law.

(a) As used in this section:

(1) “Disclose” means to sell, manufacture, give, provide, lend, trade, mail, deliver, transfer, publish, distribute, circulate, disseminate, present, exhibit, advertise, offer or otherwise make available or make known to any third party.

(2) “First responder” means law-enforcement officers, firefighters, emergency medical services personnel and other similar individuals authorized to respond to calls for public safety services or emergency medical assistance.

(b)(1) A first responder who is present at a motor vehicle accident or other emergency situation for the purpose of providing public safety services or medical care or assistance shall not photograph, film, videotape, record or otherwise
reproduce in any manner the image of a human corpse or a person being provided medical care or assistance, except for a legitimate law-enforcement purpose, public safety purpose, health care purpose, insurance purpose, legal investigation or legal proceeding involving an injured or deceased person or pursuant to a court order.

(2) A first responder shall not knowingly disclose any photograph, film, videotape, record or other reproduction of the image of a human corpse or a person being provided medical care or assistance at the scene of a motor vehicle accident or other emergency situation without prior written consent of the injured person, the person’s next-of-kin if the injured person cannot provide consent, or personal representative under law of a deceased person, unless that disclosure is for a legitimate law enforcement purpose, public safety purpose, health care purpose, insurance purpose, legal investigation or legal proceeding involving an injured or deceased person or pursuant to a court order.

(3) Any person who violates subdivision (1) or (2) of this subsection is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $50 nor more than $500. For a second offense, the person is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for twenty-four hours and shall be fined not less than $100 nor more than $750. For a third or subsequent offense, the person is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not less than twenty-four hours nor more than six months and shall be fined not less than $1,000 nor more than $5,000.

(c) This section shall be known as “Jonathan’s Law”.
CHAPTER 72

(Com. Sub. for H. B. 2205 - By Delegates Howell, Stansbury, Ambler, Cooper, Miller, Faircloth, Zatezalo, Blair, Statler and Wagner)

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

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §61-8-31, relating to creating the offense of a psychotherapist, or one fraudulently representing himself or herself as a psychotherapist, to engage in sexual contact or sexual intercourse with a patient or client by means of therapeutic deception; establishing elements of the crime; providing exceptions; providing definitions; 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 §61-8-31, to read as follows:

ARTICLE 8. CRIMES AGAINST CHASTITY, MORALITY AND DECENCY.

§61-8-31. Therapeutic deception; penalties.

1 (a) In this section, unless a different meaning plainly is required:

2 (1) “Client” or “patient” means a person who is being treated clinically or medically by a psychotherapist for more than one session or initial visit.
6 (2) “Psychotherapist” means any of the following:

7 (A) A psychiatrist licensed pursuant to article three, chapter thirty of this code;

9 (B) A psychologist licensed pursuant to article twenty-one, chapter thirty of this code or a medical psychologist licensed pursuant to article three, chapter thirty of this code;

12 (C) A licensed clinical social worker licensed pursuant to article thirty, chapter thirty of this code; or

14 (D) A mental health counselor licensed pursuant to article thirty-one, chapter thirty of this code.

16 (3) “Sexual contact” has the same meaning as provided in article eight-b, chapter sixty-one of this code.

18 (4) “Sexual intercourse” has the same meaning as provided in article eight-b, chapter sixty-one of this code.

20 (5) “Therapeutic deception” means a representation by the psychotherapist to the patient or client that sexual contact or sexual intercourse with the psychotherapist is consistent with or part of the treatment of the patient or client.

24 (b) It is unlawful for any psychotherapist, or any person who fraudulently represents himself or herself as a psychotherapist, to engage in sexual contact or sexual intercourse with a client or patient by means of therapeutic deception.

28 (c) For purposes of this section, consent of the patient or client is not a defense, regardless of the age of the patient or client.

31 (d) Any person who violates subsection (b) of this section is guilty of a felony and, upon conviction thereof, shall be fined not
more than $10,000.00 or imprisoned in a state correctional facility for not less than one year nor more than five years, or both fined and imprisoned.

CHAPTER 73

(H. B. 2494 - By Delegates Weld, Fast, Sponaugle, Skinner and Shott)

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

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §61-11-22a, relating to codifying deferred adjudication process for persons charged with felony and misdemeanor offenses in circuit and magistrate court; authorizing courts, upon motion, to defer acceptance and adjudication of entered guilty pleas for certain periods based upon severity of offense; authorizing court to impose such conditions and terms as it deems just and necessary as a condition of participation; authorizing periods of incarceration and participation in referenced programs as conditions of participation in the deferred adjudication process; authorizing acceptance of previously entered guilty plea upon violation of the terms and conditions of deferral; authorizing court to impose additional terms and conditions upon defendant if violation occurs; and clarifying that procedure hereby authorized is distinct from conditional plea under Rule 11(a)(2) of the West Virginia Rules of Criminal Procedure.

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 §61-11-22a to read as follows:

(a) Upon the entry of a guilty plea to a felony or misdemeanor before a circuit or magistrate court of this state entered in compliance with the provisions of West Virginia Rule of Criminal Procedure 11 or Rule 10 of the West Virginia Rules of Criminal Procedure for Magistrate Courts and applicable judicial decisions, the court may, upon motion, defer acceptance of the guilty plea and defer further adjudication thereon and release the defendant upon such terms and conditions as the court deems just and necessary. Terms and conditions may include, but are not limited to, periods of incarceration, drug and alcohol treatment, counseling and participation in programs offered under articles eleven-a, eleven-b and eleven-c, chapter sixty-two of this code.

(b) If the offense to which the plea of guilty is entered is a felony, the circuit court may defer adjudication for a period not to exceed three years. If the offense to which the plea of guilty is entered is a misdemeanor, the court may defer adjudication for a period not to exceed two years.

(c) If the defendant complies with the court-imposed terms and conditions he or she shall be permitted to withdraw his or her plea of guilty and the matter dismissed or, as may be agreed upon by the court and the parties, enter a plea of guilty or no contest to a lesser offense.

(d) In the event the defendant is alleged to have violated the terms and conditions imposed upon him or her by the court during the period of deferral the prosecuting attorney may file a
motion to accept the defendant’s plea of guilty and, following
notice, a hearing shall be held on the matter.

(e) In the event the court determines that there is reasonable
cause to believe that the defendant violated the terms and
conditions imposed at the time the plea was entered, the court
may accept the defendant’s plea to the original offense and
impose a sentence in the court’s discretion in accordance with
the statutory penalty of the offense to which the plea of guilty
was entered or impose such other terms and conditions as the
court deems appropriate.

(f) The procedures set forth in this section are separate and
distinct from that set forth in West Virginia Rule of Criminal
Procedure 11(a)(2).

CHAPTER 74

(S. B. 261 - By Senator Blair)

[Passed February 15, 2016; in effect ninety days from passage.]
[Approved by the Governor on February 25, 2016.]

AN ACT to amend and reenact §5-1-25 of the Code of West Virginia, 1931, as amended, relating to the designation of daylight saving time.

Be it enacted by the Legislature of West Virginia:

That §5-1-25 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 1. THE GOVERNOR.

§5-1-25. Designation of daylight saving time as official time.
Daylight saving time shall be the statewide official time, commencing at two o’clock antemeridian on the second Sunday of March and terminating at two o’clock antemeridian on the first Sunday of November; this time shall apply to all public schools, institutions of higher learning, agencies, departments and political subdivisions of the state.

CHAPTER 75


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

AN ACT to amend and reenact §48-9-209 of the Code of West Virginia, 1931, as amended, relating to limiting factors in parenting plans; clarifying the court’s consideration of fraudulent reports of domestic violence and child abuse in imposing limits on a parenting plan in order to protect a child from harm; clarifying that a person’s withdrawal of or failure to pursue a report of domestic violence or child abuse is not alone sufficient to establish that report as fraudulent; requiring court to impose limits that are reasonably calculated to protect the child or the child’s parent from harm if a parent who would otherwise be allocated responsibility under a parenting plan has made one or more fraudulent reports of domestic violence or child abuse; and correcting an internal code reference to clarify a parent’s ability to move the court to disclose whether other parent was the source of fraudulent reports of domestic violence or child abuse.

Be it enacted by the Legislature of West Virginia:
That §48-9-209 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 9. ALLOCATION OF CUSTODIAL RESPONSIBILITY AND DECISION-MAKING RESPONSIBILITY OF CHILDREN.

PART II. PARENTING PLANS.

§48-9-209. Parenting plan; limiting factors.

1 (a) If either of the parents so requests, or upon receipt of credible information thereof, the court shall determine whether a parent who would otherwise be allocated responsibility under a parenting plan:

5 (1) Has abused, neglected or abandoned a child, as defined by state law;

7 (2) Has sexually assaulted or sexually abused a child as those terms are defined in articles eight-b and eight-d, chapter sixty-one of this code;

10 (3) Has committed domestic violence, as defined in section 27-202;

12 (4) Has interfered persistently with the other parent’s access to the child, except in the case of actions taken for the purpose of protecting the safety of the child or the interfering parent or another family member, pending adjudication of the facts underlying that belief; or

17 (5) Has made one or more fraudulent reports of domestic violence or child abuse: Provided, That a person’s withdrawal of or failure to pursue a report of domestic violence or child abuse shall not alone be sufficient to consider that report fraudulent.
(b) If a parent is found to have engaged in any activity specified by subsection (a) of this section, the court shall impose limits that are reasonably calculated to protect the child or child’s parent from harm. The limitations that the court shall consider include, but are not limited to:

1. An adjustment of the custodial responsibility of the parents, including but not limited to:
   a. Increased parenting time with the child to make up for any parenting time the other parent lost as a result of the proscribed activity;
   b. An additional allocation of parenting time in order to repair any adverse effect upon the relationship between the child and the other parent resulting from the proscribed activity; or
   c. The allocation of exclusive custodial responsibility to one of them;

2. Supervision of the custodial time between a parent and the child;

3. Exchange of the child between parents through an intermediary, or in a protected setting;

4. Restraints on the parent from communication with or proximity to the other parent or the child;

5. A requirement that the parent abstain from possession or consumption of alcohol or nonprescribed drugs while exercising custodial responsibility and in the twenty-four hour period immediately preceding such exercise;

6. Denial of overnight custodial responsibility;

7. Restrictions on the presence of specific persons while the parent is with the child;
(8) A requirement that the parent post a bond to secure return of the child following a period in which the parent is exercising custodial responsibility or to secure other performance required by the court;

(9) A requirement that the parent complete a program of intervention for perpetrators of domestic violence, for drug or alcohol abuse, or a program designed to correct another factor; or

(10) Any other constraints or conditions that the court deems necessary to provide for the safety of the child, a child’s parent or any person whose safety immediately affects the child’s welfare.

(c) If a parent is found to have engaged in any activity specified in subsection (a) of this section, the court may not allocate custodial responsibility or decision-making responsibility to that parent without making special written findings that the child and other parent can be adequately protected from harm by such limits as it may impose under subsection (b) of this section. The parent found to have engaged in the behavior specified in subsection (a) of this section has the burden of proving that an allocation of custodial responsibility or decision-making responsibility to that parent will not endanger the child or the other parent.

(d) If the court determines, based on the investigation described in part three of this article or other evidence presented to it, that an accusation of child abuse or neglect, or domestic violence made during a child custody proceeding is false and the parent making the accusation knew it to be false at the time the accusation was made, the court may order reimbursement to be paid by the person making the accusations of costs resulting from defending against the accusations. Such reimbursement may not exceed the actual reasonable costs incurred by the accused party as a result of defending against the accusation and reasonable attorney’s fees incurred.
(e) (1) A parent who believes he or she is the subject of activities by the other parent described in subdivision (5) of subsection (a), may move the court pursuant to subdivision (4), subsection (b), section one hundred and one, article five, chapter forty-nine of this code for the Department of Health and Human Resources to disclose whether the other parent was the source of the allegation and, if so, whether the department found the report to be:

(A) Substantiated;

(B) Unsubstantiated;

(C) Inconclusive; or

(D) Still under investigation.

(2) If the court grants a motion pursuant to this subsection, disclosure by the Department of Health and Human Resources shall be in camera. The court may disclose to the parties information received from the department only if it has reason to believe a parent knowingly made a false report.

CHAPTER 76

(Com. Sub. for S. B. 581 - By Senators Maynard, Ashley, Laird, Kessler, Palumbo, Woelfel, Romano and Stollings)

[Passed March 8, 2016; in effect ninety days from passage.]
[Approved by the Governor on March 23, 2016.]

AN ACT to amend and reenact §48-27-301 of the Code of West Virginia, 1931, as amended; and to amend and reenact §51-2A-2 of said code, all relating to eliminating the sunset provision
terminating the pilot domestic violence court program; continuing domestic violence court initiative designed to prevent domestic violence; expanding the initiative from one pilot court to five courts; permitting Supreme Court of Appeals to determine each domestic violence court is to be located; and making other technical and conforming changes.

Be it enacted by the Legislature of West Virginia:

That §48-27-301 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §51-2A-2 of said code be amended and reenacted, all to read as follows:

CHAPTER 48. DOMESTIC RELATIONS.

ARTICLE 27. PREVENTION AND TREATMENT OF DOMESTIC VIOLENCE.

PART III.
PROCEDURE.

§48-27-301. Jurisdiction.

(a) Circuit courts, family courts and magistrate courts have concurrent jurisdiction over domestic violence proceedings as provided in this article.

(b) The Supreme Court of Appeals is authorized to assign appropriate judicial officers for five domestic violence courts in any jurisdiction chosen by the Supreme Court of Appeals. Judicial officers so assigned have the authority and jurisdiction to preside over criminal misdemeanor crimes of domestic violence involving family or household members as defined in subdivisions (1) through (6), inclusive, and paragraphs (A), (B) and (H), subdivision (7), section two hundred four of this article, relating to offenses under subsections (b) and (c), section nine, article two, chapter sixty-one of this code, misdemeanor violations of section nine-a, article two, chapter sixty-one of this
code, misdemeanor violations of section twenty-eight, article two, chapter sixty-one of this code, misdemeanor offenses under article three, chapter sixty-one of this code where the alleged perpetrator and the victim are said family or household members, subdivisions (7) and (8), section seven, article seven, chapter sixty-one of this code and civil and criminal domestic violence protective order proceedings as provided in this article.

The judicial officer chosen for any domestic violence court may be a current or senior status circuit judge, family court judge, temporary family court judge or magistrate. The Supreme Court of Appeals is requested to maintain statistical data to determine the feasibility and effectiveness of any domestic violence court established by the provisions of this section.

(c) The assigned judicial officer in a domestic violence court does not have jurisdiction to preside over any felony crimes unless the assigned judicial officer is a circuit court judge.

CHAPTER 51. COURTS AND THEIR OFFICERS.

ARTICLE 2A. FAMILY COURTS.

§51-2A-2. Family court jurisdiction; exceptions; limitations.

(a) The family court shall exercise jurisdiction over the following matters:

(1) All actions for divorce, annulment or separate maintenance brought under the provisions of article three, four or five, chapter forty-eight of this code except as provided in subsections (b) and (c) of this section;

(2) All actions to obtain orders of child support brought under the provisions of articles eleven, twelve and fourteen, chapter forty-eight of this code;

(3) All actions to establish paternity brought under the provisions of article twenty-four, chapter forty-eight of this code
and any dependent claims related to such actions regarding child support, parenting plans or other allocation of custodial responsibility or decision-making responsibility for a child;

(4) All actions for grandparent visitation brought under the provisions of article ten, chapter forty-eight of this code;

(5) All actions for the interstate enforcement of family support brought under article sixteen, chapter forty-eight of this code and for the interstate enforcement of child custody brought under the provisions of article twenty of said chapter;

(6) All actions for the establishment of a parenting plan or other allocation of custodial responsibility or decision-making responsibility for a child, including actions brought under the Uniform Child Custody Jurisdiction and Enforcement Act, as provided in article twenty, chapter forty-eight of this code;

(7) All petitions for writs of habeas corpus wherein the issue contested is custodial responsibility for a child;

(8) All motions for temporary relief affecting parenting plans or other allocation of custodial responsibility or decision-making responsibility for a child, child support, spousal support or domestic violence;

(9) All motions for modification of an order providing for a parenting plan or other allocation of custodial responsibility or decision-making responsibility for a child or for child support or spousal support;

(10) All actions brought, including civil contempt proceedings, to enforce an order of spousal or child support or to enforce an order for a parenting plan or other allocation of custodial responsibility or decision-making responsibility for a child;
(11) All actions brought by an obligor to contest the
enforcement of an order of support through the withholding from
income of amounts payable as support or to contest an affidavit
of accrued support, filed with the circuit clerk, which seeks to
collect an arrearage;

(12) All final hearings in domestic violence proceedings;

(13) Petitions for a change of name, exercising concurrent
jurisdiction with the circuit court;

(14) All proceedings for payment of attorney fees if the
family court judge has jurisdiction of the underlying action;

(15) All proceedings for property distribution brought under
article seven, chapter forty-eight of this code;

(16) All proceedings to obtain spousal support brought under
article eight, chapter forty-eight of this code;

(17) All proceedings relating to the appointment of
 guardians or curators of minor children brought pursuant to
sections three, four and six, article ten, chapter forty-four of this
code, exercising concurrent jurisdiction with the circuit court;

and

(18) All proceedings relating to petitions for sibling
visitation.

(b) If an action for divorce, annulment or separate
maintenance does not require the establishment of a parenting
plan or other allocation of custodial responsibility or
decision-making responsibility for a child and does not require
an award or any payment of child support, the circuit court has
concurrent jurisdiction with the family court over the action if,
at the time of the filing of the action, the parties also file a
written property settlement agreement executed by both parties.
(c) If an action for divorce, annulment or separate maintenance is pending and a petition is filed pursuant to the provisions of article six, chapter forty-nine of this code alleging abuse or neglect of a child by either of the parties to the divorce, annulment or separate maintenance action, the orders of the circuit court in which the abuse or neglect petition is filed shall supersede and take precedence over an order of the family court respecting the allocation of custodial and decision-making responsibility for the child between the parents. If no order for the allocation of custodial and decision-making responsibility for the child between the parents has been entered by the family court in the pending action for divorce, annulment or separate maintenance, the family court shall stay any further proceedings concerning the allocation of custodial and decision-making responsibility for the child between the parents and defer to the orders of the circuit court in the abuse or neglect proceedings.

(d) If a family court judge is assigned as a judicial officer of a domestic violence court then jurisdiction of all proceedings relating to criminal misdemeanor crimes of domestic violence as referenced in section three hundred one, article twenty-seven, chapter forty-eight of this code involving a family or household member as referenced in subdivisions (1) through (6), inclusive, and paragraphs (A), (B), and (H), subdivision (7), section two hundred four, article twenty-seven, chapter forty-eight of this code shall be concurrent with the circuit and magistrate courts.

(e) A family court is a court of limited jurisdiction. A family court is a court of record only for the purpose of exercising jurisdiction in the matters for which the jurisdiction of the family court is specifically authorized in this section and in chapter forty-eight of this code. A family court may not exercise the powers given courts of record in section one, article five of this chapter or exercise any other powers provided for courts of record in this code unless specifically authorized by the Legislature. A family court judge is not a “judge of any court of
AN ACT to amend and reenact §5B-2-5 of the Code of West Virginia, 1931, as amended, relating to providing assistance to small businesses; requiring that the director of the West Virginia Development Office report biennially and offer recommendations for reducing the burdens imposed on small businesses; and further identifying the report’s contents.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. WEST VIRGINIA DEVELOPMENT OFFICE.

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

(a) The executive director may employ economic development representatives to be paid a base salary within legislative appropriations to the West Virginia Development Office, subject to applicable contract provisions pursuant to section four of this article. Economic development representatives may receive performance-based incentives and...
expenses paid from private funds from a nonprofit corporation contracting with the West Virginia Development Office pursuant to the provisions of section four of this article. The executive director shall establish job descriptions and responsibilities of economic development representatives, subject to the provisions of any contract with a nonprofit corporation entered into pursuant to section four of this article.

(b) Notwithstanding any provision of this code to the contrary, economic development representatives employed within the West Virginia Development Office are not subject to the procedures and protections provided by articles six and six-a, chapter twenty-nine of this code. Any employee of the West Virginia Development Office on the effective date of this article who applies for employment as an economic development representative is not entitled to the protections of article six, chapter twenty-nine with respect to hiring procedures and qualifications; and upon accepting employment as an economic development representative, the employee relinquishes the protections provided for in article two, chapter six-c and article six, chapter twenty-nine of this code.

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

(1) Identify and describe loans, grants or other funding sources that economic development representatives have assisted small businesses acquire during the immediately preceding reporting cycle;
(2) Identify and describe generally inquiries, requests for assistance or other matters that other state or federal agencies have presented to the West Virginia Development Office in the immediately preceding reporting cycle in connection with those agencies’ efforts to regulate or assist small businesses;

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

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

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

(6) Provide the following information:

(A) The number of small businesses counseled by the West Virginia Development Office during the immediately preceding reporting cycle;

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

(C) The number of jobs created by businesses counseled by the West Virginia Development Office during the immediately preceding reporting cycle; and
(D) Any other information that, in the opinion of the executive director, demonstrates the performance of the West Virginia Development Office or economic development representatives during the immediately preceding reporting cycle.

CHAPTER 78

(S. B. 656 - By Senators Laird, Stollings, Unger, Miller and Palumbo)

[Passed March 8, 2016; in effect 90 days from passage.]
[Approved by the Governor on March 16, 2016.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §5B-2-15, relating to creating the Upper Kanawha Valley Resiliency and Revitalization Program for a period of five years; finding that there are challenges facing the Upper Kanawha Valley due to the decision to relocate West Virginia University Institute of Technology from Montgomery, West Virginia, to Beckley, West Virginia; establishing revitalization council to organize and prioritize state resources and technical assistance for the Upper Kanawha Valley; directing revitalization council to develop strategies to stimulate economic activity in and around the municipalities in Upper Kanawha Valley in coordination with certain contributing partners to the extent possible; directing revitalization council to annually report to the Governor and the Legislature; directing Development Office and revitalization council to facilitate economic development incentives for the Upper Kanawha Valley; and authorizing Development Office or other state body to provide state property and equipment to businesses investing in the Upper Kanawha Valley at a reduced cost.
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 §5B-2-15, to read as follows:

ARTICLE 2. WEST VIRGINIA DEVELOPMENT OFFICE.

§5B-2-15. Upper Kanawha Valley Resiliency and Revitalization Program.

(a) Definitions. —

(1) General. — Terms defined in this section have the meanings ascribed to them by this section, unless a different meaning is clearly required by either the context in which the term is used, or by specific definition in this section.

(2) Terms Defined. —

(A) “Contributing partners” means those entities or their representatives described in subsection (f) of this section.

(B) “Program” means the Upper Kanawha Valley Resiliency and Revitalization Program established in this section.

(C) “Revitalization council” means those entities or their representatives described in subsection (d) of this section.

(D) “Technical assistance” means resources provided by the state, revitalization council, contributing partners or any other individuals or entities providing programming, funding or other support to benefit the Upper Kanawha Valley under the program.

(E) “Upper Kanawha Valley” means an area defined by the Development Office that encompasses the areas from Gauley Bridge to Pratt, including the municipalities of Montgomery, Smithers, Pratt and Gauley Bridge or other communities in the vicinity of the West Virginia University Institute of Technology.
(F) “Upper Kanawha Valley Resiliency and Revitalization Program” means the entire process undertaken to further the goals of this section, including collaboration development and implementation between the members, contributors and technical assistance resource providers.

(b) Legislative purpose, findings and intent. —

(1) The decision to relocate the historic campus of the West Virginia University Institute of Technology from Montgomery, West Virginia to Beckley, West Virginia will have a dramatic economic impact on the Upper Kanawha Valley.

(2) The purpose of this section is to establish the Upper Kanawha Valley Resiliency and Revitalization Program. To further this purpose, this program creates a collaboration among state government, higher education and private and nonprofit sectors to streamline technical assistance capacity, existing services and other resources to facilitate community revitalization in the Upper Kanawha Valley.

(3) It is the intent of the Legislature to identify existing state resources that can be prioritized to support the Upper Kanawha Valley, generate thoughtful and responsible ideas to mitigate the negative effects of the departure of the West Virginia Institute of Technology from the Upper Kanawha Valley and help chart a new course and prosperous future for the Upper Kanawha Valley.

(c) Upper Kanawha Valley Resiliency and Revitalization Program established; duration of program. —

(1) The Development Office shall establish the Upper Kanawha Valley Resiliency and Revitalization Program in accordance with the provisions of this section, subject to the availability of funding necessary to support the program. The
program shall inventory existing assets and resources, prioritize planning and technical assistance, and determine such other assistance as might be available to revitalize communities in the Upper Kanawha Valley.

(2) The program shall be established for an initial period of five years from the effective date of this legislation.

(d) Revitalization council created. — There is hereby created a revitalization council to fulfill the purposes of this section. The revitalization council shall be coordinated by the Development Office in the Department of Commerce and be subject to oversight by the secretary of the department. The following entities shall serve as members of the revitalization council:

(1) The Executive Director of the Development Office or their designee, who shall serve as chairperson of the council;

(2) The Secretary of the Department of Health and Human Resources or their designee;

(3) The Commissioner of the Department of Agriculture or their designee;

(4) The Executive Director of the West Virginia Housing Development Fund or their designee;

(5) A representative from the Kanawha County commission;

(6) A representative from the Fayette County commission;

(7) The mayor, or their designee, from the municipalities of Montgomery, Smithers, Pratt and Gauley Bridge;

(8) A representative from Bridge Valley Community and Technical College; and

(9) A representative from West Virginia University.
(e) Duties of the revitalization council. —

(1) The council shall identify existing state resources that can be prioritized to support economic development efforts in the Upper Kanawha Valley.

(2) The council shall direct existing resources in a unified effort and in conjunction with contributing partners, as applicable, to support the Upper Kanawha Valley.

(3) The council shall develop a rapid response strategy to attract or develop new enterprises and job creating opportunities in the Upper Kanawha Valley.

(4) The council shall conduct or commission a comprehensive assessment of assets available at the campus of the West Virginia Institute of Technology and determine how those assets will be preserved and repurposed.

(5) The council shall assist communities in the Upper Kanawha Valley by developing an economic plan to diversify and advance the community.

(6) Members of the council shall support both the planning and implementation for the program and shall give priority wherever possible to programmatic activity and discretionary, noncompetitive funding during the period the program remains in effect.

(7) Members of the council shall work together to leverage funding or other agency resources to benefit efforts to revitalize the Upper Kanawha Valley.

(f) Contributing partners. — To the extent possible, the revitalization council shall incorporate the resources and expertise of additional providers of technical assistance to support the program, which shall include but not be limited to:
(1) The West Virginia Small Business Development Center; (2) The Center for Rural Health Development; (3) The West Virginia University Brickstreet Center for Entrepreneurship; (4) The West Virginia University Land Use and Sustainability Law Clinic; (5) The West Virginia University Center for Big Ideas; (6) The New River Gorge Regional Development Authority; (7) The Rahall Transportation Institute; (8) The Marshall University Center for Business and Economic Research; (9) TechConnect; (10) The West Virginia Community Development Hub; (11) The West Virginia University Northern Brownfields Assistance Center; (12) West Virginia State University Extension Service; and (13) West Virginia University Extension Service, Community, Economic and Workforce Development.

(g) **Reporting and agency accountability.** — The revitalization council, in coordination with its contributing partners, as applicable, shall report annually to the Governor and the Legislature detailing the progress of the technical assistance support provided by the program, the strategic plan for the Upper Kanawha Valley and the results of these efforts.

(h) **Economic Incentives for businesses investing in the Upper Kanawha Valley.** — The Development Office and the
revitalization council, as applicable, will work to educate businesses investing, or interested in investing, in the Upper Kanawha Valley, about the availability of, and access to, economic development assistance, including but not limited to, the economic opportunity tax credit provided in section nineteen, article thirteen-q, chapter eleven of this code; the manufacturing investment tax credit provided under article thirteen-s, chapter eleven of this code; and any other applicable tax credit or development assistance.

(i) Use of state property and equipment; faculty. — The Development Office or other owner of state property and equipment in the Upper Kanawha Valley is authorized to provide for the low cost and economical use and sharing of state property and equipment, including computers, research labs and other scientific and necessary equipment to assist any business within the Upper Kanawha Valley at a nominal or reduced-cost reimbursements to the state for such use.

CHAPTER 79

(S. B. 426 - By Senators Cole (Mr. President) and Kessler)
[By Request of the Executive]

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

AN ACT to amend and reenact §5B-2A-3 and §5B-2A-4 of the Code of West Virginia, 1931, as amended, all relating to continuing Office of Coalfield Community Development within Department of Commerce; allowing Secretary of the Department of Commerce to appoint a chief; and defining a term.
Be it enacted by the Legislature of West Virginia:

That §5B-2A-3 and §5B-2A-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 2A. OFFICE OF COALFIELD COMMUNITY DEVELOPMENT.

§5B-2A-3. Definitions.

(a) For the purpose of this article:

(1) “Department” means the Department of Environmental Protection established in article one, chapter twenty-two of this code;

(2) “Office” means the Office of Coalfield Community Development;

(3) “Operator” means the definition in section three, article three, chapter twenty-two of this code;

(4) “Renewable and alternative energy” means energy produced or generated from natural or replenishable resources other than traditional fossil fuels or nuclear resources and includes, without limitation, solar energy, wind power, hydropower, geothermal energy, biomass energy, biologically derived fuels, energy produced with advanced coal technologies, coalbed methane, fuel produced by a coal gasification or liquefaction facility, synthetic gas, waste coal, tire-derived fuel, pumped storage hydroelectric power or similar energy sources; and

(5) “Secretary” means the Secretary of the Department of Commerce.

(b) Unless used in a context that clearly requires a different meaning or as otherwise defined herein, terms used in this article shall have the definitions set forth in this section.
§5B-2A-4. Office of Coalfield Community Development.

(a) The Office of Coalfield Community Development is continued within the Department of Commerce.

(b) The secretary may appoint a chief to administer the office, who serves at the will and pleasure of the secretary.

CHAPTER 80

(S. B. 461 - By Senators Cole (Mr. President) and Kessler)
[By Request of the Executive]

[Passed March 8, 2016; in effect ninety days from passage.]
[Approved by the Governor on March 24, 2016.]

AN ACT to amend and reenact §5B-2B-1, §5B-2B-2, §5B-2B-3, §5B-2B-4, §5B-2B-4a, §5B-2B-5, §5B-2B-6 and §5B-2B-9 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §5B-2B-4b, all relating to West Virginia Workforce Development Board; updating West Virginia Workforce Investment Act to West Virginia Innovation and Opportunity Act; defining terms; creating West Virginia Workforce Development Board; providing for composition of West Virginia Workforce Development Board; setting forth requirements for board members; setting forth duties of board; updating reporting requirements; requiring open proceedings of board; and updating language.

Be it enacted by the Legislature of West Virginia:

That §5B-2B-1, §5B-2B-2, §5B-2B-3, §5B-2B-4, §5B-2B-4a, §5B-2B-5, §5B-2B-6 and §5B-2B-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 §5B-2B-4b, all to read as follows:

ARTICLE 2B. WEST VIRGINIA WORKFORCE INNOVATION AND OPPORTUNITY ACT.

§5B-2B-1. Short title.

1 This article shall be known and may be cited as the West Virginia Workforce Innovation and Opportunity Act.

§5B-2B-2. Definitions.

1 As used in this article, the following terms have the following meanings, unless the context clearly indicates otherwise:

4 “Board” means the West Virginia Workforce Development Board.

6 “Commission” or “Legislative Oversight Commission” means the Legislative Oversight Commission on Workforce Investment for Economic Development created pursuant to section seven of this article.

10 “Local area” means a local workforce investment area.

11 “Local board” means a local workforce development board.

12 “Team” means the workforce investment interagency collaborative team.

§5B-2B-3. West Virginia Workforce Development Board; membership of board; meetings; quorum requirements.

(a) The West Virginia Workforce Development Board is hereby created and shall serve as the state’s Workforce Development Board, as required by the WIOA. The board shall make general recommendations regarding workforce investment in the state to the Governor and the Legislature.

(b) The membership of the board shall meet the requirements of WIOA §101(b) and represent diverse geographic areas of the state, including urban, rural and suburban areas. The board membership includes:

1. The Governor, or his or her designated representative;
2. The President of the Senate, or his or her designee, and the Speaker of the House of Delegates, or his or her designee, both of whom shall be nonvoting members of the board; and
3. Members appointed by the Governor, with the advice and consent of the Senate, which shall include:

   (A) Representatives of businesses or organizations, who shall comprise a majority of the board membership, who:

   (i) Are the owner or chief executive officer for the business or organization, or is an executive with the business or organization with optimum policy-making or hiring authority, and may also be members of a local board as described in WIOA §107(b)(2)(A)(i);

   (ii) Represent businesses, or organizations that represent businesses described in paragraph (A), subdivision (3), subsection (b) of this section, that, at a minimum, provide
employment and training opportunities that include high-quality, work-relevant training and development in in-demand industry sectors or occupations in the state;

(iii) Are appointed from a list of potential members proposed by state business organization and business trade associations; and

(iv) At a minimum, one member representing small businesses as defined by the U. S. Small Business Administration.

(B) Not less than twenty percent of the board shall be representatives of the workforce within the state, which:

(i) Shall include two or more representatives of labor organizations appointed from a list proposed by state labor federations;

(ii) Shall include one representative who shall be a member of a labor organization or training director from a joint labor-management apprenticeship program, or, if no such joint program exists in the state, a member of a labor organization or training director who is a representative of an apprenticeship program;

(iii) May include one or more representatives of community-based organizations that have demonstrated experience and expertise in addressing the employment, training or education needs of individuals with barriers to employment, including organizations that serve veterans or provide or support competitive, integrated employment for individuals with disabilities; and

(iv) May include one or more representative of organizations that have demonstrated experience and expertise in addressing the employment, training or education needs of eligible youth,
including representative of organizations that serve out-of-school youth.

(C) The balance of the members:

(i) Shall include representatives of government including:

(I) The lead state officials with primary responsibility for each of the core programs. Where the lead official represents more than one core program, that official shall ensure adequate representation of the needs of all core programs under his or her jurisdiction; and

(II) Two or more chief elected officials, collectively representing both cities and counties, where appropriate.

(ii) May include other appropriate representatives and officials designated by the Governor, such as, but not limited to, state agency officials responsible for one-stop partner programs, economic development or juvenile justice programs in the state, individuals who represent an Indian tribe or tribal organization as defined in WIOA §166(b), and state agency officials responsible for education programs in the state, including chief executive officers of community colleges and other institutions of higher education.

(c) The Governor shall select a chairperson for the board from the business representatives on the board described in paragraph (A), subdivision (3), subsection (b) of this section.

(d) Initial terms for appointed members of the board are for up to three years as determined by the Governor. All subsequent terms shall be for three years.

(e) Members who represent organizations, agencies or other entities described in paragraphs (B) and (C), subdivision (3), subsection (b) of this section shall be individuals who have
optimum policy-making authority in the organizations they represent.

(f)(1) A board member may not represent more than one of the categories described in:

(A) Paragraph (A), subdivision (3), subsection (b) of this section;

(B) Paragraph (B), subdivision (3), subsection (b) of this section; or

(C) Paragraph (C), subdivision (3), subsection (b) of this section.

(2) A board member may not serve as a representative of more than one subcategory under paragraph (B), subdivision (3), subsection (b) of this section.

(3) A board member may not serve as a representative of more than one subcategory under paragraph (C), subdivision (3), subsection (b) of this section: Provided, That where a single government agency is responsible for multiple required programs, the head of the agency may represent each of the required programs.

(g) All required board members, other than the ex officio members of the Legislature, shall have voting privileges. The Governor may also convey voting privileges to nonrequired members.

§5B-2B-4. Duties of the Workforce Development Board.

(a) The board shall provide information and guidance to local boards and staff, to enable them to better educate both women and men about higher paying jobs and careers including jobs traditionally dominated by men or women. Such guidance
shall promote services provided by the local boards for job seekers that includes:

(1) Current information about compensation for jobs and careers that offer high earning potential including jobs that are traditionally dominated by men or women;

(2) Counseling, skills development and training opportunities that encourage both women and men to seek employment in such jobs;

(3) Referral information to employers offering such jobs; or

(4) Information regarding the long-term consequences, including lower social security benefits or pensions, of choosing jobs that offer lower earnings potential and are traditionally dominated by women or men.

(b) Under WIOA §101(d), the board shall assist the Governor in the:

(1) Development, implementation and modification of the four-year state plan;

(2) Review of statewide policies, programs and recommendations on actions that should be taken by the state to align workforce development programs to support a comprehensive and streamlined workforce development system. Such review of policies, programs and recommendations shall include a review and provision of comments on the state plans, if any, for programs and activities of one-stop partners that are not core programs;

(3) Development and continuous improvement of the workforce development system, including:
(A) Identification of barriers and means for removing barriers to better coordinate, align and avoid duplication among programs and activities;

(B) Development of strategies to support career pathways for the purpose of providing individuals, including low-skilled adults, youth and individuals with barriers to employment, including individuals with disabilities, with workforce investment activities, education and supportive services to enter or retain employment;

(C) Development of strategies to provide effective outreach to, and improved access for, individuals and employers who could benefit from workforce development system;

(D) Development and expansion of strategies to meet the needs of employers, workers and jobseekers, particularly through industry or sector partnerships related to in-demand industry sectors and occupations;

(E) Identification of regions, including planning regions for the purpose of WIOA §106(a), and the designation of local areas under WIOA §106 after consultation with local boards and chief elected officials;

(F) Development and continuous improvement of the one-stop delivery system in local areas, including providing assistance to local boards, one-stop operators, one-stop partners and providers. Such assistance includes assistance with planning and delivering services, including training and supportive services, to support effective delivery of services to workers, jobseekers and employers; and

(G) Development of strategies to support staff training and awareness across the workforce development system and its programs;
(4) Development and updating of comprehensive state performance and accountability measures to access core program effectiveness under WIOA §116(b);

(5) Identification and dissemination of information on best practices, including best practices for:

(A) The effective operation of one-stop centers, relating to the use of business outreach, partnerships and service delivery strategies, including strategies for serving individuals with barriers to employment;

(B) The development of effective local boards, which may include information on factors that contribute to enabling local boards to exceed negotiated local levels of performance, sustain fiscal integrity and achieve other measures of effectiveness; and

(C) Effective training programs that respond to real-time labor market analysis, that effectively use direct assessment and prior learning assessment to measure an individual’s prior knowledge, skills, competencies and experiences for adaptability, to support efficient placement into employment or career pathways;

(6) Development and review of statewide policies affecting the coordinated provision of services through the state’s one-stop delivery system described in WIOA §121(e), including the development of:

(A) Objective criteria and procedures for use by local boards in assessing the effectiveness, physical and programmatic accessibility and continuous improvement of one-stop centers. Where a local board serves as the one-stop operator, the board shall use such criteria to assess and certify the one-stop center;

(B) Guidance for the allocation of one-stop center infrastructure funds under WIOA §121(h); and
(C) Policies relating to the appropriate roles and contributions of entities carrying out one-stop partner programs within the one-stop delivery system, including approaches to facilitating equitable and efficient cost allocation in the system;

(7) Development of strategies for technological improvements to facilitate access to, and improve the quality of services and activities provided through, the one-stop delivery system, including such improvements to:

(A) Enhance digital literacy skills (as defined in §202 of the Museum and Library Service Act, 20 U. S. C. §9101);

(B) Accelerate acquisition of skills and recognized post-secondary credentials by participants;

(C) Strengthen professional development of providers and workforce professionals; and

(D) Ensure technology is accessible to individuals with disabilities and individuals residing in remote areas;

(8) Development of strategies for aligning technology and data systems across one-stop partner programs to enhance service delivery and improve efficiencies in reporting on performance accountability measures, including design implementation of common intake, data collection, case management information, and performance accountability measurement and reporting processes and the incorporation of local input into such design and implementation to improve coordination of services across one-stop partner programs;

(9) Development of allocation formulas for the distribution of funds for employment and training activities for adults and youth workforce investment activities, to local areas as permitted under WIOA §128(b)(3) and §133(b)(3);
(10) Preparation of the annual reports described in paragraphs (1) and (2) of WIOA §116(d);

(11) Development of the statewide workforce and labor market information system described in §15(e) of the Wagner-Peyser Act, 29 U. S. C. §49, et seq.; and

(12) Development of other policies as may promote statewide objectives for and enhance the performance of the workforce development system in the state.

§5B-2B-4a. Report to Legislature.

(a) The Legislature finds that:

(1) The state needs to take all necessary steps to retain, educate and train West Virginians to have the skills necessary to compete for job opportunities resulting from horizontal drilling;

(2) Specific attention shall be made by the State of West Virginia to train and educate West Virginia citizens that have not historically or traditionally been exposed to the oil and gas industry through training programs offered by community colleges, technical schools and institutions and small business owners. Small business owners shall be made aware by the State of West Virginia of any and all programs and grants available to assist them in training said individuals.

(b) To assist in maximizing the economic opportunities available with horizontal drilling, the board shall make a report to the Joint Committee on Government and Finance and the Legislative Oversight Commission on Education Accountability on or before November 1 of each year through 2016, detailing a comprehensive review of the direct and indirect economic impact of employers engaged in the production of horizontal wells in the State of West Virginia, as more specifically defined
in article six-a, chapter twenty-two of this code, which shall include:

(1) A review of the total number of jobs created;
(2) A review of total payroll of all jobs created;
(3) The average salary per job type;
(4) A review of total economic impact;
(5) The board’s recommendations for the establishment of an overall workforce investment public education agenda with goals and benchmarks toward maximizing job creation opportunities in the State of West Virginia;
(6) A review of number of jobs created for minorities based on race, ethnicity and gender;
(7) A review of number of jobs created for individuals reemployed from the State of West Virginia’s unemployment rosters;
(8) A review of number of jobs created for returning veterans; and
(9) A review of number of jobs created for legal West Virginia residents and non-West Virginia residents.

(c) To the extent permitted by federal law, and to the extent necessary for the board to comply with this section, the board, Workforce West Virginia, the Division of Labor and the Office of the Insurance Commissioner may enter into agreements providing for the sharing of job data and related information.

§5B-2B-4b. Open meetings; public information.

(a) The board shall conduct business in an open manner as required by WIOA §101(g).
(b) The board shall make available to the public, on a regular basis through electronic means and open meetings, information about the activities and functions of the board including:

(1) The state plan, or modification to the state plan, prior to submission of the plan or modification of the plan;

(2) Information regarding membership; and

(3) Minutes of formal meetings of the board upon request.

§5B-2B-5. State agencies.

On or before November 1, any state agency that receives federal or state funding that has been used for workforce investment activities for the past fiscal year shall provide to the board a report, detailing the source and amount of federal, state or other funds received; the purposes for which the funds were provided; the services provided in each regional workforce investment area; the measures used to evaluate program performance, including current and baseline performance data; and any other information requested by the board. All reports submitted pursuant to this section are to be in a form approved by the board.

§5B-2B-6. Administration of board.

(a) Workforce West Virginia shall provide administrative and other services to the board as the board requires.

(b) Workforce West Virginia shall facilitate the coordination of board activities and local workforce investment activities, including holding meetings with the executive directors of each local board at least monthly. Any executive director of a local board who participates in a meeting held pursuant to this subsection shall report to his or her local board and the county commission of each county represented by the local board regarding the meeting.
§5B-2B-9. Coordination between agencies providing workforce investment programs, local workforce investment boards and the Executive Director of Workforce West Virginia.

(a) To provide ongoing attention to addressing issues that will build and continually improve the overall workforce investment system, the Workforce Investment Interagency Collaborative Team is hereby created. The team shall be the single state interagency source for addressing issues or concerns related to building and maintaining the most effective and efficient implementation of WIOA and the overall workforce development system in West Virginia. The team shall focus on how best to collaborate between and among the state agencies directly involved in workforce investment activities and shall develop a strategic plan to that end. The team shall serve as a forum for the board to seek information or recommendations in furtherance of its responsibilities under this article. Workforce West Virginia is the entity which shall convene the team at least monthly and shall provide administrative and other services to the team as the team requires.

(b) The team shall consist of members from each agency subject to the reporting provisions of section five of this article. Each agency shall appoint two representatives to the team consisting of the chief official of the department or division and the official within that department or division who is directly responsible for overseeing the workforce investment program or activities at the state level. A designee may be selected to represent a member appointed to the team: Provided, That the designee has policy-making decision authority regarding workforce investment activities including program and fiscal issues. The team members have authority to make decisions on behalf of the agency at the level required for the team to address issues and advance system improvements.
(c) The team shall coordinate the development of a self-sufficiency standard study for the State of West Virginia. The self-sufficiency standard is to measure how much income is needed for a household of a given composition in a given place to adequately meet its basic needs without public or private assistance. Beginning on November 1, 2004, and every two years thereafter, this study is to be reported to the Speaker of the House of Delegates, the President of the Senate, the board and the Legislative Oversight Commission on Workforce Investment for Economic Development.

(d) Beginning January 1, 2003, in order to lawfully continue any workforce investment activities, any agency subject to the reporting provisions of section five of this article shall enter into a memorandum of understanding with the Executive Director of Workforce West Virginia and any local board representing an area of this state in which the agency is engaged in workforce investment activities. To the extent permitted by federal law, the agreements are to maximize coordination of workforce investment activities and eliminate duplication of services on both state and local levels.

(e) No memorandum of understanding may be effective for more than one year without annual reaffirmation by the parties.

(f) Any state agency entering a memorandum of understanding shall deliver a copy thereof to both the board and the Legislative Oversight Commission.
CHAPTER 81

(Com. Sub. for S. B. 293 - By Senators Walters, Boso and Sypolt)

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

AN ACT to amend and reenact §11-13J-3, §11-13J-4, §11-13J-4a, §11-13J-10 and §11-13J-12 of the Code of West Virginia, 1931, as amended, all relating generally to Neighborhood Investment Program Act; changing termination date; defining terms; specifying frequency of required project transferee reports; specifying number of required advisory board meetings; specifying required number of West Virginia Development Office reports to the board; providing criteria for evaluation of projects; providing for report by Tax Commissioner; and specifying frequency of program assessments by the director.

Be it enacted by the Legislature of West Virginia:

That §11-13J-3, §11-13J-4, §11-13J-4a, §11-13J-10 and §11-13J-12 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 13J. NEIGHBORHOOD INVESTMENT PROGRAM.


1 (a) General. — When used in this article, or in the administration of this article, terms defined in subsection (b) of this section have the meanings ascribed to them by this section, unless a different meaning is clearly required by either the context in which the term is used, or by specific definition in this article.
(b) Terms defined. —

“Affiliate” includes all business entities which are affiliates of each other when either directly or indirectly:

(A) One business entity controls or has the power to control the other business entity; or

(B) A third party or third parties control or have the power to control both affiliates. In determining whether business entities are independently owned and operated and whether or not affiliation exists, consideration shall be given to all appropriate factors, including common ownership, common management and contractual relationships.

“Capacity building” means to generally enhance the capacity of the community to achieve improvements and to obtain the community services described in subparagraphs (i) through (v), inclusive, of the definition of that term, as set forth in this subsection. Capacity building includes, but is not limited to, improvement of the means, or capacity, to:

(i) Access, obtain and use private, charitable and governmental assistance programs, administrative assistance and private, charitable and governmental resources or funds;

(ii) Fulfill legal, bureaucratic and administrative requirements and qualifications for accessing assistance, resources or funds; and

(iii) Attract and direct political and community attention to needs of the community for the purpose of increasing access to and use of assistance, resources or funds for a given purpose, goal or need.

“Commissioner or Tax Commissioner” are used interchangeably in this article and mean the Tax Commissioner of the State of West Virginia, or his or her delegate.
“Community services” means services, provided at no charge whatsoever, of:

(i) Providing any type of health, personal finance, psychological or behavioral, religious, legal, marital, educational or housing counseling and advice to economically disadvantaged citizens or a specifically designated group of economically disadvantaged citizens or in an economically disadvantaged area;

(ii) Providing emergency assistance or medical care to economically disadvantaged citizens or to a specifically designated group of economically disadvantaged citizens or in an economically disadvantaged area;

(iii) Establishing, maintaining or operating recreational facilities, or housing facilities for economically disadvantaged citizens or a specifically designated group of economically disadvantaged citizens or in an economically disadvantaged area;

(iv) Providing economic development assistance to economically disadvantaged citizens or a specifically designated group of economically disadvantaged citizens; without regard to whether they are located in an economically disadvantaged area, or to individuals, groups or neighborhood or community organizations, in an economically disadvantaged area; or

(v) Providing community technical assistance and capacity building to economically disadvantaged citizens or a specifically designated group of economically disadvantaged citizens, or to individuals, groups or neighborhood or community organizations in an economically disadvantaged area.

“Compensation” means wages, salaries, commissions and any other form of remuneration paid to employees for personal services.

“Community-based” means:
(i) The project is to be managed locally, without national, state, multistate or international affiliations;

(ii) The project will benefit local citizens in the immediate geographic area where the project is to operate; and

(iii) The sponsor of the project is a local entity, rather than a statewide, national or international organization or an affiliate of a statewide, national or international organization.

“Corporation” means any corporation, joint-stock company or association and any business conducted by a trustee or trustees in which interest or ownership is evidenced by a certificate of interest or ownership or similar written instrument.

“Crime prevention” means any activity which aids in the reduction of crime.

“Delegate” in the phrase “or his or her delegate”, when used in reference to the Tax Commissioner, means any officer or employee of the Tax Division of the Department of Revenue 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.

“Direct need programs” means a program, organization or community endowment that serve persons whose annual income is no more than 125 percent of the federal poverty level with self-reliance and independence from government assistance as its primary objective.

“Director or Director of the West Virginia Development Office” means the Director of the West Virginia Development Office.

“Economically disadvantaged area” means any region of the state with a poverty rate greater than the average statewide
poverty rate as determined by the U. S. Census Bureau’s most recently published data.

“Economically disadvantaged citizen” means a natural person, who during the current taxable year has, or during the immediately preceding taxable year had, an annual gross personal income not exceeding one hundred twenty-five percent of the federal designated poverty level for personal incomes, and who is a domiciliary and resident of this state.

“Education” means any type of scholastic instruction to, or scholarship by, an individual that enables that individual to prepare for better life opportunities. Education does not include courses in physical training, physical conditioning, physical education, sports training, sports camps and similar training or conditioning courses, except for physical therapy prescribed by a physician or other person licensed to prescribe courses of medical treatment under this code.

“Eligible contribution” consists of:

(A)(i) Cash;

(ii) Tangible personal property, valued at its fair market value;

(iii) Real property, valued at its fair market value;

(iv) In-kind professional services, valued at seventy-five percent of fair market value; and

(v) Publicly traded common or preferred stock representing ownership in a corporation, valued at its fair market value in accordance with the regulations of the Internal Revenue Service: Provided, That contributed stock shall be sold by the project transferee within one hundred eighty days of its receipt.

(B) For purposes of this definition, the value of in-kind professional services will not qualify as an eligible contribution unless the services are:
(i) Reasonably priced and valued, and reasonably necessary services customarily and normally provided by the contributor in the normal course of business to customers, clients or patients other than those encompassed by the project plan;

(ii) Not reimbursable, in whole or in part, from sources other than the tax credit provided under this article; and

(iii) Services which are not available without cost elsewhere in the community;

(C) “Professional services” means only those services provided directly by a physician licensed to practice in this state, those services provided directly by a dentist licensed to practice in this state, those services provided directly by a lawyer licensed to practice in this state, those services provided directly by a registered nurse, licensed practical nurse, dental hygienist or other health care professional licensed to practice in this state, those services provided directly by a certified public accountant or public accountant licensed to practice in this state, and those services provided directly by an architect licensed to practice in this state;

(D) Minimum contribution. — No contribution of cash, stock, property or professional services or any combination thereof contributed in any tax year by any taxpayer having a fair market value of less than $500 qualifies as an eligible contribution;

(E) Maximum contribution. — No contribution of cash, stock, property or professional services or any combination thereof contributed in any tax year by any taxpayer having a fair market value in excess of $200,000 qualifies as an eligible contribution; and

(F) Limitations. — Not more than twenty-five percent of total eligible contributions to a certified project may be in-kind
contributions. Not more than twenty-five percent of total eligible contributions made by any taxpayer to any certified project may be in-kind contributions.

_Eligible taxpayer._ —

(A) “Eligible taxpayer” means any person subject to the taxes imposed by article twenty-one, twenty-three or twenty-four of this chapter which makes an eligible contribution to a qualified charitable organization pursuant to the terms of a certified project plan for the purpose of providing neighborhood assistance, community services or crime prevention, or for the purpose of providing job training or education for individuals not employed by the contributing taxpayer or an affiliate of the contributing taxpayer or a person related to the contributing taxpayer;

(B) “Eligible taxpayer” also includes an affiliated group of taxpayers if the group elects to file a consolidated corporation net income tax return under article twenty-four of this chapter and if one or more affiliates included in the affiliated group would qualify as an eligible taxpayer under paragraph (A) of this subdivision.

“Emergency assistance” means the provision of basic needs including shelter, clothing, food, water, medical attention or supplies, personal safety, or funds to obtain these to an individual facing circumstances that prevent him or her from securing or maintaining these basic needs.

“Includes and including”, when used in a definition contained in this article, shall not be considered to exclude other things otherwise within the meaning of the term defined.

“Job training” means instruction to an individual that enables the individual to acquire vocational skills to become employable or able to seek a higher grade of employment.
“Natural person or individual” means a human being. The terms “natural person” and “individual” do not mean, and specifically exclude, any corporation, limited liability company, partnership, joint venture, trust, organization, association, agency, governmental subdivision, syndicate, affiliate or affiliation, group, unit or any entity other than a human being.

“Neighborhood assistance” means either:

(A) Furnishing financial assistance, labor, material and technical advice to aid in the physical or economic improvement of any part or all of an economically disadvantaged area; or

(B) Furnishing technical advice to promote higher employment in an economically disadvantaged area.

“Neighborhood organization” means any organization:

(A) Which is performing community services, as defined in this section; and

(B) Which is exempt from income taxation under Section 501(c)(3) of the Internal Revenue Code.

“Partnership and partner” includes a syndicate, group, pool, joint venture or other unincorporated organization through or by means of which any business, financial operation or venture is carried on, and which is not a trust or estate, a corporation or a sole proprietorship. The term “partner” includes a member in a syndicate, group, pool, joint venture or organization.

“Person” includes any natural person, corporation, limited liability company or partnership.

“Project transferee” means any neighborhood organization, qualified charitable organization, charitable organization or other organization, entity or person that receives an eligible
contribution or part of an eligible contribution from an eligible taxpayer for the purpose of directly or indirectly providing neighborhood assistance, community services or crime prevention, or for the purpose of providing job training or education or other services or assistance pursuant to a project plan. The project transferee is typically the first entity or person receiving eligible contributions from eligible taxpayers under a project plan. However, in the case of eligible contributions of in-kind services or other eligible contributions or portions of those contributions made pursuant to a certified project plan directly to indigent, disadvantaged or needy persons, economically disadvantaged citizens or other persons or organizations under the sponsorship or auspices of any neighborhood organization, qualified charitable organization, charitable organization or other organization, entity or person as a certified project participant, the eligible contributions shall be considered to have been made to the entity, organization or person under whose sponsorship or auspices the eligible contributions are made, and that entity, organization or person is considered to be the project transferee with relation to those eligible contributions. The project transferee is the entity, organization or person that is liable under this article for payment of the project certification fee to the West Virginia Development Office. The term “project transferee” means and includes any considered project transferee, considered as such under the provisions of this article.

“Qualified charitable organization” means a neighborhood organization, as defined in this section, which is the sponsor of a project which has received certification by the Director of the West Virginia Development Office pursuant to the requirements of this article: Provided, That no organization may qualify as a qualified organization for purposes of this article if the organization is not registered with this state as required under the Solicitation of Charitable Funds Act.
“Related person” or “person related to” a stated taxpayer means:

(A) An individual, corporation, partnership, affiliate, association or trust or any combination or group thereof controlled by the taxpayer;

(B) An individual, corporation, partnership, affiliate, association or trust or any combination or group thereof that is in control of the taxpayer;

(C) An individual, corporation, partnership, affiliate, association or trust or any combination or group thereof controlled by an individual, corporation, partnership, affiliate, association or trust or any combination or group thereof that is in control of the taxpayer; or

(D) A member of the same controlled group as the taxpayer.

For purposes of this article, “control”, with respect to a corporation means ownership, directly or indirectly, of stock possessing fifty percent or more of the total combined voting power of all classes of the stock of the corporation which entitles its owner to vote. “Control”, with respect to a trust, means ownership, directly or indirectly, of fifty percent or more of the beneficial interest in the principal or income of the trust. The ownership of stock in a corporation, of a capital or profits interest in a partnership or association or of a beneficial interest in a trust shall be determined in accordance with the rules for constructive ownership of stock provided in Section 267(c), other than paragraph (3) of that section, of the United States Internal Revenue Code, as amended.

“State fiscal year” means a twelve-month period beginning on July 1 and ending on June 30.
“Taxpayer” means any person subject to the tax imposed by article twenty-one, twenty-three or twenty-four of this chapter, or any one or combination of the articles of this chapter.

“Technical assistance” means:

(A) Assistance in understanding, using and fulfilling the legal, bureaucratic and administrative requirements and qualifications which must be negotiated for the purpose of effectively accessing, obtaining and using private, charitable, not-for-profit or governmental assistance, resources or funds, and maximizing the value of the assistance, resources or fund;

(B) Assistance provided by any person holding a license under West Virginia law to practice any licensed profession or occupation, by which the person, in the practice of the profession or occupation, assists economically disadvantaged citizens or the persons in an economically disadvantaged area by:

(i) Providing any type of health, personal finance, psychological or behavioral, religious, legal, marital, educational or housing counseling and advice to economically disadvantaged citizens or a specifically designated group of economically disadvantaged citizens or in an economically disadvantaged area;

(ii) Providing emergency assistance or medical care to economically disadvantaged citizens or to a specifically designated group of economically disadvantaged citizens or in an economically disadvantaged area;

(iii) Establishing, maintaining or operating recreational facilities, or housing facilities for economically disadvantaged citizens or a specifically designated group of economically disadvantaged citizens or in an economically disadvantaged area;

(iv) Providing economic development assistance to economically disadvantaged citizens or a specifically designated
group of economically disadvantaged citizens, without regard to whether they are located in an economically disadvantaged area, or to individuals, groups or neighborhood or community organizations, in an economically disadvantaged area; or

(v) Providing community technical assistance and capacity building to economically disadvantaged citizens or a specifically designated group of economically disadvantaged citizens or to individuals, groups or neighborhood or community organizations in an economically disadvantaged area.

§11-13J-4. Eligibility for tax credits; creation of neighborhood investment fund; certification of project plans by the West Virginia Development Office.

(a) A neighborhood organization which seeks to sponsor a project and have that project certified pursuant to this article shall submit to the Director of the West Virginia Development Office an application for certification of a project plan, in such form as the director shall prescribe, setting forth the project to be implemented, the identity of all project participant organizations, the economically disadvantaged citizens or a specifically designated group of economically disadvantaged citizens, to be assisted by the project, or the economically disadvantaged area or areas selected for assistance by the project, the amount of total tax credits to be created by the proposed project pursuant to the receipt of eligible contributions from eligible taxpayers under this article, the amount of the total estimated eligible contributions to be received pursuant to the project and the schedule for implementing the project.

(b) Project certification fee; payment of costs; revolving fund. —

(1) (A) Project certification fee. — Any project transferee that receives eligible contributions under or pursuant to a
certified project plan shall pay to the West Virginia Development Office a project certification fee in the amount of three percent of the amount of the total eligible contributions received by such project transferee pursuant to the certified project plan. The project certification fee shall be paid to the West Virginia Development Office within thirty days of the receipt of any eligible contribution, or portion thereof.

(B) Eligible contributions made through direct service to end users or recipients, or contributions to end users or recipients. — In the case of eligible contributions of in-kind services or other eligible contributions or portions thereof made pursuant to a certified project plan and contributed or provided directly to indigent, disadvantaged or needy persons, economically disadvantaged citizens or other persons or organizations made under the sponsorship or auspices of any neighborhood organization, qualified charitable organization, charitable organization or other organization, entity or person as a certified project participant, such eligible contributions shall be deemed to have been made to the entity, organization or person under whose sponsorship or auspices such eligible contributions are made, and that entity, organization or person is deemed to be the project transferee with relation to those eligible contributions. Such deemed project transferee shall be liable for the project certification fee due for such eligible contributions.

(C) Computation of fee based on fair market value. — In the case of eligible contributions consisting of in-kind services, tangible personal property or realty, the project transferee shall pay to the West Virginia Development Office a project certification fee in the amount of three percent of the fair market value of eligible contributions received pursuant to the certified project plan.

(2) Sanctions for failure to timely pay the project certification fee. — Failure to timely pay the project certification
fee imposed by this section shall be grounds for imposition of
any of the following sanctions, to be imposed by the Director of
the West Virginia Development Office at the discretion of the
director:

(A) **Prospective revocation of the project certification.** —

No tax credit shall be allowed for any project for which
certification has been revoked for periods subsequent to the
effective date of revocation. Credit taken by any taxpayer in
accordance with this article pursuant to the making of an eligible
contribution to a project transferee pursuant to a certified project
plan prior to the effective date of revocation of project
certification shall not be subject to recapture by reason of
revocation of the certification. However, such credit shall
otherwise be subject to audit and adjustment or recapture in
accordance with the requirements of this article.

(B) **Retroactive withdrawal of the project certification.** —

No tax credit shall be allowed for any project for which
certification has been withdrawn. Credit taken by any taxpayer
in accordance with this article pursuant to the making of an
eligible contribution to a project transferee pursuant to a certified
project plan for which certification is later withdrawn pursuant
to the provisions of this section shall be subject to recapture
upon withdrawal of the certification.

(C) **Suspension of the project certification for a stated period of time.** —

No tax credit shall be allowed for contributions made during
the suspension period for a project. Credit taken by any taxpayer
in accordance with this article pursuant to the making of an
eligible contribution to a project transferee pursuant to a certified
project plan prior to or subsequent to the suspension period shall
83 not be subject to recapture by reason of the suspension. However, such credit shall otherwise be subject to audit and adjustment or recapture in accordance with the requirements of this article.

87 (D) Temporary or permanent disqualification of one or more project transferees, neighborhood organizations, qualified charitable organizations, charitable organizations or other organizations, entities or persons from participation in a particular specified certified project.

92 No tax credit shall be allowed under this article for any contribution made during the disqualification period to any project transferee, neighborhood organization, qualified charitable organization, charitable organization or other organization, entity or person disqualified under this section from participation in a certified project. Tax credit taken by any taxpayer in accordance with this article pursuant to the making of an eligible contribution to any project transferee, neighborhood organization, qualified charitable organization, charitable organization or other organization, entity or person pursuant to a certified project plan prior to or subsequent to the disqualification period shall not be subject to recapture by reason of the disqualification of the recipient thereof. However, such credit shall otherwise be subject to audit and adjustment or recapture in accordance with the requirements of this article.

97 (E) Temporary or permanent disqualification of any project transferee, neighborhood organization, qualified charitable organization, charitable organization or other organization, entity or person, or group thereof, from participation in any and all certified projects currently in existence or to be formed, proposed or certified under this article.

103 (i) No tax credit shall be allowed under this article for any contribution made during the disqualification period to any
project transferee, neighborhood organization, qualified charitable organization, charitable organization or other organization, entity or person disqualified under this section from participation in any and all certified projects under this article. Tax credit taken by any eligible taxpayer in accordance with this article pursuant to the making of an eligible contribution to the project transferee, neighborhood organization, qualified charitable organization, charitable organization or other organization, entity or person disqualified from participation in any and all certified projects under this article, pursuant to a certified project plan prior to or subsequent to the disqualification period shall not be subject to recapture by reason of the disqualification. However, such credit shall otherwise be subject to audit and adjustment or recapture in accordance with the requirements of this article; and

(ii) No certification shall be issued during the disqualification period for any proposed project in which a project transferee, neighborhood organization, qualified charitable organization, charitable organization or other organization, entity or person disqualified under this section from participation in any and all certified projects is listed as a proposed project participant.

(F) Any combination of the aforementioned sanctions.

(3) Audits and investigations. — The West Virginia Development Office or the Department of Revenue, or both, may initiate and carry out investigations or audits of any recipient of any eligible contribution under this article, any eligible taxpayer or any project transferee to determine whether the project certification fee imposed by this section has been paid in accordance with the requirements of this article.

(4) Procedures, failure to timely pay the project certification fee upon written demand. —
(A) **Written demand.** — The Director of the West Virginia Development Office shall, upon a reasonable belief that a project transferee has failed to timely pay the fee imposed by this section, issue a written demand for payment thereof, plus interest determined at the interest rate prescribed under section seventeen, article ten of this chapter, in such form as the Director of the West Virginia Development Office may specify. The Director of the West Virginia Development Office may also impose a penalty for failure to timely pay the project certification fee in the amount of twenty percent of the amount of the project certification fee due and interest due. Such demand shall notify the project transferee of the opportunity to show that the project certification fee is not due and owing.

(B) **Failure to pay pursuant to written demand.** —

Failure of the project transferee to pay any project certification fee due, with interest and penalties, as stated in the written demand for payment of the project certification fee, within thirty days of service of such demand, and failure of the project transferee to prove to the satisfaction of the Director of the West Virginia Development Office that the fee imposed by this section is not due and owing, shall result in a determination by the Director of the West Virginia Development Office that sanctions shall apply.

(C) **Notice of pending sanctions.** — Upon the making of a determination by the Director of the West Virginia Development Office that sanctions for failure to pay the project certification fee apply, the Director of the West Virginia Development Office shall serve upon the project transferee from which the project certification fee, or some portion thereof, is due and owing, a notice of pending sanctions. If the project transferee from which the certified project fee, or some portion thereof, is due and owing is not the applicant for project certification, then an informational copy of the notice of pending sanctions shall also be served upon the applicant for project certification.
(D) Service of notice, content of notice. — The notice of pending sanctions shall be served upon the delinquent project transferee in the same manner as an assessment of tax in accordance with article ten of this chapter. Such notice of pending sanctions shall state the sanctions to be applied in accordance with this section, the effective date or dates of such sanctions, with specific statements of whether any sanction is to be applied retroactively or in part retroactively, and the commencement and termination dates for any suspensions of certification or temporary disqualifications of any program transferee, neighborhood organization, qualified charitable organization, charitable organization or other organization, entity or person to be disqualified under this section from participation in certified projects. The notice of pending sanctions shall state that sanctions shall be imposed sixty days after service of the notice of pending sanctions upon the delinquent project transferee, unless the delinquent project transferee pays the amount of the project certification fee due and owing, plus interest and penalties.

(E) Appeals. — The project transferee may file an appeal of pending sanctions as if the notice of pending sanctions were an assessment of tax under article ten of this chapter, and the matter on appeal shall be subject to the procedures set forth in article ten of this chapter. On appeal, the burden of proof shall be on the project transferee to prove that the project certification fee and associated interest and penalties are not due and owing. The review on appeal shall be limited to:

(i) The issue of whether a failure to timely pay the project certification fee or any portion thereof has occurred, the time period or periods over which such failure occurred, and whether such failure continues to occur;

(ii) The amount of the project certification fee and interest due; and
(iii) The mathematical and methodological accuracy of the computation of the project certification fee, interest and penalties.

(F) Statutory confidentiality. — No information, document or proceeding brought pursuant to this section, relating to the liability of any project transferee for the project certification fee, interest or penalties imposed under this section is subject to the confidentiality provisions of article ten of this chapter or any other confidentiality provision of this code. However, any proceeding relating to any amount of tax due or the recapture of tax credit taken under this article or any adjustment of the amount of tax credit taken under this article is subject to the provisions of article ten of this chapter, including all statutory confidentiality provisions, and shall be subject to all other applicable statutory tax confidentiality provisions of this code.

(G) Effect of a final determination, waiver of penalties or sanctions. — The notice of pending sanctions shall become final sixty days after service, unless an appeal is filed under this section, and shall not be subject to further appeal by the recipient thereof. When a determination has become final that a project transferee has failed to timely pay the project certification fee, or any part thereof, the sanctions described in the notice of pending sanctions shall apply, effective as of the date set forth in that notice, unless the project certification fee, interest and penalties due are paid to the West Virginia Development Office within thirty days of the date on which the determination has become final. The twenty percent penalty authorized under this section may be imposed, adjusted, withdrawn or waived, in whole or in part, at the discretion of the Director of the West Virginia Development Office. However, payment of the project certification fee and interest due shall not be subject to waiver. The sanctions for failure to pay the project certification fee authorized under this section may be imposed, adjusted,
withdrawn or waived, in whole or in part, at the discretion of the Director of the West Virginia Development Office.

(c) Within sixty days after the close of the regular meeting of the Neighborhood Investment Advisory Board at which a complete application for approval of a proposed project is considered by the board, the Director of the West Virginia Development Office shall certify, or deny certification of, the proposed project for which such application has been filed: Provided, That applications for which the board requires additional information may be considered at the next regular meeting of the board. Those applications not approved by the director within sixty days of final action of the board shall be deemed disapproved by operation of law.

(d) The West Virginia Development Office shall promptly notify an applicant as to whether an application for certification of a project plan has been approved or disapproved.

(e) Those prospective qualified charitable organizations which receive certification of a project plan, and which otherwise comply with the requirements of this article so as to become qualified charitable organizations, as defined in section three of this article, may receive eligible contributions, as defined in said section. Eligible taxpayers which make eligible contributions shall receive a tax credit as provided in section five of this article. No tax credit may be granted under this article for any contribution except eligible contributions made to a project which has been certified in accordance with the requirements of this article prior to the making of the contribution. No tax credit may be granted under this article for any contribution which, if allowed, would cause the amount of tax credit generated by the project to exceed the maximum amount of tax credit for which the project was certified as stated in the application for project certification filed with the West Virginia Development Office.
(f) All applications for certification of a project filed with the West Virginia Development Office, whether such project is certified or denied certification, are public information which may be viewed and copied by the public and, at the discretion of the West Virginia Development Office, published by the West Virginia Development Office.

(g) Project transferees shall file biannual reports with the West Virginia Development Office on the progress of the certified project. The biannual reports shall be filed in a form approved by the director.

(h) Revolving fund. —

(1) For the purpose of permitting payments to be made and costs to be met for operation of the program established by this article, there is hereby created a revolving fund for the West Virginia Development Office, which shall be known as the Neighborhood Investment Fund. All money received by the West Virginia Development Office under this article shall be paid into the State Treasury, and shall be deposited to the credit of the Neighborhood Investment Fund, and shall be expended only for the purposes of defraying the costs of the Neighborhood Investment Program Advisory Board and the West Virginia Development Office in administering the program established pursuant to this article, unless otherwise directed by the Legislature.

(2) The Neighborhood Investment Fund shall be accumulated and administered as follows:

(A) Payments received under this article shall be deposited into the Neighborhood Investment Fund.

(B) Any appropriations made to the Neighborhood Investment Fund shall not be deemed to have expired at the end of any fiscal period.
§11-13J-4a. Neighborhood Investment Program Advisory Board.

(a) There is hereby created a Neighborhood Investment Program Advisory Board, which shall consist of twelve voting members and the chairperson.

(b) Chairperson. —

(1) The Director of the West Virginia Development Office, or the designee of the Director of the West Virginia Development Office, shall be the ex officio chairperson of the Neighborhood Investment Program Advisory Board.

(2) The chairperson shall vote on actions of the board only in the event of a tie vote, in which case the chairperson’s vote shall be the deciding vote.

(c) Board members. —

(1) Four members shall be officers or members of the boards of directors of unrelated corporations which are not affiliated with one another and which are currently licensed to do business in West Virginia.

(2) Four members shall be executive directors, officers or members of the boards of directors of unrelated not-for-profit organizations which are not affiliated with one another which currently hold charitable organization status under Section 501(c)(3) of the Internal Revenue Code and which are currently licensed to do business in West Virginia.

(3) Four members shall be economically disadvantaged citizens of the state that, for the taxable year immediately preceding the year of appointment to the board, had an annual gross personal income that was not more than one hundred twenty-five percent of the federal designated poverty level for personal incomes, and who has been a domiciliary and resident of this state for at least one year at the time of appointment.
A member appointed under this subdivision is not disqualified from completion of his or her term if his or her income in the year of appointment or in any year subsequent to the year of appointment exceeds one hundred twenty-five percent of the federal designated poverty level. A member shall not be eligible for reappointment under this subdivision unless he or she meets the original qualifications for appointment: 

Provided, That such member may be reappointed pursuant to qualification under subdivision (1) or (2) of this subsection if the member meets the requirements of subdivision (1) or (2), respectively.

(d) Limitations; terms of members; appointments. —

(1) Not more than four members, exclusive of the chairperson, shall be appointed from any one congressional district. Not more than seven of the members, exclusive of the chairperson, may belong to the same political party. Members shall be eligible for reappointment. However, no member may serve for more than three consecutive terms.

(2) Appointment terms. —

(A) Except for initial appointments described under subdivision (3) of this subsection, and except for midterm special appointments made to fill irregular vacancies on the board, members shall be appointed for terms of three years each.

(B) Except for midterm special appointments made to fill irregular vacancies on the board, appointment terms shall begin on July 1 of the beginning year. All appointment terms, special and regular, shall end on June 30 of the ending year.

(3) Selection of members. —

(A) For the initial appointment of members under this subdivision, members shall be selected by the Director of the West Virginia Development Office.
(B) At the end of a member’s term, the chairperson shall solicit new member nominations from the board and appoint the most appropriate person to serve, in compliance with the requirements set forth in this section.

(C) Vacancies on the board shall be filled in the same manner as the original appointments for the duration of the unexpired term.

(e) Quorum; meetings; funding. —

(1) The presence of a majority of the members of the board constitutes a quorum for the transaction of business. The board shall elect from among its members a vice chairperson and such other officers as are necessary.

(2) The board shall meet not less than two times during the fiscal year, and additional meetings may be held upon a call of the chairperson or of a majority of the members: Provided, That no meeting of the board shall be required if the total amount of tax credits available for the fiscal year have been allotted.

(3) Board members shall be reimbursed by the West Virginia Development Office for sums necessary to carry out responsibilities of the board and for reasonable travel expenses to attend board meetings.

(f) Annual report. — The board shall make a report to the Governor and the Legislature within thirty days of the close of each fiscal year. The report shall include summaries of all meetings of the board, an analysis of the overall progress of the program, fiscal concerns, the relative impact the program is having on the state and any suggestions and policy recommendations that the board may have. The report shall be public information made available to the general public for examination and copying. The board is authorized to publish the annual report, should the board elect to do so.
(g) **Duties of the board.** —

(1) **Administrative duties.** — The board shall be responsible for advising the West Virginia Development Office concerning the administrative obligations of the program.

(2) **Project evaluation and approval; prohibition on project promotion.** —

(A) The board shall select and approve projects, which may then be certified by the Director of the West Virginia Development Office pursuant to section four of this article.

(B) Only projects sponsored by qualified charitable organizations, as defined in section three of this article, may be approved by the board or certified by the Director of the West Virginia Development Office. An applicant that does not hold current status as a charitable organization under Section 501(c)(3) of the Internal Revenue Code may not receive project approval from the board, or project certification from the Director of the West Virginia Development Office, for any proposed project. Failure of any applicant to provide convincing documentation proving such status as a charitable organization under Section 501(c)(3) of the Internal Revenue Code shall result in automatic denial of project approval and denial of project certification under this article.

(3) **Criteria for evaluation.** — In evaluating projects for approval, the board shall give priority to projects based upon the following criteria. A proposed project shall be favored if:

(A) The project is community based.

(B) The proposed project will primarily serve low income persons.

(C) The proposed project will serve highly distressed neighborhoods or communities.
(D) The project plan incorporates collaborative partnerships among nonprofit groups, businesses, government organizations and other community organizations.

(E) The applicant or sponsor of the project has demonstrated a proven capacity to deliver the proposed services.

(F) The applicant or sponsor of the project historically maintains reasonable administrative costs.

(G) The applicant produces a strong showing of need for the services which the proposed project would provide, and produces convincing documentation of that need.

(H) The proposed project is innovative, novel, creative or unique in program approach.

(I) The proposed project is a direct need program or will provide emergency assistance.

(4) If an applicant is directly or indirectly affiliated with one or more board members, those members shall not discuss the proposals with one or more board members, and shall not have a vote when that project is considered for final approval or disapproval.

(5) Project approval by the board. — Proposed projects shall be approved or denied approval by a majority vote of the board after competitive comparison with proposed projects of other applicants.

(h) Project certification by the Director of the West Virginia Development Office. —

(1) Upon issuance of approval for a project by the board, the approved project shall be certified by the Director of the West Virginia Development Office: Provided, That no certification
may issue for any project, even though the project may have been approved by the board, if the issuance of certification for such project will cause the aggregate amount of tax credits certified to exceed the limitation set forth in this article. No certification may be issued by the Director of the West Virginia Development Office for any project which has not been approved by the board.

(2) The West Virginia Development Office shall promptly notify applicants of the issuance of certification for their projects and shall issue tax credit vouchers to certified project applicants in the amount of the tax credit represented by the project.

(3) The West Virginia Development Office may provide incidental technical support and guidance to projects certified under this article and may monitor the progress of the projects. The West Virginia Development Office shall make a biannual report to the board on the progress of certified projects and the program generally.

§11-13J-10. Public information relating to tax credit.

The Tax Commissioner shall annually publish in the State Register the name of every taxpayer asserting this credit on a tax return, and the amount of any credit asserted on a tax return under this article by each such taxpayer, and the confidentiality provisions of section four-a, article one of this chapter or section five-d, article ten of this chapter, or of any other provision of this code, do not apply to such information.

§11-13J-12. Program evaluation; expiration of credit; preservation of entitlement.

Beginning on December 15, 2005, and every third year thereafter, the director shall secure an independent review of the Neighborhood Investment Program created by this article and present the findings to the Joint Committee on Government and
Finance. Unless sooner terminated by law, the Neighborhood Investment Program Act terminates on July 1, 2021. There is no entitlement to the tax credit under this article for a contribution made to a certified project after July 1, 2021, and no credit is available to any taxpayer for any contribution made after that date. Taxpayers which have gained entitlement to the credit pursuant to eligible contributions made to certified projects prior to July 1, 2021, shall retain that entitlement and apply the credit in due course pursuant to the requirements and limitations of this article.

CHAPTER 82

(S. B. 618 - By Senators Carmichael, Hall and Unger)

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

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §31-15-12b, relating generally to economic development; and allowing Economic Development Authority to refinance indebtedness of certain licensed commercial whitewater outfitters.

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 §31-15-12b, to read as follows:

ARTICLE 15. WEST VIRGINIA ECONOMIC DEVELOPMENT AUTHORITY.

§31-15-12b. Loans to support tourism.
(a) In order to preserve jobs and support tourism, the Economic Development Authority may make loans, consistent with this section.

(b) For purpose of this section an applicant is:

(1) A licensed entity that has filed an application for a loan under this section no later than July 1, 2016;

(2) A licensed entity operating in West Virginia; and

(3) A licensed entity that operates a resort comprised of at least seventy-five acres and employing a minimum of one hundred employees.

(c) The proceeds of the loans:

(1) May be used only to refinance the existing indebtedness of qualifying applicants; and

(2) May not exceed the outstanding indebtedness of the qualifying applicants as of January 1, 2016.

(d) The loans shall be:

(1) Made under terms and conditions established by the Economic Development Authority.

(2) Collateralized as determined by the Economic Development Authority.

(e) The total refinancing provided pursuant to this section by the Economic Development Authority shall not exceed 2.5 percent of the Economic Development Authority’s direct loan portfolio.
AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §59-1-2c, relating to creating Young Entrepreneur Reinvestment Act; waiving certain fees for individuals under thirty creating certain business organizations, and expire the waiver of those fees.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §59-1-2c, to read as follows:

ARTICLE 1. FEES AND ALLOWANCES.

§59-1-2c. Young Entrepreneur Reinvestment Act; certain fees waived.

1   (a) Beginning on July 1, 2016, a person who is under the age of thirty who resides within West Virginia is exempt from paying the fees provided in section two of this article for filing:

4   (1) Articles of incorporation of a domestic, for-profit corporation, for which he or she is an incorporator;

6   (2) Articles of incorporation of a domestic, nonprofit corporation for which he or she is an incorporator;

8   (3) Articles of organization of a domestic limited liability company, for which he or she is a member;
(4) Agreement of a domestic general partnership, for which he or she is a partner; or

(5) Certificate of a domestic limited partnership, for which he or she is a partner.

(b) This section is effective until and through June 30, 2018. After June 30, 2018, this section is no longer in force and effect.

CHAPTER 84

(S. B. 459 - By Senators Cole (Mr. President) and Kessler)
[By Request of the Executive]

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

AN ACT to amend and reenact §18-2-6 of the Code of West Virginia, 1931, as amended, relating to requiring promulgation of a rule to provide for payment of tuition by county boards of education to Mountaineer Challenge Academy for students graduating with a high school diploma from Mountaineer Challenge Academy.

Be it enacted by the Legislature of West Virginia:

That §18-2-6 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2. STATE BOARD OF EDUCATION.

§18-2-6. Classification and standardization of schools; standards for degrees and diplomas; certificates of proficiency; establishment of alternative education programs.
(a) The state board shall promulgate rules for the accreditation, classification and standardization of all schools in the state, except institutions of higher education, and shall determine the minimum standards for granting diplomas and certificates of proficiency by those schools.

(1) The certificates of proficiency shall include specific information regarding the graduate’s skills, competence and readiness for employment or honors and advanced education and shall be granted, along with the diploma, to every eligible high school graduate.

(2) The certificate of proficiency shall include the program of study major completed by the student only for those students who have completed the required major courses, or higher level courses, advanced placement courses, college courses or other more rigorous substitutes related to the major, and the recommended electives.

(b) An institution of less than collegiate or university status may not grant any diploma or certificate of proficiency on any basis of work or merit below the minimum standards prescribed by the state board.

(c) A charter or other instrument containing the right to issue diplomas or certificates of proficiency may not be granted by the State of West Virginia to any institution or other associations or organizations of less than collegiate or university status within the state until the condition of granting or issuing the diplomas or other certificates of proficiency has first been approved in writing by the state board.

(d) The state board shall promulgate a rule for the approval of alternative education programs for disruptive students who are at risk of not succeeding in the traditional school structure.
(1) This rule may provide for the waiver of other policies of the state board, the establishment and delivery of a nontraditional curriculum, the establishment of licensure requirements for alternative education program teachers, and the establishment of performance measures for school accreditation.

(2) This rule shall provide uniform definitions of disruptive student behavior and uniform standards for the placement of students in alternative settings or providing other interventions including referrals to local juvenile courts to correct student behavior so that they can return to a regular classroom without engaging in further disruptive behavior.

(e) The state board shall establish up to five pilot projects at the elementary or middle school levels, or both, that employ alternative schools or other placements for disruptive students to learn appropriate behaviors so they can return to the regular classroom without further disrupting the learning environment. The state board shall report to the Legislative Oversight Commission on Education Accountability by December 1, 2010, on its progress in establishing the pilot projects and by December 1 in each year after that for the duration of the pilot projects on the effect of the projects on maintaining student discipline.

(f) If a student attends an approved alternative education program or the Mountaineer Challenge Academy, which is designated as a special alternative education program pursuant to section twenty-four, article one-b, chapter fifteen of this code, and the student graduates or passes the General Equivalency Development (GED) Tests within five years of beginning ninth grade, that student shall be considered graduated for the purposes of calculating the high school graduation rate used for school accreditation and school system approval, subject to the following:
(1) The student shall be considered graduated only to the extent that this is not in conflict with any provision of federal law relating to graduation rates;

(2) If the state board determines that this is in conflict with a provision of federal law relating to graduation rates, the state board shall request a waiver from the United States department of education; and

(3) If the waiver is granted, notwithstanding the provisions of subdivision (1) of this subsection, the student graduating or passing the General Educational Development (GED) Tests within five years shall be considered graduated.

(g) The state board shall promulgate a rule to support the operation of the National Guard Youth Challenge Program operated by the Adjutant General and known as the Mountaineer Challenge Academy which is designated as a special alternative education program pursuant to section twenty-four, article one-b, chapter fifteen of this code for students who are at risk of not succeeding in the traditional school structure. The rule shall set forth policies and procedures applicable only to the Mountaineer Challenge Academy that provide for, but are not limited to, the following:

(1) Implementation of provisions set forth in section twenty-four, article one-b, chapter fifteen of this code;

(2) Precedence of the policies and procedures designated by the National Guard Bureau for the operation of the Mountaineer Challenge Academy special alternative education program;

(3) Consideration of a student participating in the Mountaineer Challenge Academy special alternative education program at full enrollment status in the referring county for the purposes of funding and calculating attendance and graduation rates, subject to the following:
(A) The student shall be considered at full enrollment status only for the purposes of calculating attendance and graduation rates to the extent that this is not in conflict with any provision of federal law relating to attendance or graduation rates;

(B) If the state board determines that this is in conflict with a provision of federal law relating to attendance or graduation rates, the state board shall request a waiver from the United States Department of Education;

(C) If the waiver is granted, notwithstanding the provisions of paragraph (A) of this subdivision, the student shall be considered at full enrollment status in the referring county for the purposes of calculating attendance and graduation rates; and

(D) Consideration of the student at full enrollment status in the referring county is for the purposes of funding and calculating attendance and graduation rates only. For any other purpose, a student participating in the academy is considered withdrawn from the public school system;

(4) Articulation of the knowledge, skills and competencies gained through alternative education so that students who return to regular education may proceed toward attainment or may attain the standards for graduation without duplication;

(5) Consideration of eligibility to take the General Educational Development (GED) Tests by qualifying within the extraordinary circumstances provisions established by state board rule for a student participating in the Mountaineer Challenge Academy special alternative education program who does not meet any other criteria for eligibility; and

(6) Payment of tuition by a county board to the Mountaineer Challenge Academy for each student graduating from the academy with a high school diploma that resides in that county.
board’s school district. For purposes of this subdivision, “tuition” means an amount equal to seventy-five percent of the amount allotted per pupil under the school aid formula.

(h) Nothing in this section or the rules promulgated under this section compels the Mountaineer Challenge Academy to be operated as a special alternative education program or to be subject to any other laws governing the public schools except by its consent.

(i) The Legislature makes the following findings regarding students at risk:

(1) **Defeated and discouraged learners. —**

(A) Any child who is unlikely to graduate on schedule with both the skills and self esteem necessary to exercise meaningful options in the areas of work, leisure, culture, civic affairs and personal relationships may be defined as being an at-risk student;

(B) Problems associated with students at risk often begin for them in the early grades as they gradually fall further behind in the essential skills of reading, writing and math;

(C) These problems may be accompanied by such behavior patterns as poor attendance, inattentiveness, negative attitudes and acting out in class. These patterns are both symptoms of and added catalysts for students to become increasingly defeated and discouraged learners;

(D) By the middle grades, students with growing skill deficits usually know they are behind other students and have good reason to feel discouraged. A growing lack of self confidence and self worth, limited optimism for the future, avoidance of school and adults and a dimming view of the relationship between effort and achievement are among the characteristics of defeated and discouraged learners;
(E) Public schools are expected to address the needs of all students, minimizing the likelihood that they will become at risk and giving additional attention to those who do; however, the circumstances involved with a child becoming at risk often are complex and may include influences both within and outside of the school environment; and

(F) In fragile homes, a child who is at risk and is becoming a discouraged and defeated learner often lacks adequate support and may develop peer relationships that further exacerbate the difficulty of reengaging him or her in learning, school and responsible social behavior.

(2) The Legislature further finds that the public schools should not be deterred from seeking and assisting with enrollment of students in an alternative program that helps remedy the discouragement, lessens skill deficits and facilitates a successful return to public school.

For this purpose, subject to approval of the county superintendent, a student enrolled in the public schools of the county may continue to be enrolled while also enrolled in an alternative program subject to the following conditions:

(1) The alternative program is approved by the state board;

(2) The student meets the general description of an at-risk student and exhibits behaviors and characteristics associated with a discouraged and defeated learner;

(3) The alternative program complies with all requests of the county superintendent for information on the educational program and progress of the student;

(4) The alternative program includes a family involvement component in its program. This component shall include, but is not limited to, providing for student and parent participation in
activities that help address the challenging issues that have hindered the student’s engagement and progress in learning;

(5) The alternative program includes an on-site boarding option for students;

(6) The alternative program provides an individualized education program for students that is designed to prepare them for a successful transition back into the public schools; and

(7) The parents or legal guardian of the student make application for enrollment of the student in the alternative program, agree to the terms and conditions for enrollment, and enroll the student in the program.

CHAPTER 85

(Com. Sub. for H. B. 4261 - By Delegates Shott, McCuskey, Cowles, O’Neal, Butler, Marcum, Shaffer, Sobonya, Folk, Overington and Azinger)

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

AN ACT to amend and reenact §18-2-5h of the Code of West Virginia, 1931, as amended, relating to student data; prohibiting the West Virginia Department of Education from transferring confidential student information or certain redacted data to any federal, state or local agency or other person or entity; establishing exception when the department enters into a contract that governs student or redacted data with a contractor for the purposes of state level reporting; establishing exception that, in the event the ACT or the SAT tests are adopted as the state summative assessment,
allows the ACT or the College Board to use certain information; requiring written consent if information classified as confidential is required; and requiring consent contain a detailed list of confidential information required and the purpose of its requirement.

Be it enacted by the Legislature of West Virginia:

That §18-2-5h of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2. STATE BOARD OF EDUCATION.

§18-2-5h. Student Data Accessibility, Transparency and Accountability Act.

1 (a) Title. This section shall be known and may be cited as the “Student Data Accessibility, Transparency and Accountability Act.”

4 (b) Definitions. — As used in this section, the following words have the meanings ascribed to them unless the context clearly implies a different meaning:

7 (1) “Board” means the West Virginia Board of Education;

8 (2) “Department” means the West Virginia Department of Education;

10 (3) “Student Data system” means the West Virginia Department of Education statewide longitudinal data system;

12 (4) “Aggregate data” means data collected that is reported at the group, cohort, or institutional level with a data set of sufficient size that no information for an individual parent or student is identifiable;

16 (5) “Redacted data” means a student dataset in which parent and student identifying information has been removed;
(6) “State-assigned student identifier” means the unique student identifier assigned by the state to each student that shall not be or include the Social Security number of a student in whole or in part;

(7) “Student data” means data collected or reported at the individual student level included in a student’s educational record;

(8) “Provisional student data” means new student data proposed for inclusion in the student data system;

(9) “School district” means a county board of education, the West Virginia Schools for the Deaf and Blind and the West Virginia Department of Education with respect to the education programs under its jurisdiction that are not in the public schools;

(10) “Directory information” means the following individual student information that is subject to disclosure for school-related purposes only: Student name, address, telephone number, date and place of birth, major field of study, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, indication of “graduate” or “nongraduate,” degrees and awards receives, most recent previous school attended, and photograph.

(11) “Confidential student information” means data relating to a person’s Social Security number, or other identification number issued by a state or federal agency, except for the state-assigned student identifier as defined in this section, religious affiliation, whether the person or a member of their household owns or possesses a firearm, whether the person or their family are or were recipients of financial assistance from a state or federal agency, medical, psychological or behavioral diagnoses, criminal history, criminal history of parents, siblings or any members of the person’s household, vehicle registration
number, driver’s license number, biometric information, handwriting sample, credit card numbers, consumer credit history, credit score, or genetic information;

(12) “Affective computing” means human-computer interaction in which the device has the ability to detect and appropriately respond to its user’s emotions and other stimuli;

(13) “Fair Information Practice Principles” are United States Federal Trade Commission guidelines that represent widely accepted concepts concerning fair information practice in an electronic marketplace.

(c) Data Inventory B State Responsibilities. C The Department of Education shall:

(1) Create, publish, and make publicly available a data inventory and dictionary or index of data elements with definitions of individual student data fields in the student data system to include, but not be limited to:

(A) Any individual student data required to be reported by state and federal education mandates;

(B) Any individual student data which has been proposed in accordance with paragraph (A), subdivision (7) of this subsection for inclusion in the student data system with a statement regarding the purpose or reason and legal authority for the proposed collection; and

(C) Any individual student data that the department collects or maintains with no current identified purpose;

(2) Develop, publish, and make publicly available policies and procedures to comply with all relevant state and federal privacy laws and policies, including, but not limited to, the
Federal Family Educational Rights and Privacy Act (FERPA) and other relevant privacy laws and policies. The policies and procedures specifically shall include, but are not limited to:

(A) Access to student and redacted data in the statewide longitudinal data system shall be restricted to:

(i) The authorized staff of the department and the contractors working on behalf of the department who require access to perform their assigned duties as required by law and defined by interagency data-sharing agreements;

(ii) District administrators, teachers and school personnel who require access to perform their assigned duties;

(iii) Students and their parents; and

(iv) The authorized staff of other West Virginia state agencies as required by law and defined by interagency data-sharing agreements;

(B) Ensure that any inter-agency data-sharing agreements shall be posted on the Department website, and parents shall be notified of their right to opt out of sharing the child’s data pursuant to agreements.

(C) Use only aggregate data in public reports or in response to record requests in accordance with this section;

(D) Unless otherwise prohibited by law, develop criteria for the approval of research and data requests from state and local agencies, the Legislature, researchers working on behalf of the department, and the public. Student data maintained by the department shall remain redacted; and

(E) Notification to students and parents regarding student privacy rights under federal and state law;
(3) Unless otherwise provided by law, the department shall not transfer confidential student information or redacted data that is confidential under this section to any federal, state or local agency or other person or entity, public or private, with the following exceptions:

(A) A student transfers out-of-state or a school or school district seeks help with locating an out-of-state transfer;

(B) A student leaves the state to attend an out-of-state institution of higher education or training program;

(C) A student registers for or takes a national or multistate assessment;

(D) A student voluntarily participates in a program for which a data transfer is a condition or requirement of participation;

(E) The department enters into a contract that governs databases, assessments, student or redacted data, special education or instructional supports with an in-state or out-of-state contractor for the purposes of state level reporting;

(F) A student is classified as “migrant” for federal reporting purposes;

(G) A federal agency is performing a compliance review; or

(H) In the event that the ACT or the SAT tests are adopted for use as the state summative assessment, nothing in this article prevents the ACT or the College Board from using a student’s assessment results and necessary directory or other permissible information under this Act. If information classified as confidential is required, the ACT, SAT or College Board shall obtain affirmative written consent from the student if the student is eighteen years of age or older, or from the student’s parent or guardian if the student is under eighteen years of age. The
consent shall contain a detailed list of confidential information required and the purpose of its requirement.

(4) Develop a detailed data security plan that includes:

(A) Guidelines for the student data system and for individual student data including guidelines for authentication of authorized access;

(B) Privacy compliance standards;

(C) Privacy and security audits;

(D) Breach planning, notification and procedures;

(E) Data retention and disposition policies; and

(F) Data security policies including electronic, physical, and administrative safeguards, such as data encryption and training of employees;

(5) Ensure routine and ongoing compliance by the department with FERPA, other relevant privacy laws and policies, and the privacy and security policies and procedures developed under the authority of this act, including the performance of compliance audits;

(6) Ensure that any contracts that govern databases, assessments or instructional supports that include student or redacted data and are outsourced to private vendors include express provisions that safeguard privacy and security and include penalties for noncompliance; and

(7) Notify the Governor and the Legislature annually of the following:

(A) New student data proposed for inclusion in the state student data system. Any proposal by the Department of
Education to collect new student data must include a statement regarding the purpose or reason and legal authority for the proposed collection. The proposal shall be announced to the general public for a review and comment period of at least sixty days and approved by the state board before it becomes effective. Any new student data collection approved by the state board is a provisional requirement for a period sufficient to allow schools and school districts the opportunity to meet the new requirement;

(B) Changes to existing data collections required for any reason, including changes to federal reporting requirements made by the U.S. Department of Education and a statement of the reasons the changes were necessary;

(C) An explanation of any exceptions granted by the state board in the past year regarding the release or out-of-state transfer of student or redacted data; and

(D) The results of any and all privacy compliance and security audits completed in the past year. Notifications regarding privacy compliance and security audits shall not include any information that would itself pose a security threat to the state or local student information systems or to the secure transmission of data between state and local systems by exposing vulnerabilities.

(8) Notify the Governor upon the suspicion of a data security breach or confirmed breach and upon regular intervals as the breach is being managed. The parents shall be notified as soon as possible after the suspected or confirmed breach.

(9) Prohibit the collection of confidential student information as defined in subdivision ten of subsection (b) of this section.
(d) Data Inventory B District Responsibilities. — A school district shall not report to the state the following individual student data:

(1) Juvenile delinquency records;

(2) Criminal records;

(3) Medical and health records; and

(4) Student biometric information.

(e) Data Inventory B School Responsibilities. — Schools shall not collect the following individual student data:

(1) Political affiliation and beliefs;

(2) Religion and religious beliefs and affiliations;

(3) Any data collected through affective computing;

(4) Any data concerning the sexual orientation or beliefs about sexual orientation of the student or any student’s family member; and

(5) Any data concerning firearm’s ownership by any member of a student’s family.

(f) Data Governance Manager. C The state superintendent shall appoint a data governance manager, who shall report to and be under the general supervision of the state superintendent. The data governance manager shall have primary responsibility for privacy policy, including:

(1) Assuring that the use of technologies sustain, and do not erode, privacy protections relating to the use, collection, and disclosure of student data;
(2) Assuring that student data contained in the student data system is handled in full compliance with the Student Data Accessibility, Transparency, and Accountability Act, FERPA, and other state and federal privacy laws;

(3) Evaluating legislative and regulatory proposals involving collection, use, and disclosure of student data by the Department of Education;

(4) Conducting a privacy impact assessment on proposed rules of the state board and department in general and on the privacy of student data, including the type of personal information collected and the number of students affected;

(5) Coordinating with the general counsel of the state board and department, other legal entities, and organization officers to ensure that programs, policies, and procedures involving civil rights, civil liberties, and privacy considerations are addressed in an integrated and comprehensive manner;

(6) Preparing a report to the Legislature on an annual basis on activities of the department that affect privacy, including complaints of privacy violations, internal controls, and other matters;

(7) Establishing department-wide policies necessary for implementing Fair Information Practice Principles to enhance privacy protections;

(8) Working with the Office of Data Management and Analysis, the general counsel, and other officials in engaging with stakeholders about the quality, usefulness, openness, and privacy of data;

(9) Establishing and operating a department-wide Privacy Incident Response Program to ensure that incidents are properly reported, investigated and mitigated, as appropriate;
(10) Establishing and operating a process for parents to file complaints of privacy violations;

(11) Establishing and operating a process to collect and respond to complaints of privacy violations and provides redress, as appropriate; and

(12) Providing training, education and outreach to build a culture of privacy across the department and transparency to the public.

The data governance manager shall have access to all records, reports, audits, reviews, documents, papers, recommendations, and other materials available to the department that relate to programs and operations with respect to his or her responsibilities under this section and shall make investigations and reports relating to the administration of the programs and operations of the department as are necessary or desirable.

(g) Parental rights regarding child’s information and education record. — Parents have the right to inspect and review their child’s education record maintained by the school and to request student data specific to their child’s educational record. School districts must provide parents or guardians with a copy of their child’s educational record upon request. Whenever possible, an electronic copy of the educational record must be provided if requested and the identity of the person requesting the information is verified as the parent or guardian.

The state board shall develop guidance for school district policies that:

(1) Annually notify parents of their right to request student information;

(2) Ensure security when providing student data to parents;
(3) Ensure student data is provided only to the authorized individuals;

(4) Detail the timeframe within which record requests must be provided;

(5) Ensure that school districts have a plan to allow parents to view and access data specific to their child’s educational record and that any electronic access provided is restricted to eligible parties;

(6) Ensure compliance in the collection, use and disclosure of directory information and providing parents or guardians with a form to limit the information concerning their child in directory and subject to release; and

(7) Informing parents of their rights and the process for filing complaints of privacy violations.

(h) State Board Rules. — The state board shall adopt rules necessary to implement the provisions of the Student Data Accessibility, Transparency, and Accountability Act.

(i) Effect on Existing Data. — Upon the effective date of this section, any existing student data collected by the Department of Education shall not be considered a new student data collection under this section.
AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §18-2-12, relating to computer science courses of instruction; making legislative findings; requiring submission by state board of plan for implementation of computer science instruction and learning standards in public schools to legislative oversight commission prior to 2017 legislative session; and specifying areas of recommendations to be included in plan.

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 §18-2-12, to read as follows:

ARTICLE 2. STATE BOARD OF EDUCATION.

§18-2-12. Computer science courses of instruction; learning standards; state board plan development.

(a) Legislative findings:

(1) Computer technology increasingly is pervasive in nearly every function of society from consumer products to transportation, communications, electrical infrastructure, logistics, agriculture, medical treatments, research, security and financial transactions;
(2) The U. S. Bureau of Labor Statistics predicts that by 2024, there will be more than 800,000 new jobs in the STEM fields and more than two-thirds of these directly will be in computing occupations;

(3) Studying computer science prepares students to enter many career areas, both within and outside of computing, teaching them logical reasoning, algorithmic thinking, design and structured problem solving skills applicable in many contexts from science and engineering to the humanities and business;

(4) Computer science is an established discipline at the collegiate and post-graduate levels but, unfortunately, computer science concepts and courses have not kept pace in the K-12 curriculum to the point that the nation faces a serious shortage of computer scientists at all levels that is likely to continue for the foreseeable future; and

(5) Organizations such as the Computer Science Teachers Association, the International Society for Technology in Education and technology industry leaders have developed recommendations for standards, curriculum and instructional resources for computer technology learning in K-12 schools.

(b) Prior to the 2017 regular legislative session, the state board shall submit a plan to the Legislative Oversight Commission on Education Accountability for the implementation of computer science instruction and learning standards in the public schools. The Plan shall include at least the following:

(1) Recommendations for a core set of learning standards designed to provide the foundation for a complete computer science curriculum and its implementation at the K–12 level including, but not limited to:
(A) Introducing the fundamental concepts of computer science to all students, beginning at the elementary school level;

(B) Presenting computer science at the secondary school level in a way that is both accessible and worthy of an academic curriculum credit and may fulfill a computer science, math, or science graduation credit;

(C) Encouraging schools to offer additional secondary-level computer science courses that will allow interested students to study facets of computer science in more depth and prepare them for entry into the work force or college; and

(D) Increasing the availability of rigorous computer science for all students.

(2) Recommendations for teaching standards and secondary certificate endorsements if necessary for teachers to deliver curriculum appropriate to meet the standards;

(3) Recommendations for units of instruction or courses in academic and vocational technical settings that complement any existing K–12 computer science and IT curricula where they are already established, especially the Advanced Placement computer science curricula and professional IT certifications; and

(4) Proposals for implementation of the recommendations over a period not to exceed four years and estimates of any associated additional costs.

(c) Nothing in this section requires adoption or implementation of any specific recommendation or any level of appropriation by the Legislature.
AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §18-2-36, relating to a framework for initiating comprehensive transformation of school leadership; making legislative findings that provide a context for leadership that promotes instructional improvement; stating purpose of section as framework for development of needed statutory and policy changes; stating further purpose to initiate transformation through general statement of legislative intent; providing certain expectations; stating intent for process of broad stakeholder input; requiring convening of stakeholders to assist state board; listing minimum issues to be considered for state recommendations; and requiring reports and recommendations to Legislature and Governor.

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 §18-2-36, to read as follows:

ARTICLE 2. STATE BOARD OF EDUCATION.


(a) Legislative findings. —
(1) The report and recommendations of Imagine West Virginia on Transforming School Leadership in West Virginia are clearly on point that school leadership and the essential role of the principal in achieving a high performing school are well documented, long studied and too often set aside. The report and recommendations also clearly recognize the value of providing teachers with authentic opportunities and resources to lead, influence professional practice, and assume shared responsibility for school and classroom improvement. The recommendations related to school leadership, the role, preparation and selection of the principal and a career ladder for teacher leaders once again bring the importance of strong school-level instructional leadership, including mechanisms for career advancement for teachers in leadership roles, to the forefront of discussions on school improvement. The state board posted the report recommendations for comment with the intent of providing a starting point for deeper deliberation and stakeholder input.

(2) Among the general conclusions of the Education Efficiency Audit of West Virginia’s Primary and Secondary Education System is the need to drive more educational decision-making down to the level closest to the students, to the classroom and building level, allowing principals to lead and teachers to deliver the most effective curriculum for their students, and then holding them accountable for student success. Such a system heightens the imperative for strong school leadership. The school climate and culture observed in high quality schools reflects strong leadership that develops shared beliefs and values among the staff, high expectations for all, and a safe, orderly and engaging environment. A key concept in developing good school leadership and then holding schools accountable for student performance is that they have the authority, resources and flexibility to affect the outcome.

(3) An increasing body of knowledge concludes that unless teachers are collectively involved in the planning and
implementation of school improvement, it is unlikely to be sustained. Successful schools are distinguishable from unsuccessful ones by the frequency and extent to which teachers discuss professional practices, collectively design materials and inform and critique one another. Even successful schools must be self-renewing systems, learning organizations marked by deliberate effort to identify helpful knowledge and spread its use within the organization. Again, leadership by the principal combined with authentic roles for teacher leaders are necessary ingredients.

(4) The school responsibilities for accreditation adopted by the state board to implement West Virginia’s performance based accreditation system embodied in section five, article two-e of this chapter, the Process for Improving Education, include a collective and collaborative process for continuous school improvement led by the principal. The process includes data analysis, goal setting, strategic planning, progress review and results analysis. It includes identifying what and where improvement is needed, establishing goals and a strategic plan for improved student learning, defining the roles and responsibilities of all team members, securing the professional development needed to achieve the goals, and sharing the responsibility and rewards for the results. The principal must foster and develop distributed leadership in order to focus collective action for improved school performance. The school’s faculty and members of the Local School Improvement Council must participate effectively in the self-assessment and annual and cyclical reviews of school performance to effect a process of continuous improvement.

(5) The prior studies and Imagine WV report in which they are cited recognize that the job of principal has become overwhelming. The report focuses on instructional leadership as the most important role of the principal, but notes that it has become a less prominent function in the overall job of being a
principal. The diminished time devoted to instructional leadership has been a gradual crowding out by other necessary functions, rather than a conscience choice. Just as important for high performing schools is the strong leadership role necessary for operations management, establishing the climate and culture of the school as a learning environment, and instructional leadership. All require strong leadership skills, but in a different context. They require different skill sets, all of which are needed to lead high quality schools. The reality, however, is that these many responsibilities inherent in the operation of high quality schools compete for time and it is difficult for principals to do them all well. Various scenarios have been discussed for enabling a heightened focus on instructional leadership, including the introduction of school manager positions or the broader use of assistant principals in all schools to allow greater principal attention to instructional improvement. A further scenario builds upon the research that high quality schools are distinguishable by the collective and collaborative involvement of teachers in sustained school improvement. It brings a heightened focus on instructional leadership to assist, and under direction of, the principal by providing authentic opportunities for teacher leaders to participate and assume greater responsibility. This scenario involves various approaches to reward excellent teaching, to provide the time necessary for excellent teachers to lead instructional improvement, and to enable excellent teachers to advance in their teaching careers and levels of compensation through instructional leadership positions without leaving the classroom completely.

(6) Emerging research and policy direction toward distributed leadership and shared responsibility for results as cited in these findings, elevate the focus for all teachers on instructional improvement, and particularly for excellent teachers to assume instructional leadership roles. In most schools today, excellent teachers rarely have authority, time, or
sustained incentives to lead while teaching. Developing models for supporting new teacher induction, for professional development and mentoring for struggling teachers, and for teacher collaboration on instructional improvement all involve a role for teacher leaders. As professional educators, teachers should have an established structure through which they can advance their careers as experienced instructional leaders without leaving classroom teaching completely. Like other professionals, teachers should be afforded an opportunity to take on more responsibility, share their expertise with other less experienced teachers and advance their teaching career as teacher leaders. Like other professions, teaching should provide for a routine progression of continuing education for license maintenance and opportunities for salary advancement as additional knowledge, skill and expertise are acquired that directly affect student learning. Examples of leadership roles that may be performed by teachers include serving on the school leadership team, leading collective and collaborative processes for strategic improvement planning, leading teacher collaboration processes within the school day, leading the faculty senate, serving on the local school improvement council, supervising student teachers, serving as mentors and models for new and struggling teachers and teachers-in-residence, and helping arrange school level professional development. Ideally, in an opportunity culture for teachers, career paths and teacher pay will recognize and reward the value of excellent teaching and teacher leadership roles for extending excellent teaching to all students consistently.

(7) Education is a human resources intensive endeavor. It competes for talented professionals with other occupations with higher levels of compensation, particularly in the STEM fields. While opportunities for career advancement and added compensation for teachers under career ladder type arrangements may improve the attractiveness of the profession for excellent
teachers, it will not replace the need for general salary increases. In West Virginia and nationally, the enrollments in college and university teacher preparation programs are declining. For West Virginia particularly, the need to recruit and retain excellent teachers is exacerbated by the increasing numbers of retirements of a very senior teaching force. Increasingly important will be a variety of methods for encouraging and supporting an interest in the teaching profession, preparing the next generation of educators, actively recruiting top talent graduating from teacher preparation programs and supporting their development through the first years of their careers. In the human resources intensive business of education, human resource development should not be left to chance.

(b) Legislative purpose, intent, process for stakeholder input; items for recommendation. —

(1) The purpose of this section is to provide a framework for development of the statutory and policy changes needed to support and sustain a comprehensive transformation of school leadership. A further purpose of this section is to initiate the comprehensive transformation of school leadership through a general statement of legislative intent to pursue this change in public policy and, thereby, provide assurances and parameters under which the work toward this change may proceed. It is expected that the transformation will affect both the public education system and the educator preparation programs at institutions of higher education to develop, prepare and credential teacher, principal and administrative leaders to accomplish a systemic change in school leadership. It is expected that the transformation will involve multiple, and in some cases sequential, steps that may require a period of years to accomplish to ensure that the necessary supports are in place to enable school leaders to meet the expectations of new roles and responsibilities and to finance the necessary improvements.
(2) It is further expected that the transformation will involve roles and responsibilities for leadership that may not match the certification and training of all of those currently in leadership positions. Therefore, the options for implementation will need to take the existing legacy into account to minimize cost and system disruption while bringing new models of leadership for instructional improvement to every school expeditiously. Finally, it is expected that district size and resources, school size and programmatic level, existing leadership positions, and differences in school performance may all be factors that will affect the transformation of school leadership within the various school systems and they should be afforded ample local flexibility for establishing priorities and implementation within their schools.

(3) The findings set forth in subsection (a) of this section provide a context for considering a leadership framework that promotes instructional improvement and for determining the statutory and policy changes needed to enable it. It is the intent of the Legislature to begin this transformation through a process of broad stakeholder input to consider and make recommendations to accomplish this task. Therefore, the state board shall convene the relevant stakeholders, including, but not limited to, principals, teachers, superintendents, county board members, educator preparation program personnel, legislators or their designees and a Governor’s designee to assist the state board in developing state board policies, practices and recommended statutory changes consistent with the findings of this section. Among the issues the state board shall consider are:

(A) Issues relating to principal leadership that include, but are not limited to, the following:

(i) A clear definition of the role and responsibilities of principals and assistant principals in statute and policy that include leadership for instructional improvement;
(ii) The role and responsibilities of the principal as the legally responsible party in charge of the school with the added need for authority and flexibility to delegate responsibilities to accomplish a distributed leadership model for instructional improvement;

(iii) Leadership standards that include the essential role of the principal for leadership in developing a culture of collegiality and professionalism among the staff so that improving student learning is a shared responsibility;

(iv) The scope of topics to be covered in the preparation programs and certifications for principals and assistant principals;

(v) A process of preparing new principals that may include clinical experiences and mentoring through a partnership between higher education and county boards. It may include a commitment of county board resources to assist in the training, as well as a commitment from the candidate to stay in the system for some period of time;

(vi) The additional school-level tools needed to give good principals the flexibility and authority necessary for success, including additional independent, school-level authority needed to adequately fulfill the responsibilities;

(vii) A method of implementation under which the capacity of the principal for leading is a condition precedent to implementation of methods for distributed leadership;

(viii) Limitations on the employment of new principals to those candidates prepared and credentialed under the new standards, or some comparable standards approved by the state board, and limitations on the applicability of Master’s degrees in education administration for advanced salary classification if
earned after a certain date following state board approval of a new preparation program; and

(ix) Differentiation and improvements in the salary schedules and increments for principals subject to the newly defined roles and responsibilities for school leadership;

(B) Issues relating to teacher leadership that include, but are not limited to, the following:

(i) Various approaches that reward excellent teaching, provide authentic opportunities for excellent teachers to influence professional practice and enable excellent teachers to advance in their teaching careers and compensation without leaving the classroom completely including, but are not limited to, incentive increments, career lattice steps and career ladder positions;

(ii) Incentive increments in the salary scale for advanced degrees, approved course work or advanced certification in the teacher’s area of certification and for excellent teaching;

(iii) Career lattice steps that provide extra pay and/or extra time for teachers for specific types of assignments made by the principal or, in some cases, by the faculty senate for instructional and school improvement work. These types of steps may not be permanent and may change or involve different teachers and team members from time to time depending on the needs of the school and the ability of teachers to participate;

(iv) Career ladder steps that are permanent steps for master teachers who possess the appropriate leadership certification to progress in teacher leadership positions with additional compensation and reduced teaching load to assume duties under the direction of the principal without leaving the classroom completely;
(v) A clear definition in statute and policy of the role and responsibilities of career ladder teacher leaders that includes leadership for instructional improvement;

(vi) Career ladder teacher leader standards that include the essential role of leadership in developing a culture of collegiality and professionalism among the staff so that improving student learning is a shared responsibility;

(vii) The scope of topics to be covered in the preparation programs and certifications for career ladder teacher leaders;

(viii) Appropriate limitations on the number of teachers in career lattice positions and on the number of teachers in career ladder positions, separately, for schools of different size and programmatic level; and

(ix) An additional incentive increment in the salary scale for excellent teachers and principals who accept transfer to a low performing school for a certain number of years;

(C) Issues relating to a leadership development pipeline that include, but are not limited to, the following:

(i) A comprehensive leadership development process for school systems to identify, recruit and train outstanding leadership candidates consistent with numbers needed to meet the projected needs of the school system;

(ii) A method for school-level identification of those teachers who most clearly demonstrate budding leadership qualities as potential candidates for development into the career ladder teacher leaders, assistant principals and principals of the future;

(iii) Appropriate school district and higher education partnerships for preparation, support and credentialing at each
step so the focus on instructional leadership will become pervasive; and

(iv) Allowances that may be necessary to fill positions during the transition to new leadership models; and

(D) Issues related to local and state systems of support that include, but are not limited to, the following:

(i) Information management tools that enhance the capacity of school leaders and leadership teams to quickly assemble performance information on student learning and other aspects of the school’s learning environment into the actionable intelligence needed for strategic planning, adjusting instructional strategies and focusing on individual student needs;

(ii) School-level tools or resources that give principals a flexible, timely and targeted way to meet the professional development needs of teachers at their school;

(iii) Methods to help ensure the uniformity and inter-rater reliability of the portion of the professional personnel performance evaluation based on teaching standards;

(iv) Additional state-level infrastructure that may be needed to support the additional credentialing and monitoring of course work and degree attainment for salary progressions and new leadership positions;

(v) Methods to support, encourage and facilitate school-level leadership for instructional improvement, to endorse and encourage innovation to improve the success of all students rather than rely on top-down enforcement of one size fits all approaches to education; and

(vi) Methods to establish an emphasis on human resource management including, but not limited to, approaches to
improve the position posting and recruitment of new graduates for shortage area positions, and improving the retention of new professional personnel.

(c) *Reports and recommendations to Legislature and Governor.* —

(1) Not later than regular session of the Legislature, 2018, the state board shall make a report to the Joint Standing Committee on Education and the Governor on transforming school leadership including, at a minimum:

(A) Recommendations on a general leadership structure and definitions of the roles and responsibilities for principals and teacher leaders;

(B) Identification of affected statutes and policies, including pending and completed policy revisions, and recommendations for statutory amendments, if any, needed to effectuate its recommendations;

(C) An outline of sequential implementation of the changes needed to transform school leadership, and recommendations for phased implementation, if any; and

(D) The estimated costs of implementation of the recommendations and statutory changes necessary to effectuate the recommendations along with potential funding sources from improved efficiencies or other cost savings from the elimination of unnecessary operations or programs.
AN ACT to repeal §18-2-5g of the Code of West Virginia, 1931, as amended; to repeal §18-2E-3g of said code; to repeal §18B-5-8 of said code; to amend and reenact §18-2E-5 of said code; to amend and reenact §18-2I-5 of said code; to amend and reenact §18-3-12 of said code; to amend and reenact §18-5-44 of said code; to amend and reenact §18-20-5 and §18-20-8 of said code; to amend and reenact §18A-2-3 of said code; to amend and reenact §18A-4-7a of said code; to amend and reenact §18A-5-1a of said code; to amend and reenact §18B-1-10 of said code; to amend and reenact §18B-1B-4 of said code; to amend and reenact §18B-1D-8 of said code; to amend said code by adding thereto a new section, designated §18B-1D-8a; to amend and reenact §18B-2B-6 of said code; to amend and reenact §18B-2C-3 of said code; to amend and reenact §18B-3D-2 of said code; to amend and reenact §18B-10-1 of said code; to amend and reenact §18B-13-5 of said code; to amend and reenact §18B-18-6 of said code; to amend and reenact §18C-3-4 of said code; to amend and reenact §18C-5-7 of said code; and to amend and reenact §18C-7-5 of said code, all relating to legislative education reporting requirements; repealing obsolete section providing for establishment of a special five-year demonstration professional development school project for improving academic achievement including requirement for status reports to commission; repealing requirement for review, evaluation and report to commission on reports required to be written by principals and teachers; repealing section requiring
Higher Education Policy Commission to report to commission on in-state and out-of-state contracts and purchases; removing requirement for Office of Education Performance Audits to report to commission on each appeal of on-site review findings; removing requirement for report to the commission on the effectiveness of staff development resulting from expenditures from Strategic Staff Development Fund; removing requirement for status report to commission relating to Special Community Development School Pilot Program; removing requirement for report to commission on progress of implementation of early childhood education programs for all children who have attained the age of four prior to September 1 of the school year in which the pupil enters the program; removing requirement for report to the commission and the Joint Committee on Government and Finance that addresses, at a minimum, certain early childhood education program issues; removing requirement for State Superintendent of Schools to review the rules, policies and standards of the state and federal law for serving the needs of certain exceptional children and removing requirement for report to commission on the findings of the review along with an accounting of the services provided and the costs thereof; removing requirement for annual report to commission, the Joint Committee on Education, the Legislative Commission on Juvenile Law, and other agencies, as appropriate, which recommends policies, procedures and legislation for effectively providing early intervention services and reports on the status of existing programs; removing requirement for State Board of Education to review the status of employing prospective employable professional personnel and the requirement for an annual report to the commission which must include certain minimum prospective employable professional personnel-related items; removing requirement that county board of education submit a copy of its policy defining which policies are lateral positions to the state board within thirty days of any adoption or modification and the requirement that the state board compile a report and submit the report to the commission; removing the
requirement that county boards report the number of students determined to be dangerous students to the state board and the requirement that the state board compile the statistics and report its findings to the commission; removing the reporting requirements on the cooperative relationship between Potomac State College and Eastern West Virginia Community and Technical College; removing the requirement that the Higher Education Policy Commission report on its performance, capital investment priorities, and recommendations for statutory changes; removing numerous reports from list of reports that are not required to be made annually to the Legislature and requiring remaining reports on list to be combined with other reports, including certain personnel, classification, compensation and human resources reports, all capital appropriation requests, priorities and campus and state capital development plans, all academic related matters and reports, and all financial aid reports; permitting the Commission to modify deadlines for statutory or rule mandated reports without a statutory or rule-making change as long as provided within calendar year; removing requirement that Council collect and analyze data, report on community and technical college performance in every region, and report on progress toward meeting goals and objectives; removing annual requirement that Council report on its performance, capital investment priorities and recommendations for statutory changes; removing annual requirement that Council report on progress toward meeting statutory goals and whether statewide independently accredited community and technical college should be created; removing requirement for status report on workforce development initiatives; removing requirement for annual report on auxiliary fees; removing requirement that Higher Education Policy Commission report on technical assistance and associated costs provided to qualified businesses within the higher education and industry partnership; removing requirement for annual status report on the Eminent Scholars Endowment Trust Fund; removing requirement of an annual report on number of nursing scholarship recipients;
removing requirement to report on status of Higher Education Adult Part-Time Student Grant Program; and removing requirement for annual recommendation to encourage PROMISE recipients to live and work in West Virginia after graduation.

Be it enacted by the Legislature of West Virginia:

That §18-2-5g of the Code of West Virginia, 1931, as amended, be repealed; that §18-2E-3g of said code be repealed; that §18B-5-8 of said code be repealed; that §18-2E-5 of said code be amended and reenacted; that §18-2I-5 of said code be amended and reenacted; that §18-3-12 of said code be amended and reenacted; that §18-5-44 of said code be amended and reenacted; that §18-20-5 and §18-20-8 of said code be amended and reenacted; that §18A-2-3 of said code be amended and reenacted; that §18A-4-7a of said code be amended and reenacted; that §18A-5-1a of said code be amended and reenacted; that §18B-1-10 of said code be amended and reenacted; that §18B-1B-4 of said code be amended and reenacted; that §18B-1D-8 of said code be amended and reenacted; that §18B-1-10 of said code be amended and reenacted; that §18B-1D-8a of said code be amended and reenacted; that §18B-2C-3 of said code be amended and reenacted; that §18B-3D-2 of said code be amended and reenacted; that §18B-10-1 of said code be amended and reenacted; that §18B-13-5 of said code be amended and reenacted; that §18B-18-6 of said code be amended and reenacted; that §18C-3-4 of said code be amended and reenacted; that §18C-5-7 of said code be amended and reenacted; and that §18C-7-5 of said code be amended and reenacted, all to read as follows:

CHAPTER 18. EDUCATION.

ARTICLE 2E. HIGH QUALITY EDUCATIONAL PROGRAMS.

§18-2E-5. Process for improving education; education standards; statewide assessment program; accountability measures; Office of Education Performance Audits;
school accreditation and school system approval; intervention to correct low performance.

(a) Legislative findings, purpose and intent. — The Legislature makes the following findings with respect to the process for improving education and its purpose and intent in the enactment of this section:

(1) The process for improving education includes four primary elements, these being:

(A) Standards which set forth the knowledge and skills that students should know and be able to perform as the result of a thorough and efficient education that prepares them for the twenty-first century, including measurable criteria to evaluate student performance and progress;

(B) Assessments of student performance and progress toward meeting the standards;

(C) A system of accountability for continuous improvement defined by high-quality standards for schools and school systems articulated by a rule promulgated by the state board and outlined in subsection (c) of this section that will build capacity in schools and districts to meet rigorous outcomes that assure student performance and progress toward obtaining the knowledge and skills intrinsic to a high-quality education rather than monitoring for compliance with specific laws and regulations; and

(D) A method for building the capacity and improving the efficiency of schools and school systems to improve student performance and progress;

(2) As the constitutional body charged with the general supervision of schools as provided by general law, the state board has the authority and the responsibility to establish the
standards, assess the performance and progress of students against the standards, hold schools and school systems accountable and assist schools and school systems to build capacity and improve efficiency so that the standards are met, including, when necessary, seeking additional resources in consultation with the Legislature and the Governor;

(3) As the constitutional body charged with providing for a thorough and efficient system of schools, the Legislature has the authority and the responsibility to establish and be engaged constructively in the determination of the knowledge and skills that students should know and be able to do as the result of a thorough and efficient education. This determination is made by using the process for improving education to determine when school improvement is needed by evaluating the results and the efficiency of the system of schools, by ensuring accountability and by providing for the necessary capacity and its efficient use;

(4) In consideration of these findings, the purpose of this section is to establish a process for improving education that includes the four primary elements as set forth in subdivision (1) of this subsection to provide assurances that the high-quality standards are, at a minimum, being met and that a thorough and efficient system of schools is being provided for all West Virginia public school students on an equal education opportunity basis; and

(5) The intent of the Legislature in enacting this section and section five-c of this article is to establish a process through which the Legislature, the Governor and the state board can work in the spirit of cooperation and collaboration intended in the process for improving education, to consult and examine the performance and progress of students, schools and school systems and, when necessary, to consider alternative measures to ensure that all students continue to receive the thorough and efficient education to which they are entitled. However, nothing
in this section requires any specific level of funding by the Legislature.

(b) **Electronic county and school strategic improvement plans.** — The state board shall promulgate a rule consistent with the provisions of this section and in accordance with article three-b, chapter twenty-nine-a of this code establishing an electronic county strategic improvement plan for each county board and an electronic school strategic improvement plan for each public school in this state. Each respective plan shall be for a period of no more than five years and shall include the mission and goals of the school or school system to improve student, school or school system performance and progress, as applicable. The strategic plan shall be revised annually in each area in which the school or system is below the standard on the annual performance measures. The plan shall be revised when required pursuant to this section to include each annual performance measure upon which the school or school system fails to meet the standard for performance and progress, the action to be taken to meet each measure, a separate time line and a date certain for meeting each measure, a cost estimate and, when applicable, the assistance to be provided by the department and other education agencies to improve student, school or school system performance and progress to meet the annual performance measure.

The department shall make available to all public schools through its website or the West Virginia Education Information System an electronic school strategic improvement plan boilerplate designed for use by all schools to develop an electronic school strategic improvement plan which incorporates all required aspects and satisfies all improvement plan requirements of the No Child Left Behind Act.

(c) **High-quality education standards and efficiency standards.** — In accordance with the provisions of article
three-b, chapter twenty-nine-a of this code, the state board shall adopt and periodically review and update high-quality education standards for student, school and school system performance and processes in the following areas:

1. Curriculum;
2. Workplace readiness skills;
3. Finance;
4. Transportation;
5. Special education;
6. Facilities;
7. Administrative practices;
8. Training of county board members and administrators;
9. Personnel qualifications;
10. Professional development and evaluation;
11. Student performance, progress and attendance;
12. Professional personnel, including principals and central office administrators, and service personnel attendance;
13. School and school system performance and progress;
14. A code of conduct for students and employees;
15. Indicators of efficiency; and
16. Any other areas determined by the state board.

(d) Comprehensive statewide student assessment program. — The state board shall establish a comprehensive statewide
student assessment program to assess student performance and progress in grades three through twelve. The assessment program is subject to the following:

(1) The state board shall promulgate a rule in accordance with the provisions of article three-b, chapter twenty-nine-a of this code establishing the comprehensive statewide student assessment program;

(2) Prior to the 2014-2015 school year, the state board shall align the comprehensive statewide student assessment for all grade levels in which the test is given with the college-readiness standards adopted pursuant to section thirty-nine, article two of this chapter or develop other aligned tests to be required at each grade level so that progress toward college readiness in English/language arts and math can be measured;

(3) The state board may require that student proficiencies be measured through the ACT EXPLORE and the ACT PLAN assessments or other comparable assessments, which are approved by the state board and provided by future vendors;

(4) The state board may require that student proficiencies be measured through the West Virginia writing assessment at any grade levels determined by the state board to be appropriate; and

(5) The state board may provide, through the statewide assessment program, other optional testing or assessment instruments applicable to grade levels kindergarten through grade twelve which may be used by each school to promote student achievement. The state board annually shall publish and make available, electronically or otherwise, to school curriculum teams and teacher collaborative processes the optional testing and assessment instruments.

(e) State annual performance measures for school and school system accreditation. —
The state board shall promulgate a rule in accordance with the provisions of article three-b, chapter twenty-nine-a of this code that establishes a system to assess and weigh annual performance measures for state accreditation of schools and school systems. The state board also may establish performance incentives for schools and school systems as part of the state accreditation system. On or before December 1, 2013, the state board shall report to the Governor and to the Legislative Oversight Commission on Education Accountability the proposed rule for establishing the measures and incentives of accreditation and the estimated cost therefore, if any. Thereafter, the state board shall provide an annual report to the Governor and to the Legislative Oversight Commission on Education Accountability on the impact and effectiveness of the accreditation system. The rule for school and school system accreditation proposed by the board may include, but is not limited to, the following measures:

(1) Student proficiency in English and language arts, math, science and other subjects determined by the board;

(2) Graduation and attendance rate;

(3) Students taking and passing AP tests;

(4) Students completing a career and technical education class;

(5) Closing achievement gaps within subgroups of a school’s student population; and

(6) Students scoring at or above average attainment on SAT or ACT tests.

(f) Indicators of efficiency. — In accordance with the provisions of article three-b, chapter twenty-nine-a of this code, the state board shall adopt by rule and periodically review and
update indicators of efficiency for use by the appropriate
divisions within the department to ensure efficient management
and use of resources in the public schools in the following areas:

(1) Curriculum delivery including, but not limited to, the use
of distance learning;

(2) Transportation;

(3) Facilities;

(4) Administrative practices;

(5) Personnel;

(6) Use of regional educational service agency programs and
services, including programs and services that may be
established by their assigned regional educational service agency
or other regional services that may be initiated between and
among participating county boards; and

(7) Any other indicators as determined by the state board.

(g) Assessment and accountability of school and school
system performance and processes. — In accordance with the
provisions of article three-b, chapter twenty-nine-a of this code,
the state board shall establish by rule a system of education
performance audits which measures the quality of education and
the preparation of students based on the annual measures of
student, school and school system performance and progress.
The system of education performance audits shall provide
information to the state board, the Legislature and the Governor,
upon which they may determine whether a thorough and
efficient system of schools is being provided. The system of
education performance audits shall include:

(1) The assessment of student, school and school system
performance and progress based on the annual measures
established pursuant to subsection (e) of this section;
(2) The evaluation of records, reports and other information collected by the Office of Education Performance Audits upon which the quality of education and compliance with statutes, policies and standards may be determined;

(3) The review of school and school system electronic strategic improvement plans; and

(4) The on-site review of the processes in place in schools and school systems to enable school and school system performance and progress and compliance with the standards.

(h) Uses of school and school system assessment information. — The state board shall use information from the system of education performance audits to assist it in ensuring that a thorough and efficient system of schools is being provided and to improve student, school and school system performance and progress. Information from the system of education performance audits further shall be used by the state board for these purposes, including, but not limited to, the following:

(1) Determining school accreditation and school system approval status;

(2) Holding schools and school systems accountable for the efficient use of existing resources to meet or exceed the standards; and

(3) Targeting additional resources when necessary to improve performance and progress.

The state board shall make accreditation information available to the Legislature, the Governor, the general public and to any individual who requests the information, subject to the provisions of any act or rule restricting the release of information.
(i) Early detection and intervention programs. — Based on the assessment of student, school and school system performance and progress, the state board shall establish early detection and intervention programs using the available resources of the Department of Education, the regional educational service agencies, the Center for Professional Development and the Principals Academy, or other resources as appropriate, to assist underachieving schools and school systems to improve performance before conditions become so grave as to warrant more substantive state intervention. Assistance shall include, but is not limited to, providing additional technical assistance and programmatic, professional staff development, providing monetary, staffing and other resources where appropriate.

(j) Office of Education Performance Audits. —

(1) To assist the state board in the operation of a system of education performance audits, the state board shall establish an Office of Education Performance Audits consistent with the provisions of this section. The Office of Education Performance Audits shall be operated under the direction of the state board independently of the functions and supervision of the State Department of Education and state superintendent. The Office of Education Performance Audits shall report directly to and be responsible to the state board in carrying out its duties under the provisions of this section.

(2) The office shall be headed by a director who shall be appointed by the state board and who serves at the will and pleasure of the state board. The annual salary of the director shall be set by the state board and may not exceed eighty percent of the salary of the State Superintendent of Schools.

(3) The state board shall organize and sufficiently staff the office to fulfill the duties assigned to it by law and by the state board. Employees of the State Department of Education who are
transferred to the Office of Education Performance Audits shall retain their benefits and seniority status with the Department of Education.

(4) Under the direction of the state board, the Office of Education Performance Audits shall receive from the West Virginia education Information System staff research and analysis data on the performance and progress of students, schools and school systems, and shall receive assistance, as determined by the state board, from staff at the State Department of Education, the regional education service agencies, the Center for Professional Development, the Principals Academy and the School Building Authority to carry out the duties assigned to the office.

(5) In addition to other duties which may be assigned to it by the state board or by statute, the Office of Education Performance Audits also shall:

(A) Assure that all statewide assessments of student performance used as annual performance measures are secure as required in section one-a of this article;

(B) Administer all accountability measures as assigned by the state board, including, but not limited to, the following:

(i) Processes for the accreditation of schools and the approval of school systems; and

(ii) Recommendations to the state board on appropriate action, including, but not limited to, accreditation and approval action;

(C) Determine, in conjunction with the assessment and accountability processes, what capacity may be needed by schools and school systems to meet the standards established by
the state board and recommend to the state board plans to establish those needed capacities;

(D) Determine, in conjunction with the assessment and accountability processes, whether statewide system deficiencies exist in the capacity of schools and school systems to meet the standards established by the state board, including the identification of trends and the need for continuing improvements in education, and report those deficiencies and trends to the state board;

(E) Determine, in conjunction with the assessment and accountability processes, staff development needs of schools and school systems to meet the standards established by the state board and make recommendations to the state board, the Center for Professional Development, the regional educational service agencies, the Higher Education Policy Commission and the county boards;

(F) Identify, in conjunction with the assessment and accountability processes, school systems and best practices that improve student, school and school system performance and communicate those to the state board for promoting the use of best practices. The state board shall provide information on best practices to county school systems; and

(G) Develop reporting formats, such as check lists, which shall be used by the appropriate administrative personnel in schools and school systems to document compliance with applicable laws, policies and process standards as considered appropriate and approved by the state board, which may include, but is not limited to, the following:

(i) The use of a policy for the evaluation of all school personnel that meets the requirements of sections twelve and twelve-a, article two, chapter eighteen-a of this code;
(ii) The participation of students in appropriate physical assessments as determined by the state board, which assessment may not be used as a part of the assessment and accountability system;

(iii) The appropriate licensure of school personnel; and

(iv) The appropriate provision of multicultural activities.

Information contained in the reporting formats is subject to examination during an on-site review to determine compliance with laws, policies and standards. Intentional and grossly negligent reporting of false information are grounds for dismissal of any employee.

(k) On-site reviews. —

(1) The system of education performance audits shall include on-site reviews of schools and school systems which shall be conducted only at the specific direction of the state board upon its determination that circumstances exist that warrant an on-site review. Any discussion by the state board of schools to be subject to an on-site review or dates for which on-site reviews will be conducted may be held in executive session and is not subject to the provisions of article nine-a, chapter six of this code relating to open governmental proceedings. An on-site review shall be conducted by the Office of Education Performance Audits of a school or school system for the purpose of making recommendations to the school and school system, as appropriate, and to the state board on such measures as it considers necessary. The investigation may include, but is not limited to, the following:

(A) Verifying data reported by the school or county board;

(B) Examining compliance with the laws and policies affecting student, school and school system performance and progress;
(C) Evaluating the effectiveness and implementation status of school and school system electronic strategic improvement plans;

(D) Investigating official complaints submitted to the state board that allege serious impairments in the quality of education in schools or school systems;

(E) Investigating official complaints submitted to the state board that allege that a school or county board is in violation of policies or laws under which schools and county boards operate; and

(F) Determining and reporting whether required reviews and inspections have been conducted by the appropriate agencies, including, but not limited to, the State Fire Marshal, the Health Department, the School Building Authority and the responsible divisions within the department of education, and whether noted deficiencies have been or are in the process of being corrected.

(2) The Director of the Office of Education Performance Audits shall notify the county superintendent of schools five school days prior to commencing an on-site review of the county school system and shall notify both the county superintendent and the principal five school days before commencing an on-site review of an individual school: Provided, That the state board may direct the Office of Education Performance Audits to conduct an unannounced on-site review of a school or school system if the state board believes circumstances warrant an unannounced on-site review.

(3) The Office of Education Performance Audits shall conduct on-site reviews which are limited in scope to specific areas in which performance and progress are persistently below standard as determined by the state board unless specifically directed by the state board to conduct a review which covers additional areas.
(4) The Office of Education Performance Audits shall reimburse a county board for the costs of substitutes required to replace county board employees who serve on a review team.

(5) At the conclusion of an on-site review of a school system, the director and team leaders shall hold an exit conference with the superintendent and shall provide an opportunity for principals to be present for at least the portion of the conference pertaining to their respective schools. In the case of an on-site review of a school, the exit conference shall be held with the principal and curriculum team of the school and the superintendent shall be provided the opportunity to be present. The purpose of the exit conference is to review the initial findings of the on-site review, clarify and correct any inaccuracies and allow the opportunity for dialogue between the reviewers and the school or school system to promote a better understanding of the findings.

(6) The Office of Education Performance Audits shall report the findings of an on-site review to the county superintendent and the principals whose schools were reviewed within thirty days following the conclusion of the on-site review. The Office of Education Performance Audits shall report the findings of the on-site review to the state board within forty-five days after the conclusion of the on-site review. A school or county that believes one or more findings of a review are clearly inaccurate, incomplete or misleading, misrepresent or fail to reflect the true quality of education in the school or county or address issues unrelated to the health, safety and welfare of students and the quality of education, may appeal to the state board for removal of the findings. The state board shall establish a process for it to receive, review and act upon the appeals.

(7) The Legislature finds that the accountability and oversight of some activities and programmatic areas in the public schools are controlled through other mechanisms and
agencies and that additional accountability and oversight may be unnecessary, counterproductive and impair necessary resources for teaching and learning. Therefore, the Office of Education Performance Audits may rely on other agencies and mechanisms in its review of schools and school systems.

(1) School accreditation. —

(1) The state board shall establish levels of accreditation to be assigned to schools. The establishment of levels of accreditation and the levels shall be subject to the following:

(A) The levels will be designed to demonstrate school performance in all the areas outlined in this section and also those established by the state board;

(B) The state board shall promulgate legislative rules in accordance with the provisions of article three-b, chapter twenty-nine-a of this code to establish the performance and standards required for a school to be assigned a particular level of accreditation; and

(C) The state board will establish the levels of accreditation in such a manner as to minimize the number of systems of school recognition, both state and federal, that are employed to recognize and accredit schools.

(2) The state board annually shall review the information from the system of education performance audits submitted for each school and shall issue to every school a level of accreditation as designated and determined by the state board.

(3) The state board, in its exercise of general supervision of the schools and school systems of West Virginia, may exercise any or all of the following powers and actions:

(A) To require a school to revise its electronic strategic plan;
(B) To define extraordinary circumstances under which the state board may intervene directly or indirectly in the operation of a school;

(C) To appoint monitors to work with the principal and staff of a school where extraordinary circumstances are found to exist and to appoint monitors to assist the school principal after intervention in the operation of a school is completed;

(D) To direct a county board to target resources to assist a school where extraordinary circumstances are found to exist;

(E) To intervene directly in the operation of a school and declare the position of principal vacant and assign a principal for the school who will serve at the will and pleasure of the state board. If the principal who was removed elects not to remain an employee of the county board, then the principal assigned by the state board shall be paid by the county board. If the principal who was removed elects to remain an employee of the county board, then the following procedure applies:

(i) The principal assigned by the state board shall be paid by the state board until the next school term, at which time the principal assigned by the state board shall be paid by the county board;

(ii) The principal who was removed is eligible for all positions in the county, including teaching positions, for which the principal is certified, by either being placed on the transfer list in accordance with section seven, article two, chapter eighteen-a of this code, or by being placed on the preferred recall list in accordance with section seven-a, article four, chapter eighteen-a of this code; and

(iii) The principal who was removed shall be paid by the county board and may be assigned to administrative duties,
without the county board being required to post that position until the end of the school term; and

(F) Other powers and actions the state board determines necessary to fulfill its duties of general supervision of the schools and school systems of West Virginia.

(4) The county board may take no action nor refuse any action if the effect would be to impair further the school in which the state board has intervened.

(m) School system approval. — The state board annually shall review the information submitted for each school system from the system of education performance audits and issue one of the following approval levels to each county board: Full approval, temporary approval, conditional approval or nonapproval.

(1) Full approval shall be given to a county board whose schools have all been given full, temporary or conditional accreditation status and which does not have any deficiencies which would endanger student health or safety or other extraordinary circumstances as defined by the state board. A fully approved school system in which other deficiencies are discovered shall remain on full accreditation status for the remainder of the approval period and shall have an opportunity to correct those deficiencies, notwithstanding other provisions of this subsection.

(2) Temporary approval shall be given to a county board whose education system is below the level required for full approval. Whenever a county board is given temporary approval status, the county board shall revise its electronic county strategic improvement plan in accordance with subsection (b) of this section to increase the performance and progress of the school system to a full approval status level. The revised plan shall be submitted to the state board for approval.
(3) Conditional approval shall be given to a county board whose education system is below the level required for full approval, but whose electronic county strategic improvement plan meets the following criteria:

(A) The plan has been revised in accordance with subsection (b) of this section;

(B) The plan has been approved by the state board; and

(C) The county board is meeting the objectives and time line specified in the revised plan.

(4) Nonapproval status shall be given to a county board which fails to submit and gain approval for its electronic county strategic improvement plan or revised electronic county strategic improvement plan within a reasonable time period as defined by the state board or which fails to meet the objectives and time line of its revised electronic county strategic improvement plan or fails to achieve full approval by the date specified in the revised plan.

(A) The state board shall establish and adopt additional standards to identify school systems in which the program may be nonapproved and the state board may issue nonapproval status whenever extraordinary circumstances exist as defined by the state board.

(B) Whenever a county board has more than a casual deficit, as defined in section one, article one of this chapter, the county board shall submit a plan to the state board specifying the county board’s strategy for eliminating the casual deficit. The state board either shall approve or reject the plan. If the plan is rejected, the state board shall communicate to the county board the reason or reasons for the rejection of the plan. The county board may resubmit the plan any number of times. However, any county board that fails to submit a plan and gain approval for the
plan from the state board before the end of the fiscal year after a deficit greater than a casual deficit occurred or any county board which, in the opinion of the state board, fails to comply with an approved plan may be designated as having nonapproval status.

(C) Whenever nonapproval status is given to a school system, the state board shall declare a state of emergency in the school system and shall appoint a team of improvement consultants to make recommendations within sixty days of appointment for correcting the emergency. When the state board approves the recommendations, they shall be communicated to the county board. If progress in correcting the emergency, as determined by the state board, is not made within six months from the time the county board receives the recommendations, the state board shall intervene in the operation of the school system to cause improvements to be made that will provide assurances that a thorough and efficient system of schools will be provided. This intervention may include, but is not limited to, the following:

(i) Limiting the authority of the county superintendent and county board as to the expenditure of funds, the employment and dismissal of personnel, the establishment and operation of the school calendar, the establishment of instructional programs and rules and any other areas designated by the state board by rule, which may include delegating decision-making authority regarding these matters to the state superintendent;

(ii) Declaring that the office of the county superintendent is vacant;

(iii) Declaring that the positions of personnel who serve at the will and pleasure of the county superintendent as provided in section one, article two, chapter eighteen-a of this code, are vacant, subject to application and reemployment;
(v) Delegating to the state superintendent both the authority to conduct hearings on personnel matters and school closure or consolidation matters and, subsequently, to render the resulting decisions and the authority to appoint a designee for the limited purpose of conducting hearings while reserving to the state superintendent the authority to render the resulting decisions;

(vi) Functioning in lieu of the county board of education in a transfer, sale, purchase or other transaction regarding real property; and

(vi) Taking any direct action necessary to correct the emergency including, but not limited to, the following:

(I) Delegating to the state superintendent the authority to replace administrators and principals in low performing schools and to transfer them into alternate professional positions within the county at his or her discretion; and

(II) Delegating to the state superintendent the authority to fill positions of administrators and principals with individuals determined by the state superintendent to be the most qualified for the positions. Any authority related to intervention in the operation of a county board granted under this paragraph is not subject to the provisions of article four, chapter eighteen-a of this code.

(n) Notwithstanding any other provision of this section, the state board may intervene immediately in the operation of the county school system with all the powers, duties and responsibilities contained in subsection (m) of this section, if the state board finds the following:

(1) That the conditions precedent to intervention exist as provided in this section; and that delaying intervention for any period of time would not be in the best interests of the students of the county school system; or
That the conditions precedent to intervention exist as provided in this section and that the state board had previously intervened in the operation of the same school system and had concluded that intervention within the preceding five years.

(o) Capacity. — The process for improving education includes a process for targeting resources strategically to improve the teaching and learning process. Development of electronic school and school system strategic improvement plans, pursuant to subsection (b) of this section, is intended, in part, to provide mechanisms to target resources strategically to the teaching and learning process to improve student, school and school system performance. When deficiencies are detected through the assessment and accountability processes, the revision and approval of school and school system electronic strategic improvement plans shall ensure that schools and school systems are efficiently using existing resources to correct the deficiencies. When the state board determines that schools and school systems do not have the capacity to correct deficiencies, the state board shall take one or more of the following actions:

1. Work with the county board to develop or secure the resources necessary to increase the capacity of schools and school systems to meet the standards and, when necessary, seek additional resources in consultation with the Legislature and the Governor;

2. Recommend to the appropriate body including, but not limited to, the Legislature, county boards, schools and communities methods for targeting resources strategically to eliminate deficiencies identified in the assessment and accountability processes. When making determinations on recommendations, the state board shall include, but is not limited to, the following methods:

(A) Examining reports and electronic strategic improvement plans regarding the performance and progress of students,
schools and school systems relative to the standards and identifying the areas in which improvement is needed;

(B) Determining the areas of weakness and of ineffectiveness that appear to have contributed to the substandard performance and progress of students or the deficiencies of the school or school system and requiring the school or school system to work collaboratively with the West Virginia Department of Education State System of Support to correct the deficiencies;

(C) Determining the areas of strength that appear to have contributed to exceptional student, school and school system performance and progress and promoting their emulation throughout the system;

(D) Requesting technical assistance from the School Building Authority in assessing or designing comprehensive educational facilities plans;

(E) Recommending priority funding from the School Building Authority based on identified needs;

(F) Requesting special staff development programs from the Center for Professional Development, the Principals Academy, higher education, regional educational service agencies and county boards based on identified needs;

(G) Submitting requests to the Legislature for appropriations to meet the identified needs for improving education;

(H) Directing county boards to target their funds strategically toward alleviating deficiencies;

(I) Ensuring that the need for facilities in counties with increased enrollment are appropriately reflected and recommended for funding;
(J) Ensuring that the appropriate person or entity is held accountable for eliminating deficiencies; and

(K) Ensuring that the needed capacity is available from the state and local level to assist the school or school system in achieving the standards and alleviating the deficiencies.

(p) Building leadership capacity — To help build the governance and leadership capacity of a county board during an intervention in the operation of its school system by the state board, and to help assure sustained success following return of control to the county board, the state board shall require the county board to establish goals and action plans, subject to approval of the state board, to improve performance sufficiently to end the intervention within a period of not more than five years. The state superintendent shall maintain oversight and provide assistance and feedback to the county board on development and implementation of the goals and action plans. At a minimum, the goals and action plans shall include:

(A) An analysis of the training and development activities needed by the county board and leadership of the school system and schools for effective governance and school improvement;

(B) Support for the training and development activities identified which may include those made available through the state superintendent, regional education service agencies, Center for Professional Development, West Virginia School Board Association, Office of Education Performance Audits, West Virginia Education Information System and other sources identified in the goals and action plans. Attendance at these activities included in the goals and action plans is mandatory as specified in the goals and action plans; and

(C) Active involvement by the county board in the improvement process, working in tandem with the county
superintendent to gather, analyze and interpret data, write
time-specific goals to correct deficiencies, prepare and
implement action plans and allocate or request from the State
Board of Education the resources, including board development
training and coaching, necessary to achieve approved goals and
action plans and sustain system and school improvement.

At least once each year during the period of intervention, the
Office of Education Performance Audits shall assess the
readiness of the county board to accept the return of control of
the system or school from the state board and sustain the
improvements, and shall make a report and recommendations to
the state board supported by documented evidence of the
progress made on the goals and action plans. The state board
may end the intervention or return any portion of control of the
operations of the school system or school that was previously
removed at its sole determination. If the state board determines
at the fifth annual assessment that the county board is still not
ready to accept return of control by the state board and sustain
the improvements, the state board shall hold a public hearing in
the affected county at which the attendance by all members of
the county board is requested so that the reasons for continued
intervention and the concerns of the citizens of the county may
be heard. The state board may continue the intervention only
after it holds the public hearing and may require revision of the
goals and action plans.

Following the termination of an intervention in the operation
of a school system and return of full control by the state board,
the support for governance education and development shall
continue as needed for up to three years. If at any time within
this three years, the state board determines that intervention in
the operation of the school system is again necessary, the state
board shall again hold a public hearing in the affected county so
that the reasons for the intervention and the concerns of the
citizens of the county may be heard.
ARTICLE 2I. PROFESSIONAL DEVELOPMENT.

§18-2I-5. Strategic Staff Development Fund.

(a) There is created an account within the state board titled the Strategic Staff Development Fund. The allocation of balances which accrue in the General School Fund shall be transferred to the Strategic Staff Development Fund each year when the balances become available. Any remaining funds transferred to the Strategic Staff Development Fund during the fiscal year shall be carried over for use in the same manner the next fiscal year and shall be separate and apart from, and in addition to, the transfer of funds from the General School Fund for the next fiscal year.

(b) The money in the Strategic Staff Development Fund shall be used by the state board to provide staff development in schools, counties or both that the state board determines need additional resources.

ARTICLE 3. STATE SUPERINTENDENT OF SCHOOLS.

§18-3-12. Special Community Development School Pilot Program.

The state superintendent shall establish a Special Community Development School Pilot Program to be implemented in a neighborhood of at least five public schools, which shall include at least one elementary and middle school, for the duration of five years. The neighborhood of public schools designated by the state superintendent for the pilot shall have significant enrollments of disadvantaged, minority and underachieving students. The designated neighborhood of public schools under the direction of the county board and county superintendent shall work in collaboration with higher education, community organizations, Center for Professional Development, local community leaders, affected classroom teachers, affected parents and the state board to develop and implement strategies
that could be replicated in other public schools with significant enrollments of disadvantaged, minority and underachieving students to improve academic achievement. For purposes of this section “neighborhood” means an area of no more than seven square miles.

ARTICLE 5. COUNTY BOARD OF EDUCATION.

*§18-5-44. Early childhood education programs.*

(a) For the purposes of this section, “early childhood education” means programs for children who have attained the age of four prior to September 1 of the school year in which the pupil enters the program created in this section.

(b) *Findings. —*

(1) Among other positive outcomes, early childhood education programs have been determined to:

(A) Improve overall readiness when children enter school;

(B) Decrease behavioral problems;

(C) Improve student attendance;

(D) Increase scores on achievement tests;

(E) Decrease the percentage of students repeating a grade; and

(F) Decrease the number of students placed in special education programs;

(2) Quality early childhood education programs improve school performance and low-quality early childhood education

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*NOTE: This section was also amended by Com. Sub. for S. B. 146 (Chapter 90), which passed subsequent to this act.*
programs may have negative effects, especially for at-risk children;

(3) West Virginia has the lowest percentage of its adult population twenty-five years of age or older with a bachelor’s degree and the education level of parents is a strong indicator of how their children will perform in school;

(4) During the 2006-2007 school year, West Virginia ranked thirty-ninth among the fifty states in the percentage of school children eligible for free and reduced lunches and this percentage is a strong indicator of how the children will perform in school;

(5) For the school year 2008-2009, thirteen thousand one hundred thirty-five students were enrolled in prekindergarten, a number equal to approximately sixty-three percent of the number of students enrolled in kindergarten;

(6) Excluding projected increases due to increases in enrollment in the early childhood education program, projections indicate that total student enrollment in West Virginia will decline by one percent, or by approximately two thousand seven hundred four students, by the school year 2012-2013;

(7) In part, because of the dynamics of the state aid formula, county boards will continue to enroll four-year old students to offset the declining enrollments;

(8) West Virginia has a comprehensive kindergarten program for five-year olds, but the program was established in a manner that resulted in unequal implementation among the counties which helped create deficit financial situations for several county boards;

(9) Expansion of current efforts to implement a comprehensive early childhood education program should avoid the problems encountered in kindergarten implementation;
(10) Because of the dynamics of the state aid formula, counties experiencing growth are at a disadvantage in implementing comprehensive early childhood education programs; and

(11) West Virginia citizens will benefit from the establishment of quality comprehensive early childhood education programs.

(c) Beginning no later than the school year 2012-2013, and continuing thereafter, county boards shall provide early childhood education programs for all children who have attained the age of four prior to September 1 of the school year in which the pupil enters the early childhood education program. Beginning no later than the school year 2016-2017, and continuing thereafter, early childhood education programs that are full day and five days per week shall be available to all children meeting the age requirement set forth in the subsection.

(d) The program shall meet the following criteria:

(1) It shall be voluntary, except, upon enrollment, the provisions of section one, article eight of this chapter apply to an enrolled student, subject to subdivision (3) of this subsection;

(2) All children meeting the age requirement set forth in this section shall have the opportunity to enroll in a program that is full day and five days per week. The program may be for fewer than five days per week and may be less than full day based on family need if a sufficient number of families request such programs and the county board finds that such programs are in the best interest of the requesting families and students: Provided, That the ability of families to request programs that are fewer than five days a week or less than a full day does not relieve the county of the obligation to provide all resident children with the opportunity to enroll in a full-day program; and
(3) A parent of a child enrolled in an early education program may withdraw a child from that program for good cause by notifying the district. Good cause includes, but is not limited to, enrollment of the child in another program or the immaturity of the child. A child withdrawn under this section is not subject to the attendance provisions of this chapter until that child again enrolls in a public school in this state.

(e) Enrollment of students in Head Start, in any other program approved by the state superintendent as provided in subsection (k) of this section may be counted toward satisfying the requirement of subsection (c) of this section.

(f) For the purposes of implementation financing, all counties are encouraged to make use of funds from existing sources, including:

(1) Federal funds provided under the Elementary and Secondary Education Act pursuant to 20 U. S. C. §6301, et seq.;

(2) Federal funds provided for Head Start pursuant to 42 U. S. C. §9831, et seq.;

(3) Federal funds for temporary assistance to needy families pursuant to 42 U. S. C. §601, et seq.;

(4) Funds provided by the School Building Authority pursuant to article nine-d of this chapter;

(5) In the case of counties with declining enrollments, funds from the state aid formula above the amount indicated for the number of students actually enrolled in any school year; and

(6) Any other public or private funds.

(g) Each county board shall develop a plan for implementing the program required by this section. The plan shall include the following elements:
(1) An analysis of the demographics of the county related to early childhood education program implementation;

(2) An analysis of facility and personnel needs;

(3) Financial requirements for implementation and potential sources of funding to assist implementation;

(4) Details of how the county board will cooperate and collaborate with other early childhood education programs including, but not limited to, Head Start, to maximize federal and other sources of revenue;

(5) Specific time lines for implementation; and

(6) Any other items the state board may require by policy.

(h) A county board shall submit its plan to the Secretary of the Department of Health and Human Resources. The secretary shall approve the plan if the following conditions are met:

(1) The county board has maximized the use of federal and other available funds for early childhood programs;

(2) The county board has provided for the maximum implementation of Head Start programs and other public and private programs approved by the state superintendent pursuant to the terms of subsection (k) of this section; and

(3) If the Secretary of the Department of Health and Human Resources finds that the county board has not met one or more of the requirements of this subsection, but that the county board has acted in good faith and the failure to comply was not the primary fault of the county board, then the secretary shall approve the plan. Any denial by the secretary may be appealed to the circuit court of the county in which the county board is located.
(i) The county board shall submit its plan for approval to the state board. The state board shall approve the plan if the county board has complied substantially with the requirements of subsection (g) of this section and has obtained the approval required in subsection (h) of this section.

(j) Every county board shall submit its plan for reapproval by the Secretary of the Department of Health and Human Resources and by the state board at least every two years after the initial approval of the plan and until full implementation of the early childhood education program in the county. As part of the submission, the county board shall provide a detailed statement of the progress made in implementing its plan. The standards and procedures provided for the original approval of the plan apply to any reapproval.

(k) A county board may not increase the total number of students enrolled in the county in an early childhood program until its program is approved by the Secretary of the Department of Health and Human Resources and the state board.

(l) The state board annually may grant a county board a waiver for total or partial implementation if the state board finds that all of the following conditions exist:

(1) The county board is unable to comply either because:

   (A) It does not have sufficient facilities available; or

   (B) It does not and has not had available funds sufficient to implement the program;

(2) The county has not experienced a decline in enrollment at least equal to the total number of students to be enrolled; and

(3) Other agencies of government have not made sufficient funds or facilities available to assist in implementation.
Any county board seeking a waiver shall apply with the supporting data to meet the criteria for which they are eligible on or before March 25 for the following school year. The state superintendent shall grant or deny the requested waiver on or before April 15 of that same year.

(m) The provisions of subsections (b), (c) and (d), section eighteen of this article relating to kindergarten apply to early childhood education programs in the same manner in which they apply to kindergarten programs.

(n) Except as required by federal law or regulation, no county board may enroll students who will be less than four years of age prior to September 1 for the year they enter school.

(o) Neither the state board nor the state department may provide any funds to any county board for the purpose of implementing this section unless the county board has a plan approved pursuant to subsections (h), (i) and (j) of this section.

(p) The state board shall promulgate a rule in accordance with the provisions of article three-b, chapter twenty-nine-a of this code for the purposes of implementing the provisions of this section. The state board shall consult with the Secretary of the Department of Health and Human Resources in the preparation of the rule. The rule shall contain the following:

(1) Standards for curriculum;

(2) Standards for preparing students;

(3) Attendance requirements;

(4) Standards for personnel; and

(5) Any other terms necessary to implement the provisions of this section.
The rule shall include the following elements relating to curriculum standards:

1. A requirement that the curriculum be designed to address the developmental needs of four-year old children, consistent with prevailing research on how children learn;

2. A requirement that the curriculum be designed to achieve long-range goals for the social, emotional, physical and academic development of young children;

3. A method for including a broad range of content that is relevant, engaging and meaningful to young children;

4. A requirement that the curriculum incorporate a wide variety of learning experiences, materials and equipment, and instructional strategies to respond to differences in prior experience, maturation rates and learning styles that young children bring to the classroom;

5. A requirement that the curriculum be designed to build on what children already know in order to consolidate their learning and foster their acquisition of new concepts and skills;

6. A requirement that the curriculum meet the recognized standards of the relevant subject matter disciplines;

7. A requirement that the curriculum engage children actively in the learning process and provide them with opportunities to make meaningful choices;

8. A requirement that the curriculum emphasize the development of thinking, reasoning, decisionmaking and problem-solving skills;

9. A set of clear guidelines for communicating with parents and involving them in decisions about the instructional needs of their children; and
(10) A systematic plan for evaluating program success in meeting the needs of young children and for helping them to be ready to succeed in school.

(r) After the school year 2012-2013, on or before July 1 of each year, each county board shall report the following information to the Secretary of the Department of Health and Human Resources and the state superintendent:

(1) Documentation indicating the extent to which county boards are maximizing resources by using the existing capacity of community-based programs, including, but not limited to, Head Start and child care; and

(2) For those county boards that are including eligible children attending approved, contracted community-based programs in their net enrollment for the purposes of calculating state aid pursuant to article nine-a of this chapter, documentation that the county board is equitably distributing funding for all children regardless of setting.

ARTICLE 20. EDUCATION OF EXCEPTIONAL CHILDREN.

§18-20-5. Powers and duties of state superintendent.

(a) The State Superintendent of Schools shall organize, promote, administer and be responsible for:

(1) Stimulating and assisting county boards of education in establishing, organizing and maintaining special schools, classes, regular class programs, home-teaching and visiting-teacher services.

(2) Cooperating with all other public and private agencies engaged in relieving, caring for, curing, educating and rehabilitating exceptional children, and in helping coordinate the services of such agencies.
(3) (A) Preparing the necessary rules, policies, formula for distribution of available appropriated funds, reporting forms and procedures necessary to define minimum standards in providing suitable facilities for education of exceptional children and ensuring the employment, certification and approval of qualified teachers and therapists subject to approval by the State Board of Education: Provided, That no state rule, policy or standard under this article or any county board rule, policy or standard governing special education may exceed the requirements of federal law or regulation.

(B) An appropriation shall be made to the Department of Education to be distributed to county boards to support children with high acuity needs that exceed the capacity of county to provide with funds available. Each county board shall apply to the state superintendent for receipt of this funding in a manner set forth by the state superintendent that assesses and takes into account varying acuity levels of the exceptional students. Any remaining funds at the end of a fiscal year from the appropriation shall be carried over to the next fiscal year. When possible, federal funds shall be distributed to county boards for this purpose before any of the state appropriation is distributed. The state board shall promulgate a rule in accordance with the provisions of article three-b, chapter twenty-nine-a of this code that implements the provisions of this subdivision relating to distributing the funds to the county boards. The rule at least shall include a definition for “children with high acuity needs”.

(4) Receiving from county boards of education their applications, annual reports and claims for reimbursement from such moneys as are appropriated by the Legislature, auditing such claims and preparing vouchers to reimburse said counties the amounts reimbursable to them.

(5) Assuring that all exceptional children in the state, including children in mental health facilities, residential
institutions, private schools and correctional facilities as provided in section thirteen-f, article two of this chapter receive an education in accordance with state and federal laws:

Provided, That the state superintendent shall also assure that adults in correctional facilities and regional jails receive an education to the extent funds are provided therefor.

(6) Performing other duties and assuming other responsibilities in connection with this program as needed.

(7) Receive the county plan for integrated classroom submitted by the county boards of education and submit a state plan, approved by the State Board of Education, to the Legislative Oversight Commission on Education Accountability no later than December 1, 1995.

(b) Nothing contained in this section shall be construed to prevent any county board of education from establishing and maintaining special schools, classes, regular class programs, home-teaching or visiting-teacher services out of funds available from local revenue.

§18-20-8. Interagency plan for exceptional children; advisory council.

(a) The state departments of health, human services and education shall enter into a collaborative agreement for the purpose of developing a statewide plan of coordinating comprehensive, multidisciplinary interagency programs providing appropriate early intervention services to all developmentally delayed and at-risk children, ages birth through five years, and their families to be phased in by the school year 1990-99.

This comprehensive, coordinated statewide plan shall include, at a minimum:
(1) Specification of the population to be served;

(2) The development of regulations and procedural safeguards;

(3) The development of procedures for administration, supervision and monitoring;

(4) The identification and coordination of all available resources; and

(5) The development of formal interagency agreements that define the financial responsibility of each agency and all additional components necessary to ensure meaningful cooperation and coordination.

(b) To assist in the development of such a plan, an advisory council consisting of twelve members shall be created. The departments of health, human services and education shall each appoint four members, and each shall include in such appointments one parent of an exceptional child under the age of six; one public or private provider of early intervention services for developmentally delayed and at-risk children; one individual involved in the education training of personnel who work with preschool handicapped; and one other person.

The functions of the council shall include the following:

(1) Meet at least quarterly;

(2) Solicit information and opinions from concerned agencies, groups and individuals; and

(3) Advise and assist the departments of health, human services and education in the development of the statewide plan herein required.

Following the submission of the advisory council’s first annual report, the joint committee on education is authorized and
empowered to disband the council or alter its functions as it deems advisable.

The members of the council may be reimbursed for actual and necessary expenses incurred in the performance of their official duties in accordance with state law from appropriations to the departments of health, human services and education or available federal funds.

CHAPTER 18A. SCHOOL PERSONNEL.

ARTICLE 2. SCHOOL PERSONNEL.

§18A-2-3. Employment of substitute teachers; employment of retired teachers as substitutes in areas of critical need and shortage; and employment of prospective employable professional personnel.

(a) The county superintendent, subject to approval of the county board, may employ and assign substitute teachers to any of the following duties:

(1) Fill the temporary absence of any teacher or an unexpired school term made vacant by resignation, death, suspension or dismissal;

(2) Fill a teaching position of a regular teacher on leave of absence; and

(3) Perform the instructional services of any teacher who is authorized by law to be absent from class without loss of pay, providing the absence is approved by the board of education in accordance with the law.

The substitute shall be a duly certified teacher.

(b) Notwithstanding any other provision of this code to the contrary, a substitute teacher who has been assigned as a
classroom teacher in the same classroom continuously for more
than one half of a grading period and whose assignment remains
in effect two weeks prior to the end of the grading period, shall
remain in the assignment until the grading period has ended,
unless the principal of the school certifies that the regularly
employed teacher has communicated with and assisted the
substitute with the preparation of lesson plans and monitoring
student progress or has been approved to return to work by his
or her physician. For the purposes of this section, teacher and
substitute teacher, in the singular or plural, mean professional
educator as defined in section one, article one of this chapter.

(c) (1) The Legislature hereby finds and declares that due to
a shortage of qualified substitute teachers, a compelling state
interest exists in expanding the use of retired teachers to provide
service as substitute teachers in areas of critical need and
shortage. The Legislature further finds that diverse
circumstances exist among the counties for the expanded use of
retired teachers as substitutes. For the purposes of this
subsection, “area of critical need and shortage for substitute
teachers” means an area of certification and training in which the
number of available substitute teachers in the county who hold
certification and training in that area and who are not retired is
insufficient to meet the projected need for substitute teachers.

(2) A person receiving retirement benefits under article
seven-a, chapter eighteen of this code or who is entitled to
retirement benefits during the fiscal year in which that person
retired may accept employment as a critical needs substitute
teacher for an unlimited number of days each fiscal year without
affecting the monthly retirement benefit to which the retirant is
otherwise entitled if the following conditions are satisfied:

(A) The county board adopts a policy recommended by the
superintendent to address areas of critical need and shortage for
substitute teachers;
(B) The policy sets forth the areas of critical need and shortage for substitute teachers in the county in accordance with the definition of area of critical need and shortage for substitute teachers set forth in subdivision (1) of this subsection;

(C) The policy provides for the employment of retired teachers as critical needs substitute teachers during the school year on an expanded basis in areas of critical need and shortage for substitute teachers as provided in this subsection;

(D) The policy provides that a retired teacher may be employed as a substitute teacher in an area of critical need and shortage for substitute teachers on an expanded basis as provided in this subsection only when no other teacher who holds certification and training in the area and who is not retired is available and accepts the substitute assignment;

(E) The policy is effective for one school year only and is subject to annual renewal by the county board;

(F) The state board approves the policy and the use of retired teachers as substitute teachers on an expanded basis in areas of critical need and shortage for substitute teachers as provided in this subsection; and

(G) Prior to employment of a retired teacher as a critical needs substitute teacher beyond the post-retirement employment limitations established by the Consolidated Public Retirement Board, the superintendent of the affected county submits to the state board in a form approved by the Consolidated Public Retirement Board and the state board, an affidavit signed by the superintendent stating the name of the county, the fact that the county has adopted a policy to employ retired teachers as substitutes to address areas of critical need and shortage, the name or names of the person or persons to be employed as a critical needs substitute pursuant to the policy, the critical need
and shortage area position filled by each person, the date that the
person gave notice to the county board of the person’s intent to
retire, and the effective date of the person’s retirement. Upon
verification of compliance with this section and the eligibility of
the critical needs substitute teacher for employment beyond the
post-retirement limit, the state board shall submit the affidavit to
the Consolidated Public Retirement Board.

(3) Any person who retires and begins work as a critical
needs substitute teacher within the same employment term shall
lose those retirement benefits attributed to the annuity reserve,
effective from the first day of employment as a retiree substitute
in that employment term and ending with the month following
the date the retiree ceases to perform service as a substitute.

(4) Retired teachers employed to perform expanded
substitute service pursuant to this subsection are considered
day-to-day, temporary, part-time employees. The substitutes are
not eligible for additional pension or other benefits paid to
regularly employed employees and may not accrue seniority.

(5) A retired teacher is eligible to be employed as a critical
needs substitute to fill a vacant position only if the retired
teacher’s retirement became effective at least twenty days before
the beginning of the employment term during which he or she is
employed as a substitute.

(6) When a retired teacher is employed as a critical needs
substitute to fill a vacant position, the county board shall
continue to post the vacant position until it is filled with a
regularly employed teacher who is fully certified or permitted
for the position.

(7) When a retired teacher is employed as a critical needs
substitute to fill a vacant position, the position vacancy shall be
posted electronically and easily accessible to prospective
employees as determined by the state board.
(8) Until this subsection is expired pursuant to subdivision (9) of this subsection, the state board, annually, shall report to the Joint Committee on Government and Finance prior to February 1 of each year. Additionally, a copy shall be provided to the Legislative Oversight Commission on Education Accountability. The report shall contain information indicating the effectiveness of the provisions of this subsection on reducing the critical need and shortage of substitute teachers including, but not limited to, the number of retired teachers, by critical need and shortage area position filled and by county, employed beyond the post-retirement employment limit established by the Consolidated Public Retirement Board, the date that each person gave notice to the county board of the person’s intent to retire, and the effective date of the person’s retirement.

(9) The provisions of this subsection shall expire on June 30, 2017.

(d) (1) Notwithstanding any other provision of this code to the contrary, each year a county superintendent may employ prospective employable professional personnel on a reserve list at the county level subject to the following conditions:

(A) The county board adopts a policy to address areas of critical need and shortage as identified by the state board. The policy shall include authorization to employ prospective employable professional personnel;

(B) The county board posts a notice of the areas of critical need and shortage in the county in a conspicuous place in each school for at least ten working days; and

(C) There are not any potentially qualified applicants available and willing to fill the position.

(2) Prospective employable professional personnel may only be employed from candidates at a job fair who have or will
graduate from college in the current school year or whose employment contract with a county board has or will be terminated due to a reduction in force in the current fiscal year.

(3) Prospective employable professional personnel employed are limited to three full-time prospective employable professional personnel per one hundred professional personnel employed in a county or twenty-five full-time prospective employable professional personnel in a county, whichever is less.

(4) Prospective employable professional personnel shall be granted benefits at a cost to the county board and as a condition of the employment contract as approved by the county board.

(5) Regular employment status for prospective employable professional personnel may be obtained only in accordance with the provisions of section seven-a, article four of this chapter.

**ARTICLE 4. SALARIES, WAGES AND OTHER BENEFITS.**

*§18A-4-7a. Employment, promotion and transfer of professional personnel; seniority.*

(a) A county board of education shall make decisions affecting the filling of vacancies in professional positions of employment on the basis of the applicant with the highest qualifications: *Provided,* That the county superintendent shall be hired under separate criteria pursuant to section two, article four, chapter eighteen of this code.

(b) In judging qualifications for the filling of vacancies of professional positions of employment, consideration shall be given to each of the following:

*Note: This section was also amended by Com. Sub. for H. B. 4566 (Chapter 89), which passed subsequent to this act.*
10 (1) Appropriate certification, licensure or both;

11 (2) Amount of experience relevant to the position or, in the case of a classroom teaching position, the amount of teaching experience in the required certification area;

14 (3) The amount of course work, degree level or both in the relevant field and degree level generally;

16 (4) Academic achievement;

17 (5) In the case of a classroom teaching position or the position of principal, certification by the National Board for Professional Teaching Standards;

20 (6) Specialized training relevant to the performance of the duties of the job;

22 (7) Past performance evaluations conducted pursuant to section twelve, article two of this chapter and section two, article three-c of this chapter or, in the case of a classroom teacher, past evaluations of the applicant’s performance in the teaching profession;

27 (8) Seniority;

28 (9) Other measures or indicators upon which the relative qualifications of the applicant may fairly be judged;

30 (10) In the case of a classroom teaching position, the recommendation of the principal of the school at which the applicant will be performing a majority of his or her duties; and

33 (11) In the case of a classroom teaching position, the recommendation, if any, resulting from the process established pursuant to the provisions of section five, article five-a, chapter eighteen of this code by the faculty senate of the school at which the employee will be performing a majority of his or her duties.
(c) In considering the filling of a vacancy pursuant to this section, a county board is entitled to determine the appropriate weight to apply to each of the criterion when assessing an applicant’s qualifications: Provided, That if one or more permanently employed instructional personnel apply for a classroom teaching position and meet the standards set forth in the job posting, each criterion under subsection (b) of this section shall be given equal weight except that the criterion in subdivisions (10) and (11) shall each be double weighted.

(d) For a classroom teaching position, if the recommendations resulting from the operations of subdivisions (10) and (11), subsection (b) of this section are for the same applicant, and the superintendent concurs with that recommendation, then the other provisions of subsections (b) and (c) of this section do not apply and the county board shall appoint that applicant notwithstanding any other provision of this code to the contrary.

(e) The state board shall promulgate a rule, including an emergency rule if necessary, in accordance with the provisions of article three-b, chapter twenty-nine-a of this code to implement and interpret the provisions of this section, including provisions that may provide for the compensation based on the appropriate daily rate of a classroom teacher who directly participates in making recommendations pursuant to this section for periods beyond his or her individual contract.

(f) Recommendations made pursuant to subdivisions (10) and (11), subsection (b) of this section shall be made based on a determination as to which of the applicants is the highest qualified for the position: Provided, That nothing in this subsection shall require principals or faculty senates to assign any amount of weight to any factor in making a recommendation.
(g) With the exception of guidance counselors, the seniority of classroom teachers, as defined in section one, article one of this chapter, shall be determined on the basis of the length of time the employee has been employed as a regular full-time certified and/or licensed professional educator by the county board of education and shall be granted in all areas that the employee is certified, licensed or both.

(h) Upon completion of one hundred thirty-three days of employment in any one school year, substitute teachers, except retired teachers and other retired professional educators employed as substitutes, shall accrue seniority exclusively for the purpose of applying for employment as a permanent, full-time professional employee. One hundred thirty-three days or more of said employment shall be prorated and shall vest as a fraction of the school year worked by the permanent, full-time teacher.

(i) Guidance counselors and all other professional employees, as defined in section one, article one of this chapter, except classroom teachers, shall gain seniority in their nonteaching area of professional employment on the basis of the length of time the employee has been employed by the county board of education in that area: Provided, That if an employee is certified as a classroom teacher, the employee accrues classroom teaching seniority for the time that that employee is employed in another professional area. For the purposes of accruing seniority under this paragraph, employment as principal, supervisor or central office administrator, as defined in section one, article one of this chapter, shall be considered one area of employment.

(j) Employment for a full employment term shall equal one year of seniority, but no employee may accrue more than one year of seniority during any given fiscal year. Employment for less than the full employment term shall be prorated. A random selection system established by the employees and approved by
the board shall be used to determine the priority if two or more employees accumulate identical seniority: *Provided*, That when two or more principals have accumulated identical seniority, decisions on reductions in force shall be based on qualifications.

(k) Whenever a county board is required to reduce the number of professional personnel in its employment, the employee with the least amount of seniority shall be properly notified and released from employment pursuant to the provisions of section two, article two of this chapter. The provisions of this subsection are subject to the following:

(1) All persons employed in a certification area to be reduced who are employed under a temporary permit shall be properly notified and released before a fully certified employee in such a position is subject to release;

(2) Notwithstanding any provision of this code to the contrary, all employees subject to release shall be considered applicants for any vacancy in an established, existing or newly created position that, on or before February 15, is known to exist for the ensuing school year, and for which they are qualified, and, upon recommendation of the superintendent, the board shall appoint the successful applicant from among them before posting such vacancies for application by other persons;

(3) An employee subject to release shall be employed in any other professional position where the employee is certified and was previously employed or to any lateral area for which the employee is certified, licensed or both, if the employee’s seniority is greater than the seniority of any other employee in that area of certification, licensure or both;

(4) If an employee subject to release holds certification, licensure or both in more than one lateral area and if the employee’s seniority is greater than the seniority of any other employee in each area, the employee shall be employed in a position where the employee is certified, licensed or both in the area in which the employee’s seniority is least.
employee in one or more of those areas of certification, licensure or both, the employee subject to release shall be employed in the professional position held by the employee with the least seniority in any of those areas of certification, licensure or both; and

(5) If, prior to August 1 of the year a reduction in force is approved, the reason for any particular reduction in force no longer exists as determined by the county board in its sole and exclusive judgment, the board shall rescind the reduction in force or transfer and shall notify the released employee in writing of his or her right to be restored to his or her position of employment. Within five days of being so notified, the released employee shall notify the board, in writing, of his or her intent to resume his or her position of employment or the right to be restored shall terminate. Notwithstanding any other provision of this subdivision, if there is another employee on the preferred recall list with proper certification and higher seniority, that person shall be placed in the position restored as a result of the reduction in force being rescinded.

(l) For the purpose of this article, all positions which meet the definition of “classroom teacher” as defined in section one, article one of this chapter shall be lateral positions. For all other professional positions, the county board of education shall adopt a policy by October 31, 1993, and may modify the policy thereafter as necessary, which defines which positions shall be lateral positions. In adopting the policy, the board shall give consideration to the rank of each position in terms of title; nature of responsibilities; salary level; certification, licensure or both; and days in the period of employment.

(m) After the twentieth day prior to the beginning of the instructional term, no person employed and assigned to a professional position may transfer to another professional position in the county during that instructional term unless the
person holding that position does not have valid certification. The provisions of this subsection are subject to the following:

(1) The person may apply for any posted, vacant positions with the successful applicant assuming the position at the beginning of the next instructional term;

(2) Professional personnel who have been on an approved leave of absence may fill these vacancies upon their return from the approved leave of absence;

(3) The county board, upon recommendation of the superintendent may fill a position before the next instructional term when it is determined to be in the best interest of the students. The county superintendent shall notify the state board of each transfer of a person employed in a professional position to another professional position after the twentieth day prior to the beginning of the instructional term;

(4) The provisions of this subsection do not apply to the filling of a position vacated because of resignation or retirement that became effective on or before the twentieth day prior to the beginning of the instructional term, but not posted until after that date; and

(5) The Legislature finds that it is not in the best interest of the students, particularly in the elementary grades, to have multiple teachers for any one grade level or course during the instructional term. It is the intent of the Legislature that the filling of positions through transfers of personnel from one professional position to another after the twentieth day prior to the beginning of the instructional term should be kept to a minimum.

(n) All professional personnel whose seniority with the county board is insufficient to allow their retention by the county
board during a reduction in work force shall be placed upon a preferred recall list. As to any professional position opening within the area where they had previously been employed or to any lateral area for which they have certification, licensure or both, the employee shall be recalled on the basis of seniority if no regular, full-time professional personnel, or those returning from leaves of absence with greater seniority, are qualified, apply for and accept the position.

(o) Before position openings that are known or expected to extend for twenty consecutive employment days or longer for professional personnel may be filled by the board, the board shall be required to notify all qualified professional personnel on the preferred list and give them an opportunity to apply, but failure to apply shall not cause the employee to forfeit any right to recall. The notice shall be sent by certified mail to the last known address of the employee, and it shall be the duty of each professional personnel to notify the board of continued availability annually, of any change in address or of any change in certification, licensure or both.

(p) Openings in established, existing or newly created positions shall be processed as follows:

(1) Boards shall be required to post and date notices of each opening at least once. At their discretion, boards may post an opening for a position other than classroom teacher more than once in order to attract more qualified applicants. At their discretion, boards may post an opening for a classroom teacher one additional time after the first posting in order to attract more qualified applicants only if fewer than three individuals apply during the first posting subject to the following:

(A) Each notice shall be posted in conspicuous working places for all professional personnel to observe for at least five working days;
(B) At least one notice shall be posted within twenty working days of the position openings and shall include the job description;

(C) Any special criteria or skills that are required by the position shall be specifically stated in the job description and directly related to the performance of the job;

(D) Postings for vacancies made pursuant to this section shall be written so as to ensure that the largest possible pool of qualified applicants may apply; and

(E) Job postings may not require criteria which are not necessary for the successful performance of the job and may not be written with the intent to favor a specific applicant;

(2) No vacancy shall be filled until after the five-day minimum posting period of the most recent posted notice of the vacancy;

(3) If one or more applicants under all the postings for a vacancy meets the qualifications listed in the job posting, the successful applicant to fill the vacancy shall be selected by the board within thirty working days of the end of the first posting period;

(4) A position held by a teacher who is certified, licensed or both, who has been issued a permit for full-time employment and is working toward certification in the permit area shall not be subject to posting if the certificate is awarded within five years; and

(5) Nothing provided herein shall prevent the county board of education from eliminating a position due to lack of need.

(q) Notwithstanding any other provision of the code to the contrary, where the total number of classroom teaching positions
in an elementary school does not increase from one school year to the next, but there exists in that school a need to realign the number of teachers in one or more grade levels, kindergarten through six, teachers at the school may be reassigned to grade levels for which they are certified without that position being posted: Provided, That the employee and the county board mutually agree to the reassignment.

(r) Reductions in classroom teaching positions in elementary schools shall be processed as follows:

(1) When the total number of classroom teaching positions in an elementary school needs to be reduced, the reduction shall be made on the basis of seniority with the least senior classroom teacher being recommended for transfer; and

(2) When a specified grade level needs to be reduced and the least senior employee in the school is not in that grade level, the least senior classroom teacher in the grade level that needs to be reduced shall be reassigned to the position made vacant by the transfer of the least senior classroom teacher in the school without that position being posted: Provided, That the employee is certified, licensed or both and agrees to the reassignment.

(s) Any board failing to comply with the provisions of this article may be compelled to do so by mandamus and shall be liable to any party prevailing against the board for court costs and reasonable attorney fees as determined and established by the court. Further, employees denied promotion or employment in violation of this section shall be awarded the job, pay and any applicable benefits retroactive to the date of the violation and payable entirely from local funds. Further, the board shall be liable to any party prevailing against the board for any court reporter costs including copies of transcripts.

(t) The county board shall compile, update annually on July 1 and make available by electronic or other means to all
employees a list of all professional personnel employed by the county, their areas of certification and their seniority.

(u) Notwithstanding any other provision of this code to the contrary, upon recommendation of the principal and approval by the classroom teacher and county board, a classroom teacher assigned to the school may at any time be assigned to a new or existing classroom teacher position at the school without the position being posted.

(v) The amendments to this section during the 2013 regular session of the Legislature shall be effective for school years beginning on or after July 1, 2013, and the provisions of this section immediately prior to those amendments remain in effect until July 1, 2013.

ARTICLE 5. AUTHORITY; RIGHTS; RESPONSIBILITY.

§18A-5-1a. Possessing deadly weapons on premises of educational facilities; possessing a controlled substance on premises of educational facilities; assaults and batteries committed by students upon teachers or other school personnel; temporary suspension, hearing; procedure, notice and formal hearing; extended suspension; sale of narcotic; expulsion; exception; alternative education.

(a) A principal shall suspend a student from school or from transportation to or from the school on any school bus if the student, in the determination of the principal after an informal hearing pursuant to subsection (d) of this section, has: (i) Violated the provisions of subsection (b), section fifteen, article two, chapter sixty-one of this code; (ii) violated the provisions of subsection (b), section eleven-a, article seven of said chapter; or (iii) sold a narcotic drug, as defined in section one hundred one, article one, chapter sixty-a of this code, on the premises of
an educational facility, at a school-sponsored function or on a school bus. If a student has been suspended pursuant to this subsection, the principal shall, within twenty-four hours, request that the county superintendent recommend to the county board that the student be expelled. Upon such a request by a principal, the county superintendent shall recommend to the county board that the student be expelled. Upon such recommendation, the county board shall conduct a hearing in accordance with subsections (e), (f) and (g) of this section to determine if the student committed the alleged violation. If the county board finds that the student did commit the alleged violation, the county board shall expel the student.

(b) A principal shall suspend a student from school, or from transportation to or from the school on any school bus, if the student, in the determination of the principal after an informal hearing pursuant to subsection (d) of this section, has: (i) Committed an act or engaged in conduct that would constitute a felony under the laws of this state if committed by an adult; or (ii) unlawfully possessed on the premises of an educational facility or at a school-sponsored function a controlled substance governed by the Uniform Controlled Substances Act as described in chapter sixty-a of this code. If a student has been suspended pursuant to this subsection, the principal may request that the superintendent recommend to the county board that the student be expelled. Upon such recommendation by the county superintendent, the county board may hold a hearing in accordance with the provisions of subsections (e), (f) and (g) of this section to determine if the student committed the alleged violation. If the county board finds that the student did commit the alleged violation, the county board may expel the student.

(c) A principal may suspend a student from school, or transportation to or from the school on any school bus, if the student, in the determination of the principal after an informal hearing pursuant to subsection (d) of this section: (i) Threatened
to injure, or in any manner injured, a student, teacher, administrator or other school personnel; (ii) willfully disobeyed a teacher; (iii) possessed alcohol in an educational facility, on school grounds, a school bus or at any school-sponsored function; (iv) used profane language directed at a school employee or student; (v) intentionally defaced any school property; (vi) participated in any physical altercation with another person while under the authority of school personnel; or (vii) habitually violated school rules or policies. If a student has been suspended pursuant to this subsection, the principal may request that the superintendent recommend to the county board that the student be expelled. Upon such recommendation by the county superintendent, the county board may hold a hearing in accordance with the provisions of subsections (e), (f) and (g) of this section to determine if the student committed the alleged violation. If the county board finds that the student did commit the alleged violation, the county board may expel the student.

(d) The actions of any student which may be grounds for his or her suspension or expulsion under the provisions of this section shall be reported immediately to the principal of the school in which the student is enrolled. If the principal determines that the alleged actions of the student would be grounds for suspension, he or she shall conduct an informal hearing for the student immediately after the alleged actions have occurred. The hearing shall be held before the student is suspended unless the principal believes that the continued presence of the student in the school poses a continuing danger to persons or property or an ongoing threat of disrupting the academic process, in which case the student shall be suspended immediately and a hearing held as soon as practicable after the suspension.

The student and his or her parent(s), guardian(s) or custodian(s), as the case may be, shall be given telephonic
notice, if possible, of this informal hearing, which notice shall briefly state the grounds for suspension.

At the commencement of the informal hearing, the principal shall inquire of the student as to whether he or she admits or denies the charges. If the student does not admit the charges, he or she shall be given an explanation of the evidence possessed by the principal and an opportunity to present his or her version of the occurrence. At the conclusion of the hearing or upon the failure of the noticed student to appear, the principal may suspend the student for a maximum of ten school days, including the time prior to the hearing, if any, for which the student has been excluded from school.

The principal shall report any suspension the same day it has been decided upon, in writing, to the parent(s), guardian(s) or custodian(s) of the student by regular United States mail. The suspension also shall be reported to the county superintendent and to the faculty senate of the school at the next meeting after the suspension.

(e) Prior to a hearing before the county board, the county board shall cause a written notice which states the charges and the recommended disposition to be served upon the student and his or her parent(s), guardian(s) or custodian(s), as the case may be. The notice shall state clearly whether the board will attempt at hearing to establish the student as a dangerous student, as defined by section one, article one of this chapter. The notice also shall include any evidence upon which the board will rely in asserting its claim that the student is a dangerous student. The notice shall set forth a date and time at which the hearing shall be held, which date shall be within the ten-day period of suspension imposed by the principal.

(f) The county board shall hold the scheduled hearing to determine if the student should be reinstated or should, under the
provisions of this section, must be expelled from school. If the
county board determines that the student should or must be
expelled from school, it also may determine whether the student
is a dangerous student pursuant to subsection (g) of this section.
At this, or any hearing before a county board conducted pursuant
to this section, the student may be represented by counsel, may
call his or her own witnesses to verify his or her version of the
incident and may confront and cross examine witnesses
supporting the charge against him or her. The hearing shall be
recorded by mechanical means unless recorded by a certified
court reporter. The hearing may be postponed for good cause
shown by the student but he or she shall remain under
suspension until after the hearing. The state board may adopt
other supplementary rules of procedure to be followed in these
hearings. At the conclusion of the hearing the county board shall
either: (1) Order the student reinstated immediately at the end of
his or her initial suspension; (2) suspend the student for a further
designated number of days; or (3) expel the student from the
public schools of the county.

(g) A county board that did not intend prior to a hearing to
assert a dangerous student claim, that did not notify the student
prior to the hearing that a dangerous student determination
would be considered and that determines through the course of
the hearing that the student may be a dangerous student shall
schedule a second hearing within ten days to decide the issue.
The hearing may be postponed for good cause shown by the
student, but he or she remains under suspension until after the
hearing.

A county board that expels a student, and finds that the
student is a dangerous student, may refuse to provide alternative
education. However, after a hearing conducted pursuant to this
section for determining whether a student is a dangerous student,
when the student is found to be a dangerous student, is expelled
and is denied alternative education, a hearing shall be conducted
within three months after the refusal by the board to provide alternative education to reexamine whether or not the student remains a dangerous student and whether the student shall be provided alternative education. Thereafter, a hearing for the purpose of reexamining whether or not the student remains a dangerous student and whether the student shall be provided alternative education shall be conducted every three months for so long as the student remains a dangerous student and is denied alternative education. During the initial hearing, or in any subsequent hearing, the board may consider the history of the student’s conduct as well as any improvements made subsequent to the expulsion. If it is determined during any of the hearings that the student is no longer a dangerous student or should be provided alternative education, the student shall be provided alternative education during the remainder of the expulsion period.

(h) The superintendent may apply to a circuit judge or magistrate for authority to subpoena witnesses and documents, upon his or her own initiative, in a proceeding related to a recommended student expulsion or dangerous student determination, before a county board conducted pursuant to the provisions of this section. Upon the written request of any other party, the superintendent shall apply to a circuit judge or magistrate for the authority to subpoena witnesses, documents or both on behalf of the other party in a proceeding related to a recommended student expulsion or dangerous student determination before a county board. If the authority to subpoena is granted, the superintendent shall subpoena the witnesses, documents or both requested by the other party. Furthermore, if the authority to subpoena is granted, it shall be exercised in accordance with the provisions of section one, article five, chapter twenty-nine-a of this code.

Any hearing conducted pursuant to this subsection may be postponed: (1) For good cause shown by the student; (2) when proceedings to compel a subpoenaed witness to appear must be
instituted; or (3) when a delay in service of a subpoena hinders either party’s ability to provide sufficient notice to appear to a witness. A student remains under suspension until after the hearing in any case where a postponement occurs.

(i) Students may be expelled pursuant to this section for a period not to exceed one school year, except that if a student is determined to have violated the provisions of subsection (a) of this section the student shall be expelled for a period of not less than twelve consecutive months, subject to the following:

(1) The county superintendent may lessen the mandatory period of twelve consecutive months for the expulsion of the student if the circumstances of the student’s case demonstrably warrant;

(2) Upon the reduction of the period of expulsion, the county superintendent shall prepare a written statement setting forth the circumstances of the student’s case which warrant the reduction of the period of expulsion. The county superintendent shall submit the statement to the county board, the principal, the faculty senate and the local school improvement council for the school from which the student was expelled. The county superintendent may use the following factors as guidelines in determining whether or not to reduce a mandatory twelve-month expulsion:

(A) The extent of the student’s malicious intent;

(B) The outcome of the student’s misconduct;

(C) The student’s past behavior history;

(D) The likelihood of the student’s repeated misconduct; and

(E) If applicable, successful completion or making satisfactory progress toward successful completion of Juvenile Drug Court pursuant to section one-d of this section.
(j) In all hearings under this section, facts shall be found by a preponderance of the evidence.

(k) For purposes of this section, nothing herein may be construed to be in conflict with the federal provisions of the Individuals with Disabilities Education Act, 20 U. S. C. §1400, et seq.

(l) Each suspension or expulsion imposed upon a student under the authority of this section shall be recorded in the uniform integrated regional computer information system (commonly known as the West Virginia Education Information System) described in subsection (f), section twenty-six, article two, chapter eighteen of this code.

(1) The principal of the school at which the student is enrolled shall create an electronic record within twenty-four hours of the imposition of the suspension or expulsion.

(2) Each record of a suspension or expulsion shall include the student’s name and identification number, the reason for the suspension or expulsion and the beginning and ending dates of the suspension or expulsion.

(3) The state board shall collect and disseminate data so that any principal of a public school in West Virginia can review the complete history of disciplinary actions taken by West Virginia public schools against any student enrolled or seeking to enroll at that principal’s school. The purposes of this provision are to allow every principal to fulfill his or her duty under subsection (b), section fifteen-f, article five, chapter eighteen of this code to determine whether a student requesting to enroll at a public school in West Virginia is currently serving a suspension or expulsion from another public school in West Virginia and to allow principals to obtain general information about students’ disciplinary histories.
(m) Principals may exercise any other authority and perform any other duties to discipline students consistent with state and federal law, including policies of the state board.

(n) Each county board is solely responsible for the administration of proper discipline in the public schools of the county and shall adopt policies consistent with the provisions of this section to govern disciplinary actions.

(o) For the purpose of this section, “principal” means the principal, assistant principal, vice principal or the administrative head of the school or a professional personnel designee of the principal or the administrative head of the school.

CHAPTER 18B. HIGHER EDUCATION.

ARTICLE 1. GOVERNANCE.

§18B-1-10. Potomac branch of West Virginia University.

(a) Notwithstanding any other provision of this code to the contrary, by July 1, 2005, Potomac State College shall merge and consolidate with West Virginia University, and become a fully integrated division of the university. All administrative and academic units shall be consolidated with primary responsibility for direction and support assigned to West Virginia University. The advisory board previously appointed for Potomac State College shall be known as the board of visitors and shall provide guidance to the division in carrying out its mission.

(b) Operational costs for the Potomac campus may not exceed by more than ten percent the average cost per full-time equivalent student for freestanding community and technical colleges or the southern regional education board average expenditures for two-year institutions. West Virginia University shall reduce these costs to the mandated level within four years.
(c) Auxiliary enterprises shall be incorporated into the West Virginia University auxiliary enterprise system. The West Virginia University Board of Governors shall determine if operations at the Potomac campus can be operated on a self-sufficient basis when establishing rates for auxiliary services and products.

(d) Potomac State College has a strong reputation in agriculture and forestry instruction, preprofessional programs in business, computer science and education, and basic liberal arts instruction. These programs shall be further cultivated and emphasized as the sustaining mission of the Potomac campus over the next decade, except that the Higher Education Policy Commission may change the mission of the Potomac campus at any time the commission determines appropriate. In order to focus its resources on these programs, the campus shall contract through Eastern West Virginia Community and Technical College to provide workforce development training, literacy education and technical education programs which are most efficiently offered within a flexible community and technical college curriculum. This collaborative relationship shall serve to strengthen both institutions and generate a model relationship between traditional and community and technical college education for institutions throughout the state.

ARTICLE 1B. HIGHER EDUCATION POLICY COMMISSION.


(a) The primary responsibility of the commission is to develop, establish and implement policy that will achieve the goals, objectives and priorities found in section one-a, article one and article one-d of this chapter. The commission shall exercise its authority and carry out its responsibilities in a manner that is consistent and not in conflict with the powers and duties
assigned by law to the West Virginia Council for Community and Technical College Education and the powers and duties assigned to the governing boards. To that end, the commission has the following powers and duties relating to the governing boards under its jurisdiction:

(1) Develop, oversee and advance the public policy agenda pursuant to article one-d of this chapter to address major challenges facing the state, including, but not limited to, the following:

(A) The goals, objectives and priorities established in this chapter including specifically those goals, objectives and priorities pertaining to the compacts created pursuant to section seven, article one-d of this chapter; and

(B) Development and implementation of the master plan described in section five, article one-d of this chapter for the purpose of accomplishing the mandates of this section;

(2) Develop, oversee and advance the promulgation and implementation of a financing rule for state institutions of higher education under its jurisdiction. The rule shall meet the following criteria:

(A) Provide for an adequate level of educational and general funding for institutions pursuant to section five, article one-a of this chapter;

(B) Serve to maintain institutional assets, including, but not limited to, human and physical resources and eliminating deferred maintenance; and

(C) Invest and provide incentives for achieving the priority goals in the public policy agenda, including, but not limited to, those found in section one-a, article one and article one-d of this chapter;
(3) In collaboration with the council, create a policy leadership structure capable of the following actions:

(A) Developing, building public consensus around and sustaining attention to a long-range public policy agenda. In developing the agenda, the commission and council shall seek input from the Legislature and the Governor and specifically from the state Board of Education and local school districts in order to create the necessary linkages to assure smooth, effective and seamless movement of students through the public education and post-secondary education systems and to ensure that the needs of public school courses and programs can be fulfilled by the graduates produced and the programs offered;

(B) Ensuring that the governing boards carry out their duty effectively to govern the individual institutions of higher education; and

(C) Holding the governing boards and the higher education systems as a whole accountable for accomplishing their missions and implementing their compacts;

(4) Develop and adopt each compact for the governing boards under its jurisdiction;

(5) Review and adopt the annual updates of the institutional compacts;

(6) Serve as the accountability point to state policymakers:

(A) The Governor for implementation of the public policy agenda; and

(B) The Legislature by maintaining a close working relationship with the legislative leadership and the Legislative Oversight Commission on Education Accountability;
(7) Jointly with the council, promulgate legislative rules pursuant to article three-a, chapter twenty-nine-a of this code to fulfill the purposes of section five, article one-a of this chapter;

(8) Establish and implement a peer group for each institution as described in section three, article one-a of this chapter;

(9) Establish and implement the benchmarks and performance indicators necessary to measure institutional progress in achieving state policy priorities and institutional missions pursuant to section seven, article one-d of this chapter;

(10) Establish a formal process for identifying capital investment needs and for determining priorities for these investments for consideration by the Governor and the Legislature as part of the appropriation request process pursuant to article nineteen of this chapter;

(11) Develop standards and evaluate governing board requests for capital project financing in accordance with article nineteen of this chapter;

(12) Ensure that governing boards manage capital projects and facilities needs effectively, including review and approval or disapproval of capital projects, in accordance with article nineteen of this chapter;

(13) Acquire legal services as considered necessary, including representation of the commission, its governing boards, employees and officers before any court or administrative body, notwithstanding any other provision of this code to the contrary. The counsel may be employed either on a salaried basis or on a reasonable fee basis. In addition, the commission may, but is not required to, call upon the Attorney General for legal assistance and representation as provided by law;
(14) Employ a Chancellor for Higher Education pursuant to section five of this article;

(15) Employ other staff as necessary and appropriate to carry out the duties and responsibilities of the commission and the council, in accordance with article four of this chapter;

(16) Provide suitable offices in Kanawha County for the chancellor, vice chancellors and other staff;

(17) Advise and consent in the appointment of the presidents of the institutions of higher education under its jurisdiction pursuant to section six of this article. The role of the commission in approving an institutional president is to assure through personal interview that the person selected understands and is committed to achieving the goals, objectives and priorities set forth in the compact, in section one-a, article one and article one-d of this chapter;

(18) Approve the total compensation package from all sources for presidents of institutions under its jurisdiction, as proposed by the governing boards. The governing boards must obtain approval from the commission of the total compensation package both when institutional presidents are employed initially and afterward when any change is made in the amount of the total compensation package;

(19) Establish and implement the policy of the state to assure that parents and students have sufficient information at the earliest possible age on which to base academic decisions about what is required for students to be successful in college, other post-secondary education and careers related, as far as possible, to results from current assessment tools in use in West Virginia;

(20) Approve and implement a uniform standard jointly with the council to determine which students shall be placed in
remedial or developmental courses. The standard shall be aligned with college admission tests and assessment tools used in West Virginia and shall be applied uniformly by the governing boards throughout the public higher education system. The chancellors shall develop a clear, concise explanation of the standard which they shall communicate to the State Board of Education and the State Superintendent of Schools;

(21) Jointly with the council, develop and implement an oversight plan to manage systemwide technology including, but not limited to, the following:

   (A) Expanding distance learning and technology networks to enhance teaching and learning, promote access to quality educational offerings with minimum duplication of effort; and

   (B) Increasing the delivery of instruction to nontraditional students, to provide services to business and industry and increase the management capabilities of the higher education system.

   (C) Notwithstanding any other provision of law or this code to the contrary, the council, commission and governing boards are not subject to the jurisdiction of the Chief Technology Officer for any purpose;

(22) Establish and implement policies and procedures to ensure that a student may transfer and apply toward the requirements for a bachelor’s degree the maximum number of credits earned at any regionally accredited in-state or out-of-state community and technical college with as few requirements to repeat courses or to incur additional costs as are consistent with sound academic policy;

(23) Establish and implement policies and procedures to ensure that a student may transfer and apply toward the requirements for a degree the maximum number of credits
earned at any regionally accredited in-state or out-of-state higher education institution with as few requirements to repeat courses or to incur additional costs as are consistent with sound academic policy;

(24) Establish and implement policies and procedures to ensure that a student may transfer and apply toward the requirements for a master’s degree the maximum number of credits earned at any regionally accredited in-state or out-of-state higher education institution with as few requirements to repeat courses or to incur additional costs as are consistent with sound academic policy;

(25) Establish and implement policies and programs, in cooperation with the council and the governing boards, through which a student who has gained knowledge and skills through employment, participation in education and training at vocational schools or other education institutions, or Internet-based education programs, may demonstrate by competency-based assessment that he or she has the necessary knowledge and skills to be granted academic credit or advanced placement standing toward the requirements of an associate’s degree or a bachelor’s degree at a state institution of higher education;

(26) Seek out and attend regional, national and international meetings and forums on education and workforce development-related topics as, in the commission’s discretion, are critical for the performance of their duties as members, for the purpose of keeping abreast of education trends and policies to aid it in developing the policies for this state to meet the established education goals, objectives and priorities pursuant to section one-a, article one and article one-d of this chapter;

(27) Promulgate and implement a rule for higher education governing boards and institutions to follow when considering capital projects pursuant to article nineteen of this chapter;
(28) Consider and submit to the appropriate agencies of the executive and legislative branches of state government an appropriation request that reflects recommended appropriations for the commission and the governing boards under its jurisdiction. The commission shall submit as part of its appropriation request the separate recommended appropriation request it received from the council, both for the council and for the governing boards under the council’s jurisdiction. The commission annually shall submit the proposed allocations based on each institution’s progress toward meeting the goals of its compact;

(29) The commission may assess institutions under its jurisdiction, including Marshall University and West Virginia University, for the payment of expenses of the commission or for the funding of statewide higher education services, obligations or initiatives related to the goals set forth for the provision of public higher education in the state;

(30) Promulgate rules allocating reimbursement of appropriations, if made available by the Legislature, to governing boards for qualifying noncapital expenditures incurred in providing services to students with physical, learning or severe sensory disabilities;

(31) Make appointments to boards and commissions where this code requires appointments from the State College System Board of Directors or the University of West Virginia System Board of Trustees which were abolished effective June 30, 2000, except in those cases where the required appointment has a specific and direct connection to the provision of community and technical college education, the appointment shall be made by the council. Notwithstanding any provisions of this code to the contrary, the commission or the council may appoint one of its own members or any other citizen of the state as its designee. The commission and council shall appoint the total number of
persons in the aggregate required to be appointed by these previous governing boards;

(32) Pursuant to article three-a, chapter twenty-nine-a of this code and section six, article one of this chapter, promulgate rules necessary or expedient to fulfill the purposes of this chapter. The commission and the council shall promulgate a uniform joint legislative rule for the purposes of standardizing, as much as possible, the administration of personnel matters among the state institutions of higher education and implementing the provisions of articles seven, eight, nine and nine-a of this chapter;

(33) Determine when a joint rule among the governing boards under its jurisdiction is necessary or required by law and, in those instances, in consultation with the governing boards under its jurisdiction, promulgate the joint rule;

(34) Promulgate and implement a rule jointly with the council whereby course credit earned at a community and technical college transfers for program credit at any other state institution of higher education and is not limited to fulfilling a general education requirement;

(35) By October 1, 2011, promulgate a rule pursuant to section one, article ten of this chapter, establishing tuition and fee policy for all governing boards under the jurisdiction of the commission, including Marshall University and West Virginia University. The rule shall include, but is not limited to, the following:

(A) Comparisons with peer institutions;

(B) Differences among institutional missions;

(C) Strategies for promoting student access;

(D) Consideration of charges to out-of-state students; and
(E) Such other policies as the commission and council consider appropriate;

(36) Implement general disease awareness initiatives to educate parents and students, particularly dormitory residents, about meningococcal meningitis; the potentially life-threatening dangers of contracting the infection; behaviors and activities that can increase risks; measures that can be taken to prevent contact or infection; and potential benefits of vaccination. The commission shall encourage governing boards that provide medical care to students to provide access to the vaccine for those who wish to receive it; and

(37) Notwithstanding any other provision of this code to the contrary sell, lease, convey or otherwise dispose of all or part of any real property that it owns, in accordance with article nineteen of this chapter.

(b) In addition to the powers and duties listed in subsection (a) of this section, the commission has the following general powers and duties related to its role in developing, articulating and overseeing the implementation of the public policy agenda:

(1) Planning and policy leadership, including a distinct and visible role in setting the state’s policy agenda and in serving as an agent of change;

(2) Policy analysis and research focused on issues affecting the system as a whole or a geographical region thereof;

(3) Development and implementation of institutional mission definitions, including use of incentive funds to influence institutional behavior in ways that are consistent with public priorities;

(4) Academic program review and approval for governing boards under its jurisdiction. The review and approval includes
use of institutional missions as a template to judge the appropriateness of both new and existing programs and the authority to implement needed changes.

(A) The commission’s authority to review and approve academic programs for either Marshall University or West Virginia University is limited to programs that are proposed to be offered at a new location not presently served by that institution;

(B) The commission shall approve or disapprove proposed academic degree programs in those instances where approval is required as soon as practicable, but in any case not later than six months from the date the governing board makes an official request. The commission may not withhold approval unreasonably;

(5) Distribution of funds appropriated to the commission, including incentive and performance-based funds;

(6) Administration of state and federal student aid programs under the supervision of the vice chancellor for administration, including promulgation of rules necessary to administer those programs;

(7) Serving as the agent to receive and disburse public funds when a governmental entity requires designation of a statewide higher education agency for this purpose;

(8) Developing, establishing and implementing information, assessment, accountability and personnel systems, including maintaining statewide data systems that facilitate long-term planning and accurate measurement of strategic outcomes and performance indicators;

(9) Jointly with the council, promulgating and implementing rules for licensing and oversight for both public and private
degree-granting and nondegree-granting institutions that provide
post-secondary education courses or programs in the state. The
council has authority and responsibility for approval of all
post-secondary courses or programs providing community and
technical college education as defined in section two, article one
of this chapter;

(10) Developing, implementing and overseeing statewide
and regional projects and initiatives related to providing
post-secondary education at the baccalaureate level and above
such as those using funds from federal categorical programs or
those using incentive and performance-based funds from any
source;

(11) Quality assurance that intersects with all other duties of
the commission particularly in the areas of research, data
collection and analysis, personnel administration, planning,
policy analysis, program review and approval, budgeting and
information and accountability systems; and

(12) Developing budgets and allocating resources for
governing boards under its jurisdiction:

(A) For all governing boards under its jurisdiction, except
the governing boards of Marshall University and West Virginia
University, the commission shall review institutional operating
budgets, review and approve capital budgets, and distribute
incentive and performance-based funds;

(B) For the governing boards of Marshall University and
West Virginia University, the commission shall distribute
incentive and performance-based funds and may review and
comment upon the institutional operating budgets and capital
budgets. The commission’s comments, if any, shall be made part
of the governing board’s minute record.

(c) In addition to the powers and duties provided in
subsections (a) and (b) of this section and any other powers and
duties assigned to it by law, the commission has other powers and duties necessary or expedient to accomplish the purposes of this article.

(d) The commission may withdraw specific powers of a governing board under its jurisdiction for a period not to exceed two years, if the commission determines that any of the following conditions exist:

(1) The governing board has failed for two consecutive years to develop or implement an institutional compact as required in article one-d of this chapter;

(2) The commission has received information, substantiated by independent audit, of significant mismanagement or failure to carry out the powers and duties of the governing board according to state law; or

(3) Other circumstances which, in the view of the commission, severely limit the capacity of the governing board to exercise its powers or carry out its duties and responsibilities.

The commission may not withdraw specific powers for a period exceeding two years. During the withdrawal period, the commission shall take all steps necessary to reestablish sound, stable and responsible institutional governance.

ARTICLE 1D. HIGHER EDUCATION ACCOUNTABILITY.

§18B-1D-8. Institutional and system report cards.

(a) The purpose of the institutional and statewide report cards is to make information available to parents, students, faculty, staff, state policymakers and the general public on the quality and performance of public higher education. The focus of the report cards is to determine annual progress of the commission, the council and institutions under their respective
7 jurisdictions toward achieving state goals and objectives
8 identified in this article and section one-a, article one of this
9 chapter and system goals and objectives contained in the
10 statewide master plans of the commission and council created
11 pursuant to section five of this article.

12 (b) The information contained in the report cards shall be
13 consistent and comparable between and among state institutions
14 of higher education. If applicable, the information shall allow for
15 easy comparison with higher education-related data collected
16 and disseminated by the Southern Regional Education Board, the
17 United States Department of Education and other education
18 data-gathering and data-disseminating organizations upon which
19 state policymakers frequently rely in setting policy.

20 (c) The rules required by subsection (c), section one of this
21 article shall provide for the collection, analysis and
22 dissemination of information on the performance of the state
23 institutions of higher education, including health sciences
24 education, in relation to the findings, goals and objectives set
25 forth in this article and section one-a, article one of this chapter
26 and those contained in the statewide master plans of the
27 commission and council developed pursuant to section five of
28 this article.

29 (1) The objective of this portion of the rule is to ensure that
30 the Legislative Oversight Commission on Education
31 Accountability and others identified in subsection (a) of this
32 section are provided with full and accurate information while
33 minimizing the institutional burden of recordkeeping and
34 reporting.

35 (2) This portion of the rule shall identify various indicators
36 of student and institutional performance that, at a minimum,
37 must be reported annually, set forth general guidelines for the
38 collection and reporting of data and provide for the preparation,
39 printing and distribution of report cards under this section.
(d) The report cards shall be analysis-driven, rather than simply data-driven, and shall present information in a format that can inform education policymaking. They shall include an executive summary which outlines significant trends, identifies major areas of concern and discusses progress toward meeting state and system goals and objectives. They shall be brief and concise, reporting required information in nontechnical language. Any technical or supporting material to be included shall be contained in a separate appendix.

(e) The statewide report card shall include the data for each separately listed, applicable indicator identified in the rule promulgated pursuant to subsection (c) of this section and the aggregate of the data for all public institutions of higher education.

(f) The statewide report card shall be prepared using actual institutional, state, regional and national data, as applicable and available, indicating the present performance of the individual institutions, the governing boards and the state systems of higher education. Statewide report cards shall be based upon information for the current school year or for the most recent school year for which the information is available, in which case the year shall be clearly noted.

(g) The president or chief executive officer of each state institution of higher education shall prepare and submit annually all requested data to the commission at the times established by the commission.

(h) The higher education central office staff, under the direction of the Vice Chancellor for Administration, shall provide technical assistance to each institution and governing board in data collection and reporting and is responsible for assembling the statewide report card from information submitted by each governing board.
(i) The statewide report card shall be completed and disseminated with copies to the Legislative Oversight Commission on Education Accountability prior to January 1 of each year and the staff of the commission and the council shall prepare a report highlighting specifically the trends, progress toward meeting goals and objectives and major areas of concern for public higher education, including medical education, for presentation to the Legislative Oversight Commission on Education Accountability at the interim meetings in January, 2009, and annually thereafter.

(j) For a reasonable fee, the Vice Chancellor for Administration shall make copies of the report cards, including any appendices of supporting material, available to any individual requesting them.

§18B-1D-8a. Modification to reporting requirements to the Legislative Oversight Commission on Education Accountability.

(a) Notwithstanding any other provisions of this code to the contrary, the following statutorily mandated reports are not required to be prepared and submitted annually to the Legislature but this information and data previously contained therein shall be combined with other reports in a manner that reduces the cost and increases the efficacy of those reports. This includes:

(1) All personnel, classification, compensation and human resources reports set out in section four, article one-b of this chapter, section six, article two-b of this chapter and article nine-a of this chapter;

(2) All capital appropriation requests, priorities and campus and state capital development plans set out in section four, article one-b of this chapter, section six, article two-b of this chapter and article nineteen of this chapter;
(3) All academic related matters and reports including those
detailing institutional reauthorization at section seven, article
four of this chapter; training of institutional Boards of Governors
set out in section nine, article one-d of this chapter and section
one, article ten of this chapter dealing with institutional
compliance with tuition and fee increases;

(4) All financial aid reports including PROMISE, HEAPS,
the Higher Education Grant Program, the Nursing Scholarship
Program, the Underwood-Smith Teacher Scholarship Program
and others set out in chapter eighteen-c of this code.

(b) In order to create more efficiency, reporting deadlines of
statutorily or rule mandated reports may be altered, as needed by
the Commission without a statutory or rule-making change:
Provided, That the reports are always provided within any given
calendar year.

ARTICLE 2B. WEST VIRGINIA COUNCIL FOR
COMMUNITY AND TECHNICAL
COLLEGE EDUCATION.


(a) The council is the sole agency responsible for
administration of vocational-technical-occupational education
and community and technical college education in the state. The
council has jurisdiction and authority over the community and
technical colleges and the statewide network of independently
accredited community and technical colleges as a whole,
including community and technical college education programs
as defined in section two, article one of this chapter.

(b) The council shall propose rules pursuant to section six,
article one of this chapter and article three-a, chapter
twenty-nine-a of this code to implement the provisions of this
section and applicable provisions of article one-d of this chapter:

(1) To implement the provisions of article one-d of this
chapter relevant to community and technical colleges, the
council may propose rules jointly with the commission, or
separately, and may choose to address all components of the
accountability system in a single rule or may propose additional
rules to cover specific components;

(2) The rules pertaining to financing policy and benchmarks
and indicators required by this section shall be filed with the
Legislative Oversight Commission on Education Accountability
by October 1, 2008. Nothing in this subsection requires other
rules of the council to be promulgated again under the procedure
set forth in article three-a, chapter twenty-nine-a of this code
unless such rules are rescinded, revised, altered or amended; and

(3) The Legislature finds that an emergency exists and,
therefore, the council shall propose an emergency rule or rules
to implement the provisions of this section relating to the
financing policy and benchmarks and indicators in accordance
with section six, article one of this chapter and article three-a,
chapter twenty-nine-a of this code by October 1, 2008. The
emergency rule or rules may not be implemented without prior
approval of the Legislative Oversight Commission on Education
Accountability.

(c) The council has the following powers and duties relating
to the authority established in subsection (a) of this section:

(1) Develop, oversee and advance the public policy agenda
for community and technical college education for the purpose
of accomplishing the mandates of this section, including, but not
limited to, the following:

(A) Achieving the goals and objectives established in articles
one and one-d of this chapter;
(B) Addressing the goals and objectives contained in the institutional compacts created pursuant to section seven, article one-d of this chapter; and

(C) Developing and implementing the master plan described in section five, article one-d of this chapter;

(2) Propose a legislative rule pursuant to subsection (b) of this section and article three-a, chapter twenty-nine-a of this code to develop and implement a financing policy for community and technical college education in West Virginia. The rule shall meet the following criteria:

(A) Provide an adequate level of education and general funding for institutions pursuant to section five, article one-a of this chapter;

(B) Serve to maintain institutional assets, including, but not limited to, human and physical resources and deferred maintenance;

(C) Establish a plan for strategic funding to strengthen capacity for support of community and technical college education; and

(D) Establish a plan that measures progress and provides performance-based funding to institutions which make significant progress in the following specific areas:

(i) Achieving the objectives and priorities established in article one-d of this chapter;

(ii) Serving targeted populations, especially working age adults twenty-five years of age and over;

(iii) Providing access to high-cost, high-demand technical programs in every region of the state;
(iv) Increasing the percentage of functionally literate adults in every region of the state; and

(v) Providing high-quality community and technical college education services to residents of every region of the state.

(3) Create a policy leadership structure relating to community and technical college education capable of the following actions:

(A) Developing, building public consensus around and sustaining attention to a long-range public policy agenda. In developing the agenda, the council shall seek input from the Legislature and the Governor and specifically from the State Board of Education and local school districts in order to create the necessary linkages to assure smooth, effective and seamless movement of students through the public education and post-secondary education systems and to ensure that the needs of public school courses and programs can be fulfilled by the graduates produced and the programs offered;

(B) Ensuring that the governing boards of the institutions under the council’s jurisdiction carry out their duty effectively to govern the individual institutions of higher education; and

(C) Holding each community and technical college and the statewide network of independently accredited community and technical colleges as a whole accountable for accomplishing their missions and achieving the goals and objectives established in articles one, one-d and three-c of this chapter;

(4) Develop for inclusion in the statewide public agenda, a plan for raising education attainment, increasing adult literacy, promoting workforce and economic development and ensuring access to advanced education for the citizens of West Virginia;
(5) Provide statewide leadership, coordination, support, and technical assistance to the community and technical colleges and to provide a focal point for visible and effective advocacy for their work and for the public policy agendas approved by the commission and council;

(6) Review and adopt annually all institutional compacts for the community and technical colleges pursuant to the provisions of section seven, article one-d of this chapter;

(7) Fulfill the mandates of the accountability system established in article one-d of this chapter and report on progress in meeting established goals, objectives, and priorities to the elected leadership of the state;

(8) Propose a legislative rule pursuant to subsection (b) of this section and article three-a, chapter twenty-nine-a of this code to establish benchmarks and indicators in accordance with the provisions of this subsection;

(9) Establish and implement the benchmarks and performance indicators necessary to measure institutional progress:

(A) In meeting state goals, objectives, and priorities established in articles one and one-d of this chapter;

(B) In carrying out institutional missions; and

(C) In meeting the essential conditions established in article three-c of this chapter;

(10) Establish a formal process for identifying needs for capital investments and for determining priorities for these investments for consideration by the Governor and the Legislature as part of the appropriation request process. Notwithstanding the language in subdivision eleven, subsection
a, section four, article one-b of this chapter, the commission is not a part of the process for identifying needs for capital investments for the statewide network of independently accredited community and technical colleges;

(11) Draw upon the expertise available within the Governor’s Workforce Investment Office and the West Virginia Development Office as a resource in the area of workforce development and training;

(12) Acquire legal services that are considered necessary, including representation of the council, its institutions, employees and officers before any court or administrative body, notwithstanding any other provision of this code to the contrary. The counsel may be employed either on a salaried basis or on a reasonable fee basis. In addition, the council may, but is not required to, call upon the Attorney General for legal assistance and representation as provided by law;

(13) Employ a chancellor for community and technical college education pursuant to section three of this article;

(14) Employ other staff as necessary and appropriate to carry out the duties and responsibilities of the council consistent with the provisions of section two, article four of this chapter;

(15) Employ other staff as necessary and appropriate to carry out the duties and responsibilities of the council who are employed solely by the council;

(16) Provide suitable offices in Charleston for the chancellor and other staff: Provided, That the offices may be located outside of Charleston at a technology and research center: Provided, however, That the current employees of WVNET shall not be moved from Monongalia County without legislative approval;
(17) Approve the total compensation package from all sources for presidents of community and technical colleges, as proposed by the governing boards. The governing boards must obtain approval from the council of the total compensation package both when presidents are employed initially and subsequently when any change is made in the amount of the total compensation package;

(18) Establish and implement policies and procedures to ensure that students may transfer and apply toward the requirements for a degree the maximum number of credits earned at any regionally accredited in-state or out-of-state higher education institution with as few requirements to repeat courses or to incur additional costs as is consistent with sound academic policy;

(19) Establish and implement policies and programs, jointly with the community and technical colleges, through which students who have gained knowledge and skills through employment, participation in education and training at vocational schools or other education institutions, or internet-based education programs, may demonstrate by competency-based assessment that they have the necessary knowledge and skills to be granted academic credit or advanced placement standing toward the requirements of an associate degree or a bachelor’s degree at a state institution of higher education;

(20) Seek out and attend regional and national meetings and forums on education and workforce development-related topics, as council members consider critical for the performance of their duties. The council shall keep abreast of national and regional community and technical college education trends and policies to aid members in developing the policies for this state that meet the education goals and objectives established in articles one and one-d of this chapter;
(21) Assess community and technical colleges for the payment of expenses of the council or for the funding of statewide services, obligations or initiatives related specifically to the provision of community and technical college education;

(22) Promulgate rules allocating reimbursement of appropriations, if made available by the Legislature, to community and technical colleges for qualifying noncapital expenditures incurred in the provision of services to students with physical, learning or severe sensory disabilities;

(23) Assume the prior authority of the commission in examining and approving tuition and fee increase proposals submitted by community and technical college governing boards as provided in section one, article ten of this chapter;

(24) Develop and submit to the commission, a single budget for community and technical college education that reflects recommended appropriations for community and technical colleges and that meets the following conditions:

(A) Incorporates the provisions of the financing rule mandated by this section to measure and provide performance funding to institutions which achieve or make significant progress toward achieving established state objectives and priorities;

(B) Considers the progress of each institution toward meeting the essential conditions set forth in section three, article three-c of this chapter, including independent accreditation; and

(C) Considers the progress of each institution toward meeting the goals, objectives, and priorities established in article one-d of this chapter and its approved institutional compact.

(25) Administer and distribute the independently accredited community and technical college development account;
(26) Establish a plan of strategic funding to strengthen capacity for support and assure delivery of high-quality community and technical college education in all regions of the state;

(27) Foster coordination among all state-level, regional and local entities providing post-secondary vocational education or workforce development and coordinate all public institutions and entities that have a community and technical college mission;

(28) Assume the principal responsibility for oversight of those community and technical colleges seeking independent accreditation and for holding governing boards accountable for meeting the essential conditions pursuant to article three-c of this chapter;

(29) Advise and consent in the appointment of the presidents of the community and technical colleges pursuant to section six, article one-b of this chapter. The role of the council in approving a president is to assure through personal interview that the person selected understands and is committed to achieving the goals and objectives established in the institutional compact and in articles one, one-d and three-c of this chapter;

(30) Provide a single, statewide link for current and prospective employers whose needs extend beyond one locality;

(31) Provide a mechanism capable of serving two or more institutions to facilitate joint problem-solving in areas including, but not limited to the following:

(A) Defining faculty roles and personnel policies;

(B) Delivering high-cost technical education programs across the state;

(C) Providing one-stop service for workforce training to be delivered by multiple institutions; and
252 (D) Providing opportunities for resource-sharing and collaborative ventures;

254 (32) Provide support and technical assistance to develop, coordinate, and deliver effective and efficient community and technical college education programs and services in all regions of the state;

258 (33) Assist the community and technical colleges in establishing and promoting links with business, industry and labor in the geographic areas for which each community and technical college is responsible;

262 (34) Develop alliances among the community and technical colleges for resource sharing, joint development of courses and courseware, and sharing of expertise and staff development;

265 (35) Serve aggressively as an advocate for development of a seamless curriculum;

267 (36) Cooperate with all providers of education services in the state to remove barriers relating to a seamless system of public and higher education and to transfer and articulate between and among community and technical colleges, state colleges and universities and public education, preschool through grade twelve;

273 (37) Encourage the most efficient use of available resources;

274 (38) Coordinate with the commission in informing public school students, their parents and teachers of the academic preparation that students need in order to be prepared adequately to succeed in their selected fields of study and career plans, including presentation of academic career fairs;

279 (39) Jointly with the commission, approve and implement a uniform standard, as developed by the chancellors, to determine
which students shall be placed in remedial or developmental courses. The standard shall be aligned with college admission tests and assessment tools used in West Virginia and shall be applied uniformly by the governing boards throughout the public higher education system. The chancellors shall develop a clear, concise explanation of the standard which the governing boards shall communicate to the State Board of Education and the State Superintendent of Schools;

(40) Develop and implement strategies and curriculum for providing developmental education which shall be applied by any state institution of higher education providing developmental education;

(41) Develop a statewide system of community and technical college programs and services in every region of West Virginia for competency-based certification of knowledge and skills, including a statewide competency-based associate degree program;

(42) Review and approve all institutional master plans for the community and technical colleges pursuant to section four, article two-a of this chapter;

(43) Propose rules for promulgation pursuant to subsection (b) of this section and article three-a, chapter twenty-nine-a of this code that are necessary or expedient for the effective and efficient performance of community and technical colleges in the state;

(44) In its sole discretion, transfer any rule under its jurisdiction, other than a legislative rule, to the jurisdiction of the governing boards who may rescind, revise, alter or amend any rule transferred pursuant to rules adopted by the council and provide technical assistance to the institutions under its jurisdiction to aid them in promulgating rules;
(45) Develop for inclusion in the higher education report card, as defined in section eight, article one-d of this chapter, a separate section on community and technical colleges. This section shall include, but is not limited to, evaluation of the institutions based upon the benchmarks and indicators developed in subdivision (9) of this subsection;

(46) Facilitate continuation of the Advantage Valley Community College Network under the leadership and direction of Marshall Community and Technical College;

(47) Initiate and facilitate creation of other regional networks of affiliated community and technical colleges that the council finds to be appropriate and in the best interests of the citizens to be served;

(48) Develop with the State Board of Education plans for secondary and post-secondary vocational-technical-occupational and adult basic education, including, but not limited to the following:

(A) Policies to strengthen vocational-technical-occupational and adult basic education; and

(B) Programs and methods to assist in the improvement, modernization and expanded delivery of vocational-technical-occupational and adult basic education programs;

(49) Distribute federal vocational education funding provided under the Carl D. Perkins Vocational and Technical Education Act of 1998, PL 105-332, with an emphasis on distributing financial assistance among secondary and post-secondary vocational-technical-occupational and adult basic education programs to help meet the public policy agenda.

In distributing funds the council shall use the following guidelines:
(A) The State Board of Education shall continue to be the fiscal agent for federal vocational education funding;

(B) The percentage split between the State Board of Education and the council shall be determined by rule promulgated by the council under the provisions of article three-a, chapter twenty-nine-a of this code. The council shall first obtain the approval of the State Board of Education before proposing a rule;

(50) Collaborate, cooperate and interact with all secondary and post-secondary vocational-technical-occupational and adult basic education programs in the state, including the programs assisted under the federal Carl D. Perkins Vocational and Technical Education Act of 1998, PL 105-332, and the Workforce Investment Act of 1998, to promote the development of seamless curriculum and the elimination of duplicative programs;

(51) Coordinate the delivery of vocational-technical-occupational and adult basic education in a manner designed to make the most effective use of available public funds to increase accessibility for students;

(52) Analyze and report to the State Board of Education on the distribution of spending for vocational-technical-occupational and adult basic education in the state and on the availability of vocational-technical-occupational and adult basic education activities and services within the state;

(53) Promote the delivery of vocational-technical-occupational education, adult basic education and community and technical college education programs in the state which emphasize the involvement of business, industry and labor organizations;
(54) Promote public participation in the provision of vocational-technical-occupational education, adult basic education and community and technical education at the local level, emphasizing programs which involve the participation of local employers and labor organizations;

(55) Promote equal access to quality vocational-technical-occupational education, adult basic education and community and technical college education programs to handicapped and disadvantaged individuals, adults in need of training and retraining, single parents, homemakers, participants in programs designed to eliminate sexual bias and stereotyping and criminal offenders serving in correctional institutions;

(56) Meet annually between the months of October and December with the Advisory Committee of Community and Technical College Presidents created pursuant to section eight of this article to discuss those matters relating to community and technical college education in which advisory committee members or the council may have an interest;

(57) Accept and expend any gift, grant, contribution, bequest, endowment or other money for the purposes of this article;

(58) Assume the powers set out in section nine of this article. The rules previously promulgated by the State College System Board of Directors pursuant to that section and transferred to the commission are hereby transferred to the council and shall continue in effect until rescinded, revised, altered or amended by the council;

(59) Pursuant to the provisions of subsection (b) of this section and article three-a, chapter twenty-nine-a of this code, promulgate a uniform joint legislative rule with the commission for the purpose of standardizing, as much as possible, the
administration of personnel matters among the institutions of higher education;

(60) Determine when a joint rule among the governing boards of the community and technical colleges is necessary or required by law and, in those instances and in consultation with the governing boards, promulgate the joint rule;

(61) Promulgate a joint rule with the commission establishing tuition and fee policy for all institutions of higher education. The rule shall include, but is not limited to, the following:

(A) Comparisons with peer institutions;
(B) Differences among institutional missions;
(C) Strategies for promoting student access;
(D) Consideration of charges to out-of-state students; and
(E) Any other policies the commission and council consider appropriate;

(62) In cooperation with the West Virginia Division of Highways, study a method for increasing the signage signifying community and technical college locations along the state interstate highways, and report to the Legislative Oversight Commission on Education Accountability regarding any recommendations and required costs; and

(63) Implement a policy jointly with the commission whereby any course credit earned at a community and technical college transfers for program credit at any other state institution of higher education and is not limited to fulfilling a general education requirement.

(d) In addition to the powers and duties listed in subsections (a), (b) and (c) of this section, the council has the following
general powers and duties related to its role in developing, articulating and overseeing the implementation of the public policy agenda for community and technical colleges:

(1) Planning and policy leadership including a distinct and visible role in setting the state’s policy agenda for the delivery of community and technical college education and in serving as an agent of change;

(2) Policy analysis and research focused on issues affecting the community and technical college network as a whole or a geographical region thereof;

(3) Development and implementation of each community and technical college mission definition including use of incentive and performance funds to influence institutional behavior in ways that are consistent with achieving established state goals, objectives, and priorities;

(4) Academic program review and approval for the institutions under its jurisdiction, including the use of institutional missions as a template to judge the appropriateness of both new and existing programs and the authority to implement needed changes;

(5) Development of budget and allocation of resources for institutions delivering community and technical college education, including reviewing and approving institutional operating and capital budgets and distributing incentive and performance-based funding;

(6) Acting as the agent to receive and disburse public funds related to community and technical college education when a governmental entity requires designation of a statewide higher education agency for this purpose;

(7) Development, establishment and implementation of information, assessment and internal accountability systems,
including maintenance of statewide data systems that facilitate long-term planning and accurate measurement of strategic outcomes and performance indicators for community and technical colleges;

(8) Jointly with the commission, development, establishment and implementation of policies for licensing and oversight of both public and private degree-granting and nondegree-granting institutions that provide post-secondary education courses or programs;

(9) Development, implementation and oversight of statewide and regionwide projects and initiatives related specifically to providing community and technical college education such as those using funds from federal categorical programs or those using incentive and performance-based funding from any source; and

(10) Quality assurance that intersects with all other duties of the council particularly in the areas of planning, policy analysis, program review and approval, budgeting and information and accountability systems.

(e) The council may withdraw specific powers of a governing board under its jurisdiction for a period not to exceed two years if the council makes a determination that any of the following conditions exist:

(1) The governing board has failed for two consecutive years to develop an institutional compact as required in section seven, article one-d of this chapter;

(2) The council has received information, substantiated by independent audit, of significant mismanagement or failure to carry out the powers and duties of the board of governors according to state law; or
(3) Other circumstances which, in the view of the council, severely limit the capacity of the board of governors to carry out its duties and responsibilities.

The period of withdrawal of specific powers may not exceed two years during which time the council is authorized to take steps necessary to reestablish the conditions for restoration of sound, stable and responsible institutional governance.

(f) In addition to the powers and duties provided for in subsections (a), (b), (c) and (d) of this section and any others assigned to it by law, the council has those powers and duties necessary or expedient to accomplish the purposes of this article; and

(g) When the council and commission, each, is required to consent, cooperate, collaborate or provide input into the actions of the other the following conditions apply:

(1) The body acting first shall convey its decision in the matter to the other body with a request for concurrence in the action;

(2) The commission or the council, as the receiving body, shall place the proposal on its agenda and shall take final action within sixty days of the date when the request for concurrence is received; and

(3) If the receiving body fails to take final action within sixty days, the original proposal stands and is binding on both the commission and the council.

ARTICLE 2C. WEST VIRGINIA COMMUNITY AND TECHNICAL COLLEGE.

§18B-2C-3. Authority and duty of council to determine progress of community and technical colleges; conditions;
authority to create West Virginia Community and Technical College.

(a) The council annually shall review and analyze all the state community and technical colleges, and any branches, centers, regional centers or other delivery sites with a community and technical college mission, to determine their progress toward meeting the goals, objectives, priorities, and essential conditions established in articles one, one-d and three-c of this chapter.

(b) The analysis required in subsection (a) of this section shall be based, in whole or in part, upon the findings made pursuant to the rule establishing benchmarks and indicators promulgated by the council pursuant to section six, article two-b of this chapter.

(c) Based upon their analysis in subsections (a) and (b) of this section, the council shall make a determination whether any one or more of the following conditions exists:

(1) A community and technical college required to do so has not achieved or is not making sufficient, satisfactory progress toward achieving the essential conditions, including independent accreditation;

(2) One or more of the public community and technical colleges, branches, centers, regional centers and other delivery sites with a community and technical college mission requires financial assistance or other support to meet the goals and essential conditions set forth in this chapter;

(3) It is in the best interests of the people of the state or a region within the state to have a single, accredited institution which can provide an umbrella of statewide accreditation;

(4) One or more of the state community and technical colleges, branches, centers, regional centers or other delivery
(5) One or more state community and technical colleges, branches, centers, regional centers or other delivery sites with a community and technical college mission has not achieved, or is not making sufficient, satisfactory progress toward achieving, the goals, objectives and essential conditions established in articles one, one-d and three-c of this chapter; and

(6) The council determines that it is in the best interests of the people of the state or a region of the state to create a statewide, independently accredited community and technical college.

(d) The council may not make a determination subject to the provisions of this section that a condition does not exist based upon a finding that the higher education entity lacks sufficient funds to make sufficient, satisfactory progress.

ARTICLE 3D. WORKFORCE DEVELOPMENT INITIATIVE.

§18B-3D-2. Workforce Development Initiative Program continued; purpose; program administration; rule required.

(a) The Workforce Development Initiative Program is continued under the supervision of the council. The purpose of the program is to administer and oversee grants to community
and technical colleges to implement the provisions of this article in accordance with legislative intent.

(b) It is the responsibility of the council to administer the state fund for community and technical college and workforce development, including setting criteria for grant applications, receiving applications for grants, making determinations on distribution of funds and evaluating the performance of workforce development initiatives.

(c) The chancellor, under the direction of the council, shall review and approve the expenditure of all grant funds, including development of application criteria, the review and selection of applicants for funding and the annual review and justification of applicants for grant renewal.

(1) To aid in decisionmaking, the chancellor appoints an advisory committee consisting of the Executive Director of the West Virginia Development Office or designee; the Secretary of Education and the Arts or designee; the Assistant State Superintendent for Technical and Adult Education; the Chair of the West Virginia Council for Community and Technical College Education; the Chair of the West Virginia Workforce Investment Council; the Executive Director of Workforce West Virginia; two members representing business and industry; and one member representing labor. The advisory committee shall review all applications for workforce development initiative grants and make recommendations for distributing grant funds to the council. The advisory committee also shall make recommendations on methods to share among the community and technical colleges any curricula developed as a result of a workforce development initiative grant.

(2) When determining which grant proposals will be funded, the council shall give special consideration to proposals by community and technical colleges that involve businesses with fewer than fifty employees.
(3) The council shall weigh each proposal to avoid awarding grants which will have the ultimate effect of providing unfair advantage to employers new to the state who will be in direct competition with established local businesses.

(d) The council may allocate a reasonable amount, not to exceed five percent up to a maximum of $50,000 of the funds available for grants on an annual basis, for general program administration.

(e) Moneys appropriated or otherwise available for the Workforce Development Initiative Program shall be allocated by line item to an appropriate account. Any moneys remaining in the fund at the close of a fiscal year are carried forward for use in the next fiscal year.

(f) Nothing in this article requires a specific level of appropriation by the Legislature.

ARTICLE 10. FEES AND OTHER MONEY COLLECTED AT STATE INSTITUTIONS OF HIGHER EDUCATION.

§18B-10-1. Enrollment, tuition and other fees at education institutions; refund of fees.

(a) Each governing board shall fix tuition and other fees for each academic term for the different classes or categories of students enrolling at the state institution of higher education under its jurisdiction and may include among the tuition and fees any one or more of the following as defined in section one-b of this article:

(1) Tuition and required educational and general fees;

(2) Auxiliary and auxiliary capital fees; and

(3) Required educational and general capital fees.
(b) A governing board may establish a single special revenue account for each of the following classifications of fees:

(1) All tuition and required educational and general fees collected;

(2) All auxiliary and auxiliary capital fees collected; and

(3) All required educational and general capital fees collected to support existing systemwide and institutional debt service and future systemwide and institutional debt service, capital projects and campus renewal for educational and general facilities.

(4) Subject to any covenants or restrictions imposed with respect to revenue bonds payable from the accounts, a governing board may expend funds from each special revenue account for any purpose for which funds were collected within that account regardless of the original purpose for which the funds were collected.

(c) The purposes for which tuition and fees may be expended include, but are not limited to, health services, student activities, recreational, athletic and extracurricular activities. Additionally, tuition and fees may be used to finance a student’s attorney to perform legal services for students in civil matters at the institutions. The legal services are limited to those types of cases, programs or services approved by the president of the institution where the legal services are to be performed.

(d) By October 1, 2011, the commission and council each shall propose a rule for legislative approval in accordance with article three-a, chapter twenty-nine-a of this code to govern the fixing, collection and expenditure of tuition and other fees by the governing boards under their respective jurisdictions.

(e) The schedule of all tuition and fees, and any changes in the schedule, shall be entered in the minutes of the meeting of
the appropriate governing board and the board shall file with the commission or council, or both, as appropriate, and the Legislative Auditor a certified copy of the schedule and changes.

(f) The governing boards shall establish the rates to be charged full-time students, as defined in section one-b of this article, who are enrolled during a regular academic term.

(1) Undergraduate students taking fewer than twelve credit hours in a regular term shall have their fees reduced pro rata based upon one twelfth of the full-time rate per credit hour and graduate students taking fewer than nine credit hours in a regular term shall have their fees reduced pro rata based upon one ninth of the full-time rate per credit hour.

(2) Fees for students enrolled in summer terms or other nontraditional time periods shall be prorated based upon the number of credit hours for which the student enrolls in accordance with this subsection.

(g) All fees are due and payable by the student upon enrollment and registration for classes except as provided in this subsection:

(1) The governing boards shall permit fee payments to be made in installments over the course of the academic term. All fees shall be paid prior to awarding course credit at the end of the academic term.

(2) The governing boards also shall authorize the acceptance of credit cards or other payment methods which may be generally available to students for the payment of fees. The governing boards may charge the students for the reasonable and customary charges incurred in accepting credit cards and other methods of payment.

(3) If a governing board determines that a student’s finances are affected adversely by a legal work stoppage, it may allow the
student an additional six months to pay the fees for any academic

term. The governing board shall determine on a case-by-case
basis whether the finances of a student are affected adversely.

(4) The commission and council jointly shall propose a rule
in accordance with article three-a, chapter twenty-nine-a of this
code defining conditions under which a governing board may
offer tuition and fee deferred payment plans itself or through
third parties.

(5) A governing board may charge interest or fees for any
delayed or installment payment plans.

(h) In addition to the other fees provided in this section, each
governing board may impose, collect and distribute a fee to be
used to finance a nonprofit, student-controlled public interest
research group if the students at the institution demonstrate
support for the increased fee in a manner and method established
by that institution’s elected student government. The fee may not
be used to finance litigation against the institution.

(i) Governing boards shall retain tuition and fee revenues not
pledged for bonded indebtedness or other purposes in accordance
with the tuition rules proposed by the commission and council
pursuant to this section. The tuition rules shall address the
following areas:

(1) Providing a basis for establishing nonresident tuition and
fees;

(2) Allowing governing boards to charge different tuition
and fees for different programs;

(3) Authorizing a governing board to propose to the
commission, council or both, as appropriate, a mandatory
auxiliary fee under the following conditions:
(A) The fee shall be approved by the commission, council or both, as appropriate, and either the students below the senior level at the institution or the Legislature before becoming effective;

(B) Increases may not exceed previous state subsidies by more than ten percent;

(C) The fee may be used only to replace existing state funds subsidizing auxiliary services such as athletics or bookstores;

(D) If the fee is approved, the amount of the state subsidy shall be reduced annually by the amount of money generated for the institution by the fees. All state subsidies for the auxiliary services shall cease five years from the date the mandatory auxiliary fee is implemented;

(4) Establishing methodology, where applicable, to ensure that, within the appropriate time period under the compact, community and technical college tuition rates for students in all community and technical colleges will be commensurate with the tuition and fees charged by their peer institutions.

(j) A penalty may not be imposed by the commission or council upon any governing board based upon the number of nonresidents who attend the institution unless the commission or council determines that admission of nonresidents to any institution or program of study within the institution is impeding unreasonably the ability of resident students to attend the institution or participate in the programs of the institution. The governing boards shall report annually to the commission or council on the numbers of nonresidents and any other enrollment information the commission or council may request.

(k) Tuition and fee increases of the governing boards, including the governing boards of Marshall University and West
Virginia University, are subject to rules adopted by the commission and council pursuant to this section and in accordance with article three-a, chapter twenty-nine-a of this code. The commission or council, as appropriate, shall examine individually each request from a governing board for an increase and make its determinations as follows:

(1) A tuition and fee increase greater than five percent for resident students proposed by a governing board requires the approval of the commission or council, as appropriate.

(2) A fee used solely for the purpose of complying with the athletic provisions of 20 U. S. C. §1681, et seq., known as Title IX of the Education Amendment of 1972, is exempt from the limitations on fee increases set forth in this subsection for three years from the effective date of the section.

(3) In determining whether to approve or deny a governing board’s request for a tuition and/or fee increase for resident students greater than the increases granted pursuant to subdivision (1) of this subsection, the commission or council shall determine the progress the governing board has made toward meeting the conditions outlined in this subsection and shall make this determination the predominate factor in its decision. The commission or council shall consider the degree to which each governing board has met the following conditions:

(A) Maximizes resources available through nonresident tuition and fee charges to the satisfaction of the commission or council;

(B) Consistently achieves the benchmarks established in the compact pursuant to article one-d of this chapter;

(C) Continuously pursues the statewide goals for post-secondary education and the statewide compact established in this chapter;
(D) Demonstrates to the satisfaction of the commission or council that an increase will be used to maintain high-quality programs at the institution;

(E) Demonstrates to the satisfaction of the commission or council that the governing board is making adequate progress toward achieving the goals for education established by the Southern Regional Education Board;

(F) Demonstrates to the satisfaction of the commission or council that the governing board has considered the average per capita income of West Virginia families and their ability to pay for any increases; and

(G) Demonstrates to the satisfaction of the commission or council that base appropriation increases have not kept pace with recognized nation-wide inflationary benchmarks;

(4) This section does not require equal increases among governing boards nor does it require any level of increase by a governing board.

(5) The commission and council shall report to the Legislative Oversight Commission on Education Accountability regarding the basis for approving or denying each request as determined using the criteria established in this subsection.

ARTICLE 13. HIGHER EDUCATION – INDUSTRY PARTNERSHIPS.

§18B-13-5. Use of state property and equipment; faculty.

(a) The governing boards are authorized to provide for the low cost and economical use and sharing of state property and equipment, including computers, research labs and other scientific and necessary equipment to assist any qualified business within an approved research park or zone or technology
section. The commission shall approve a schedule of nominal or reduced-cost reimbursements to the state for such use.

(b) The governing boards shall develop and provide for a program of release time, sabbaticals or other forms of faculty involvement or participation with any qualifying business.

(c) The Legislature finds that cooperation, communication and coordination are integral components of higher education’s involvement in economic development. In order to proceed in a manner that is cost effective and time efficient, it is the duty of the commission to review and coordinate such aspects of the programs administered by the governing boards. The review and coordination may not operate to affect adversely sources of funding or any statutory characterization of any program as an independent entity.

ARTICLE 18. EMINENT SCHOLARS ENDOWMENT TRUST FUND ACT.


The Higher Education Policy Commission shall:

(a) Establish documentation standards and review procedures to determine the eligibility of donor gifts to participate in the eminent scholars program when the gift is initially received or whenever the terms are significantly changed;

(b) Require that each participating institution report on total gifts received, investment earnings realized and anticipated expenditures in its annual operating budget request;

(c) Annually develop and submit a consolidated budget request for the eminent scholars program to the Governor for the fiscal year beginning on July 1, 2003. The budget request shall
include a request for an appropriation by the Legislature to each
institutional account each fiscal year in an amount equal to the
investment earnings in the previous fiscal year which are
intended for use in the fiscal year to supplement the salaries of
eminent scholars;

(d) Allocate any funds appropriated by the Legislature
among the participating institutions in equal installments at the
beginning of each quarter.

CHAPTER 18C. STUDENT LOANS;
SCHOLARSHIPS AND STATE AID.

ARTICLE 3. HEALTH PROFESSIONALS STUDENT LOAN PROGRAM.

§18C-3-4. Nursing Scholarship Program; Center for Nursing
Fund; administration; scholarship awards; service
requirements.

(a) There is continued in the State Treasury a special revenue
account known as the “Center for Nursing Fund” to be
administered by the commission to implement the provisions of
this section and article seven-b, chapter thirty of this code. Any
moneys in the account on the effective date of this section are
transferred to the commission’s administrative authority.
Balances remaining in the fund at the end of the fiscal year do
not expire or revert to the general revenue. All costs associated
with the administration of this section and article seven-b,
chapter thirty of this code shall be paid from the Center for
Nursing Fund under the direction of the Vice Chancellor for
Administration. Administrative costs are to be minimized and
the maximum amount feasible is to be used to fund awards for
students in nursing programs.

(b) The account is funded from the following sources:
(1) A supplemental licensure fee, not to exceed $10 per year, to be paid by all nurses licensed by the Board of Examiners for Registered Professional Nurses, pursuant to section eight-a, article seven, chapter thirty of this code, and the Board of Examiners for Licensed Practical Nurses, pursuant to section seven-a, article seven-a, chapter thirty of this code;

(2) Repayments, including interest as set by the Vice Chancellor for Administration, collected from recipients who fail to practice or teach in West Virginia under the terms of the scholarship agreement; and

(3) Any other funds from any source as may be added to the account.

(c) In consultation with the Board of Directors of the West Virginia Center for Nursing, established pursuant to article seven-b, chapter thirty of this code, the commission shall administer a scholarship, designated the Nursing Scholarship Program, designed to benefit nurses who practice in hospitals and other health care institutions or teach in state nursing programs.

(1) Awards are available for students enrolled in accredited nursing programs in West Virginia. A recipient shall execute an agreement to fulfill a service requirement or repay the amount of any award received.

(2) Awards are made as follows, subject to the rule required by this section:

(A) An award for any student may not exceed the full cost of education for program completion.

(B) An award of up to $3,000 is available for a student in a licensed practical nurse education program. A recipient is
required to practice nursing in West Virginia for one year following program completion.

(C) An award of up to $7,500 is available for a student who has completed one-half of a registered nurse education program. A recipient is required to teach or practice nursing in West Virginia for two years following program completion.

(D) An award of up to $15,000 is available to a student in a nursing master’s degree program or a doctoral nursing or education program. A recipient is required to teach in West Virginia for two years following program completion.

(E) An award of up to $1,000 per year is available for a student obtaining a licensed practical nurse teaching certificate. A recipient is required to teach in West Virginia for one year per award received.

(d) An award recipient shall satisfy one of the following conditions:

(1) Fulfill the service requirement pursuant to this section and the legislative rule; or

(2) Repay the commission for the amount awarded, together with accrued interest as stipulated in the service agreement.

(e) The commission shall promulgate a rule for legislative approval pursuant to article three-a, chapter twenty-nine-a of this code to implement and administer this section. The rule shall provide for the following:

(1) Eligibility and selection criteria for program participation;

(2) Terms of a service agreement which a recipient shall execute as a condition of receiving an award;
(3) Repayment provisions for a recipient who fails to fulfill the service requirement;

(4) Forgiveness options for death or disability of a recipient;

(5) An appeal process for students denied participation or ordered to repay awards; and

(6) Additional provisions as necessary to implement this section.

ARTICLE 5. HIGHER EDUCATION GRANT PROGRAM.

§18C-5-7. Higher education adult part-time student grant program.

(a) There is established the Higher Education Adult Part-time Student Grant Program, referred to in this section as the HEAPS grant program. The grant program established and authorized by this section is administered by the vice chancellor for administration. Moneys appropriated or otherwise available for the grant program shall be allocated by line item to an appropriate account. Any moneys remaining in the fund at the close of a fiscal year shall be carried forward for use in the next fiscal year.

(b) As used in this section, the following terms have the meanings ascribed to them:

(1) “Approved distance education” means a course of study offered via electronic access that has been approved for inclusion in the applicant’s program of study by the eligible institution of higher education at which the applicant is enrolled or has been accepted for enrollment;

(2) “Part-time” means enrollment for not less than three nor more than eleven semester or term hours: Provided, That in the
case of enrollment in postsecondary certificate, industry
recognized credential and other skill development programs in
demand occupations in this state, “part-time” means enrollment
on such basis as is established for the program in which enrolled;

(3) “Satisfactory academic progress” means maintaining a
cumulative grade point average of at least 2.0 on a 4.0 grading
scale with a goal of obtaining a certificate, associate degree or
bachelor’s degree. In the case of postsecondary certificate,
industry recognized credential and other skill development
programs, satisfactory academic progress means continuous
advancement toward completion of the program on the normal
schedule established for the program in which enrolled;

(4) “Eligible institution” means:

(A) Any community college; community and technical
college; adult technical preparatory education program or
training;

(B) Any state college or university, as those terms are
defined in section two, article one, chapter eighteen-b of this
code;

(C) Any approved institution of higher education as that term
is defined in section two of this article; and

(D) Any approved distance education, including world wide
web based courses;

(5) “Eligible program or programs” or “eligible course or
courses” means, in addition to programs and courses offered by
eligible institutions as defined in subdivision (4) of this
subsection:

(A) Programs and courses offered by any nationally
accredited degree granting institution of higher learning
permitted pursuant to section five, article three, chapter
eighteen-b of this code and approved by the joint commission for
vocational-technical-occupational education; and

(B) Any postsecondary certificate, industry recognized
credential and other skill development programs of study as
defined in this section in a demand occupation in this state;

(6) “State resident” means a student who has lived in West
Virginia continuously for a minimum of twelve months
immediately preceding the date of application for a HEAPS
grant or renewal of a grant;

(7) “Postsecondary certificate program” means an organized
program of study, approved by the joint commission for
vocational-technical-occupational education, with defined
competencies or skill sets that may be offered for credit or
noncredit and which culminates in the awarding of a certificate:
Provided, That postsecondary certificate programs offered by
eligible institutions as defined in subdivision (4) of this
subsection do not require the approval of the joint commission
for vocational-technical-occupational education;

(8) “Demand occupation” means any occupation having
documented verification from employers that job opportunities
in that occupation are currently available or are projected to be
available within a year within the state or regions of the state.
The Joint Commission for Vocational-Technical-Occupational
Education shall prepare and update annually a list of occupations
that they determine meet the requirements of this definition;

(9) “Industry-recognized credential program” means an
organized program that meets nationally recognized standards in
a particular industry, is approved by the joint commission for
vocational-technical-occupational education and which
culminates in the awarding of a certification or other credential
79 commonly recognized in that industry: Provided, That industry
80 recognized credential programs offered by eligible institutions
81 as defined in subdivision (4) of this subsection do not require the
82 approval of the Joint Commission for Vocational-Technical-
83 Occupational Education; and

84 (10) “Skill development program” means a structured
85 sequence or set of courses, approved by the joint commission for
86 vocational-technical-occupational education, with defined
87 competencies that are designed to meet the specific skill
88 requirements of an occupation and which culminates in the
89 awarding of a certificate of completion that specifically lists the
90 competencies or skills mastered: Provided, That skill
91 development programs offered by eligible institutions as defined
92 in subdivision (4) of this subsection do not require the approval
93 of the joint commission.

94 (c) A person is eligible for consideration for a HEAPS grant
95 if the person:

96 (1) Demonstrates that he or she has applied for, accepted, or
97 both, other student financial assistance in compliance with
98 federal financial aid rules, including the federal Pell grant;

99 (2) Demonstrates financial need for funds, as defined by
100 legislative rule;

101 (3) Is a state resident and may not be considered a resident
102 of any other state;

103 (4) Is a United States citizen or permanent resident thereof;

104 (5) Is not incarcerated in a correctional facility;

105 (6) Is not in default on a higher education loan; and

106 (7) Is enrolled in a program of study at less than the graduate
107 level on a part-time basis in an eligible institution or program of
study and is making satisfactory academic progress at the time
of application: Provided, That the requirement that the student
be making satisfactory academic progress may not preclude a
HEAPS grant award to a student who has been accepted for
enrollment in an eligible institution or program of study but has
not yet been enrolled.

(d) Each HEAPS grant award is eligible for renewal until the
course of study is completed, but not to exceed an additional
nine years beyond the first year of the award.

(e) The Higher Education Policy Commission shall propose
a legislative rule pursuant to article three-a, chapter
twenty-nine-a of this code to implement the provisions of this
section which shall be filed with the Legislative Oversight
Commission on Education Accountability by September 1, 2003.
The Legislature hereby declares that an emergency situation
exists and, therefore, the policy commission may establish, by
emergency rule, under the procedures of article three-a, chapter
twenty-nine-a of this code, a rule to implement the provisions of
this section, after approval by the Legislative Oversight
Commission on Education Accountability.

(f) The legislative rule shall provide at least the following:

(1) That consideration of financial need, as required by
subdivision (3), subsection (c) of this section, include the
following factors:

(A) Whether the applicant has dependents as defined by
federal law;

(B) Whether the applicant has any personal hardship as
determined at the discretion of the vice chancellor for
administration; and

(C) Whether the applicant will receive any other source of
student financial aid during the award period.
(2) That an appropriate allocation process be provided for distribution of funds directly to the eligible institutions or programs based on the part-time enrollment figures of the prior year;

(3) That not less than twenty-five percent of the funds appropriated in any one fiscal year be used to make grants to students enrolled in postsecondary certificate, industry recognized credential and other skill development programs of study: Provided, That after giving written notice to the Legislative Oversight Commission on Education Accountability, the vice chancellor for administration may allocate less than twenty-five percent of the funds for such grants;

(4) That ten percent of the funds appropriated in any one fiscal year shall be granted to state community and technical colleges by the council for community and technical college education in accordance with a process specified in the rule for noncredit and customized training programs which further the economic development goals of the state, help meet the training and skill upgrade needs of employers in the state, and for which funds are not available from other sources;

(5) That any funds not expended by an eligible institution or program at the end of each fiscal year shall be returned to the vice chancellor for administration for distribution under the provisions of this section;

(6) That grants under this section shall be available for approved distance education throughout the calendar year, subject only to the availability of funds; and

(7) That the amount of each HEAPS grant award be determined using the following guidelines:

(A) The amount of any HEAPS grant awarded to a student per semester, term hour or program for those students who are
enrolled in eligible institutions or programs operated under the jurisdiction of an agency of the state or a political subdivision thereof shall be based upon the following:

(i) Actual cost of tuition and fees;

(ii) The portion of the costs determined to be appropriate by the commission; and

(iii) In addition to factors (i) and (ii) above, in determining the amount of the award, the vice chancellor may consider the demand for the program pursuant to subdivision (8), subsection (b) of this section; and

(B) The amount of any HEAPS grant awarded to a student who is enrolled in any other eligible institution, program or course shall be no greater than the average amount for comparable programs or courses as determined pursuant to the provisions of paragraph (A) above.

(g) The HEAPS grant program is subject to any provision of this article not inconsistent with the provisions of this section.

ARTICLE 7. WEST VIRGINIA PROVIDING REAL OPPORTUNITIES FOR MAXIMIZING IN-STATE STUDENT EXCELLENCE SCHOLARSHIP PROGRAM.

§18C-7-5. Powers and duties of the West Virginia Higher Education Policy Commission regarding the PROMISE Scholarship.

(a) Powers of commission. — In addition to the powers granted by any other provision of this code, the commission has the powers necessary or convenient to carry out the purposes and provisions of this article including, but not limited to, the following express powers:
(1) To promulgate legislative rules in accordance with the provisions of article three-a, chapter twenty-nine-a of this code to effectuate the purposes of this article;

(2) To invest any of the funds of the West Virginia PROMISE Scholarship Fund established in section seven of this article with the West Virginia Investment Management Board in accordance with the provisions of article six, chapter twelve of this code. Any investments made pursuant to this article shall be made with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in conducting an enterprise of a like character and with like aims. Fiduciaries shall diversify plan investments to the extent permitted by law to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so;

(3) To execute contracts and other necessary instruments;

(4) To impose reasonable requirements for residency for students applying for the PROMISE scholarship. Except as provided in section four, article one of this chapter, a student shall have met the following requirements to be eligible:

(A) Completed at least one half of the credits required for high school graduation in a public or private high school in this state; or

(B) Received instruction in the home or other approved place pursuant to subsection (c), section one, article eight, chapter eighteen of this code for the two years immediately preceding application;

(C) This subsection does not establish residency requirements for matriculation or fee payment purposes at state institutions of higher education;
(5) To contract for necessary goods and services, to employ necessary personnel and to engage the services of private persons for administrative and technical assistance in carrying out the responsibilities of the scholarship program. Any services provided or secured to implement or administer the provisions of this section remain under the direction and authority of the Vice Chancellor for Administration;

(6) To solicit and accept gifts, including bequests or other testamentary gifts made by will, trust or other disposition, grants, loans and other aid from any source and to participate in any federal, state or local governmental programs in carrying out the purposes of this article;

(7) To define the terms and conditions under which scholarships are awarded with the minimum requirements being set forth in section six of this article; and

(8) To establish other policies, procedures and criteria necessary to implement and administer the provisions of this article.

(b) Duties of commission. — In addition to any duty required by any other provision of this code, the commission has the following responsibilities:

(1) To operate the program in a fiscally responsible manner and within the limits of available funds;

(2) To operate the program as a merit-based program;

(3) To adjust academic eligibility requirements should projections indicate that available funds will not be sufficient to cover future costs; and

(4) To maintain contact with graduates who have received PROMISE scholarships and to provide a written statement of
intent to recipients who are selected to receive a PROMISE scholarship notifying them that acceptance of the scholarship entails a responsibility to supply the following:

(A) Information requested by the commission to determine the number and percentage of recipients who shall:

(i) Continue to live in West Virginia after graduation;

(ii) Obtain employment in West Virginia after graduation; and

(iii) Enroll in post-graduate education programs;

(B) For PROMISE scholars who enroll in post-graduate education programs, the name of the state in which each post-graduate institution is located; and

(C) Any other relevant information the commission reasonably requests to implement the provisions of this subdivision.

AN ACT to amend and reenact §18-4-2 of the Code of West Virginia, 1931, as amended; to amend and reenact §18A-2-2, §18A-2-5a, §18A-2-6, §18A-2-7 and §18A-2-8a of said code; to amend said code by adding thereto a new section, designated §18A-2-7b; to
amend and reenact, §18A-4-7a, §18A-4-8b and §18A-4-8e of said code; and to amend and reenact §18A-5-8 of said code, all relating to school personnel; including assistant and associate superintendents under provisions for permanent administrative certification for superintendents; changing deadline for county board vote on termination of continuing contracts of teachers; requiring the department to report on database system certain disqualifications to teach; changing deadlines for teachers and service personnel to give notice of retirement to qualify for early notification payment; changing deadline for county board vote on termination of continuing contracts of service persons; changing deadline for notice of consideration for transfer; changing deadline for hearing on proposed transfer; changing deadline to provide list of employees considered for transfer to county board; changing method of notification and documentation of receipt of notice to employees recommended for transfer; making technical alignment of dates on personnel action and foreseen need for personnel; consolidating limitations on employee transfers after twentieth day prior to instructional term; removing reports to state superintendent; removing exemption for position vacated but not posted; changing transfer limit to twentieth day for prior for service person employed and assigned as autism mentor or certain aid, paraprofessional, interpreter or early childhood assistant teacher; limiting transfers service persons after the twentieth day prior with certain exceptions; changing deadline providing county board list of probationary teachers recommended for rehire; providing for filling position known on or before March 1 to exist for the next school year and requiring employees subject to release to be considered prior to posting for application for nonemployees; removing requirement to submit lateral transfer policies to state board to be complied for reports to LOCEA; facilitating postings for longer than the five-day minimum; removing requirement to any applicant of status of his or her application after hiring decision made; changing requirements for notice and receipt notification to persons on preferred recall of all position openings;
requiring periodic review and update of service personnel competency tests; removing requiring requirement for minimum one day in-service training to assist preparation for competency tests; removing obsolete language and making technical improvements.

Be it enacted by the Legislature of West Virginia:

That §18-4-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §18A-2-2, §18A-2-5a, §18A-2-6, §18A-2-7 and §18A-2-8a of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §18A-2-7b; that §18A-4-7a, §18A-4-8b and §18A-4-8e of said code be amended and reenacted; and that §18A-5-8 of said code be amended and reenacted, all to read as follows:

CHAPTER 18. EDUCATION.

ARTICLE 4. COUNTY SUPERINTENDENT OF SCHOOLS.

§18-4-2. Qualifications; health certificate; disability; acting superintendent.

(a) Each county superintendent shall hold a professional administrative certificate endorsed for superintendent, or a first class permit endorsed for superintendent, subject to the following:

(1) A superintendent who holds a first class permit may be appointed for one year only, and may be reappointed two times for an additional year each upon an annual evaluation by the county board and a determination of satisfactory performance and reasonable progress toward completion of the requirements for a professional administrative certificate endorsed for superintendent;

(2) Any candidate for superintendent, assistant superintendent or associate superintendent, who possesses an
earned doctorate from an accredited institution of higher education and either has completed three successful years of teaching in public education or has the equivalent of three years of experience in management or supervision as defined by state board rule, after employment by the county board shall be granted a permanent administrative certificate and shall be a licensed county superintendent;

(3) The state board shall promulgate a legislative rule in accordance with article three-b, chapter twenty-nine-a of this code, to address those cases where a county board finds that course work needed by the county superintendent who holds a first class permit is not available or is not scheduled at state institutions of higher education in a manner which will enable the county superintendent to complete normal requirements for a professional administrative certificate within the three-year period allowed under the permit; and

(4) Any person employed as assistant superintendent or educational administrator prior to June 27, 1988, and who was previously employed as superintendent is not required to hold the professional administrative certificate endorsed for superintendent.

(b) In addition to other requirements set forth in this section, a county superintendent shall meet the following health-related conditions of employment:

(1) Before entering upon the discharge of his or her duties, file with the president of the county board a certificate from a licensed physician certifying the following:

(A) A tuberculin skin test, of the type Mantouxs skin test, approved by the Director of the Division of Health, has been made within four months prior to the beginning of the term of the county superintendent; and
(B) The county superintendent does not have tuberculosis in a communicable state based upon the test results and any further study;

(2) After completion of the initial test, the county superintendent shall have an approved tuberculin skin test once every two years or more frequently if medically indicated. Positive reactors to the skin test are to be referred immediately to a physician for evaluation and indicated treatment or further studies;

(3) A county superintendent who is certified by a licensed physician to have tuberculosis in a communicable stage shall have his or her employment discontinued or suspended until the disease has been arrested and is no longer communicable; and

(4) A county superintendent who fails to complete required follow-up examinations as set forth in this subsection shall be suspended from employment until a report of examination is confirmed.

CHAPTER 18A. SCHOOL PERSONNEL.

ARTICLE 2. SCHOOL PERSONNEL.

§18A-2-2. Employment of teachers; contracts; continuing contract status; how terminated; dismissal for lack of need; released time; failure of teacher to perform contract or violation thereof; written notice bonus for teachers and professional personnel.

(a) Before entering upon their duties, all teachers shall execute a contract with their county boards, which shall state the salary to be paid and shall be in the form prescribed by the state superintendent. Each contract shall be signed by the teacher and by the president and secretary of the county board and shall be filed, together with the certificate of the teacher, by the secretary
of the office of the county board. When necessary to facilitate
the employment of employable professional personnel and
prospective and recent graduates of teacher education programs
who have not yet attained certification, the contract may be
signed upon the condition that the certificate is issued to the
employee prior to the beginning of the employment term in
which the employee enters upon his or her duties.

(b) Each teacher’s contract, under this section, shall be
designated as a probationary or continuing contract. A
probationary teachers contract shall be for a term of not less than
one nor more than three years, one of which shall be for
completion of a beginning teacher internship pursuant to the
provisions of section two-b, article three of this chapter, if
applicable. If, after three years of such employment, the teacher
who holds a professional certificate, based on at least a
bachelor’s degree, has met the qualifications for a bachelors
degree and the county board enter into a new contract of
employment, it shall be a continuing contract, subject to the
following:

(1) Any teacher with less than a bachelor’s degree who holds
a valid certificate and is employed in a county beyond the
three-year probationary period shall be granted continuing
contract status upon qualifying for the professional certificate
based upon a bachelor’s degree, if the teacher becomes
reemployed; and

(2) A teacher holding continuing contract status with one
county shall be granted continuing contract status with any other
county upon completion of one year of acceptable employment
if the employment is during the next succeeding school year or
immediately following an approved leave of absence extending
no more than one year.

(c) The continuing contract of any teacher shall remain in
full force and effect except as modified by mutual consent of the
school board and the teacher, unless and until terminated, subject
to the following:

(1) A continuing contract may not be terminated except:

(A) By a majority vote of the full membership of the county
board on or before May 1 of the then current year, after written
notice, served upon the teacher, return receipt requested, stating
cause or causes and an opportunity to be heard at a meeting of
the board prior to the board’s action on the termination issue; or

(B) By written resignation of the teacher on or before May
1 to initiate termination of a continuing contract;

(2) The termination shall take effect at the close of the
school year in which the contract is terminated;

(3) The contract may be terminated at any time by mutual
consent of the school board and the teacher;

(4) This section does not affect the powers of the school
board to suspend or dismiss a principal or teacher pursuant to
section eight of this article;

(5) A continuing contract for any teacher holding a
certificate valid for more than one year and in full force and
effect during the school year 1984-1985 shall remain in full
force and effect;

(6) A continuing contract does not operate to prevent a
teacher’s dismissal based upon the lack of need for the teacher’s
services pursuant to the provisions of law relating to the
allocation to teachers and pupil-teacher ratios. The written
notification of teachers being considered for dismissal for lack
of need shall be limited to only those teachers whose
consideration for dismissal is based upon known or expected
circumstances which will require dismissal for lack of need. An
employee who was not provided notice and an opportunity for a
hearing pursuant to this subsection may not be included on the list. In case of dismissal for lack of need, a dismissed teacher shall be placed upon a preferred list in the order of their length of service with that board. A teacher may not be employed by the board until each qualified teacher on the preferred list, in order, has been offered the opportunity for reemployment in a position for which he or she is qualified, not including a teacher who has accepted a teaching position elsewhere. The reemployment shall be upon a teacher’s preexisting continuing contract and has the same effect as though the contract had been suspended during the time the teacher was not employed.

(d) In the assignment of position or duties of a teacher under a continuing contract, the board may provide for released time of a teacher for any special professional or governmental assignment without jeopardizing the contractual rights of the teacher or any other rights, privileges or benefits under the provisions of this chapter. Released time shall be provided for any professional educator while serving as a member of the Legislature during any duly constituted session of that body and its interim and statutory committees and commissions without jeopardizing his or her contractual rights or any other rights, privileges, benefits or accrual of experience for placement on the state minimum salary schedule in the following school year under the provisions of this chapter, board policy and law.

(e) A teacher is disqualified to teach in any public school in the state for the duration of the next ensuing school year, if that teacher:

(1) Fails to fulfill his or her contract with the board, unless prevented from doing so by personal illness or other just cause or unless released from his or her contract by the board, or

(2) Violates any lawful provision of his or her contract: Provided, That the marriage of a teacher is not considered a failure to fulfill, or violation of, the contract.
The State Department of Education or board may hold all papers and credentials of the teacher on file for a period of one year for the violation and shall report such disqualification status in the National Association of State Directors of Teacher Education and Certification (NASDTEC) database system.

(f) Any classroom teacher, as defined in section one, article one of this chapter, who desires to resign employment with a county board or request a leave of absence, the resignation or leave of absence to become effective on or before July 15 of the same year and after completion of the employment term, may do so at any time during the school year by written notification of the resignation or leave of absence and any notification received by a county board shall automatically extend the teacher’s public employee insurance coverage until August 31 of the same year.

(g) (1) A classroom teacher who gives written notice to the county board on or before March 1 of the school year of his or her retirement from employment with the board at the conclusion of the school year shall be paid $500 from the early notification of retirement line item established for the Department of Education for this purpose, subject to appropriation by the Legislature. If the appropriations to the Department of Education for this purpose are insufficient to compensate all applicable teachers, the Department of Education shall request a supplemental appropriation in an amount sufficient to compensate all such teachers. Additionally, if funds are still insufficient to compensate all applicable teachers, the priority of payment is for teachers who give written notice the earliest. This payment may not be counted as part of the final average salary for the purpose of calculating retirement.

(2) The position of a classroom teacher providing written notice of retirement pursuant to this subsection may be considered vacant and the county board may immediately post the position as an opening to be filled at the conclusion of the
school year. If a teacher has been hired to fill the position of a retiring classroom teacher prior to the start of the next school year, the retiring classroom teacher is disqualified from continuing his or her employment in that position. However, the retiring classroom teacher may be permitted to continue his or her employment in that position and forfeit the early retirement notification payment if, after giving notice of retirement in accordance with this subsection, he or she becomes subject to a significant unforeseen financial hardship, including a hardship caused by the death or illness of an immediate family member or loss of employment of a spouse. Other significant unforeseen financial hardships shall be determined by the county superintendent on a case-by-case basis. This subsection does not prohibit a county school board from eliminating the position of a retiring classroom teacher.


Each county board is authorized to pay, entirely from local funds, $500 or less to any service employee, or to any professional employee who is not a classroom teacher, who gives written notice to the county board on or before March 1 of the school year of his or her retirement from employment with the board at the conclusion of the school year.

§18A-2-6. Continuing contract status for service personnel; termination.

After three years of acceptable employment, each service person who enters into a new contract of employment with the board shall be granted continuing contract status. A service person holding continuing contract status with one county shall be granted continuing contract status with any other county upon completion of one year of acceptable employment if such employment is during the next succeeding school year or immediately following an approved leave of absence which
extends no more than one year. The continuing contract of any such employee shall remain in full force and effect except as modified by mutual consent of the school board and the employee, unless and until terminated with written notice, stating cause or causes, to the employee, by a majority vote of the full membership of the board on or before May 1 of the then current year, or by written resignation of the employee on or before that date. The affected employee has the right of a hearing before the board, if requested, before final action is taken by the board upon the termination of such employment.

Those employees who have completed three years of acceptable employment as of the effective date of this legislation shall be granted continuing contract status.

§18A-2-7. Assignment, transfer, promotion, demotion, suspension and recommendation of dismissal of school personnel by superintendent; preliminary notice of transfer; hearing on the transfer; proof required.

(a) The superintendent, subject only to approval of the board, may assign, transfer, promote, demote or suspend school personnel and recommend their dismissal pursuant to provisions of this chapter. However, an employee shall be notified in writing by the superintendent on or before April 1 if he or she is being considered for transfer or to be transferred. Only those employees whose consideration for transfer or intended transfer is based upon known or expected circumstances which will require the transfer of employees shall be considered for transfer or intended for transfer and the notification shall be limited to only those employees. Any teacher or employee who desires to protest the proposed transfer may request in writing a statement of the reasons for the proposed transfer. The statement of reasons shall be delivered to the teacher or employee within ten days of the receipt of the request. Within ten days of the receipt of the statement of the reasons, the teacher or employee may make
written demand upon the superintendent for a hearing on the proposed transfer before the county board. The hearing on the proposed transfer shall be held on or before May 1. At the hearing, the reasons for the proposed transfer must be shown.

(b) The superintendent at a meeting of the board on or before May 1 shall furnish in writing to the board a list of teachers and other employees to be considered for transfer and subsequent assignment for the next ensuing school year. An employee who was not provided notice and an opportunity for a hearing pursuant to subsection (a) of this section may not be included on the list. All other teachers and employees not so listed shall be considered as reassigned to the positions or jobs held at the time of this meeting. The list of those recommended for transfer shall be included in the minute record of the meeting and all those so listed shall be notified in writing and shall be delivered within ten days following the board meeting, with written receipt notification documented by the superintendent, and shall state that the person is being recommended for transfer and subsequent assignment and the reasons therefor.

(c) The superintendent’s authority to suspend school personnel shall be temporary only pending a hearing upon charges filed by the superintendent with the county board and the period of suspension may not exceed thirty days unless extended by order of the board.

(d) The provisions of this section respecting hearing upon notice of transfer are not applicable in emergency situations where a school building becomes damaged or destroyed through an unforeseeable act and which act necessitates a transfer of the school personnel because of the aforementioned condition of the building.

(e) Notwithstanding this section or any provision of this code, when actual student enrollment in a grade level or
program, unforeseen on or before May 1 of the preceding school year, permits the assignment of fewer teachers or service personnel to or within a school under any pupil-teacher ratio, class size or caseload standard established in section eighteen-a, article five, chapter eighteen of this code or any policy of the state board, the superintendent, with board approval, may reassign the surplus personnel to another school or to another grade level or program within the school if needed there to comply with any such pupil-teacher ratio, class size or caseload standard.

(1) Before any reassignment may occur pursuant to this subsection, notice shall be provided to the employee and the employee shall be provided an opportunity to appear before the county board to state the reasons for his or her objections, if any, prior to the board voting on the reassignment.

(2) Except as otherwise provided in subdivision (1) of this subsection, the reassignment may be made without following the notice and hearing provisions of this section, and at any time during the school year when the conditions of this subsection are met: Provided, That the reassignment may not occur after the last day of the second school month.

(3) A professional employee reassigned under this subsection shall be the least senior of the surplus professional personnel who holds certification or licensure to perform the duties at the other school or at the grade level or program within the school.

(4) A service employee reassigned under this subsection shall be the least senior of the surplus personnel who holds the same classification or multiclassification needed to perform the duties at the other school or at the grade level or program within the same school.
§18A-2-7b. Limitations on voluntary transfer of school employees to posted vacant position after twentieth day prior to beginning of instructional term.

(a) The Legislature finds that it is not in the best interest of the students particularly in the elementary grades to have multiple teachers for any one grade level or course during the instructional term. Therefore, it is the intent of the Legislature that the filling of positions through transfers of personnel from one professional position to another after the twentieth day prior to the beginning of the instructional term should be kept to a minimum in accordance with the following:

(1) After the twentieth day prior to the beginning of the instructional term, no person employed and assigned to a professional position may transfer to another professional position in the county during that instructional term unless the person holding that position does not have valid certification;

(2) The person may apply for any posted, vacant positions with the successful applicant assuming the position at the beginning of the next instructional term;

(3) Professional personnel who have been on an approved leave of absence may fill these vacancies upon their return from the approved leave of absence; and

(4) The county board, upon recommendation of the superintendent may fill a position before the next instructional term when it is determined to be in the best interest of the students.

(b) The Legislature finds that it is not in the best interest of students with autism or with an exceptionality whose IEP
requires one-on-one services, or students in the early childhood years, to have multiple teachers, mentors, aides, paraprofessionals, interpreters or any combination thereof during the instructional term. Therefore, it is the intent of the Legislature that after the twentieth day prior to the beginning of the instructional term, filling positions through transfers of personnel from one position to another be kept to a minimum for autism mentors and aides who work with students with autism and for paraprofessionals, interpreters, early childhood classroom assistant teachers and aides who work with students with exceptionalities whose IEPs require one-on-one services, in accordance with the following:

(1) After the twentieth day prior to the beginning of the instructional term, a service person may not transfer to another position in the county during that instructional term, unless he or she does not have valid certification, if the service person is employed and assigned as an autism mentor or aide who works with students with autism, or as a paraprofessional, interpreter, early childhood classroom assistant teacher, or aide who works with a student with an exceptionality whose IEP requires one-on-one services;

(2) The aide, autism mentor, paraprofessional, interpreter or early childhood classroom assistant teacher may apply for any posted, vacant position with the successful applicant assuming the position at the beginning of the next instructional term; and

(3) The county board, upon recommendation of the superintendent, may fill a position before the beginning of the next instructional term when it is determined to be in the best interest of the students.

(c) Except as provided in subsection (b) of this section, after the twentieth day prior to the beginning of the instructional term, a service person may transfer to another position of employment
one time only during any one half of the instructional term, unless otherwise mutually agreed upon by the service person and the county superintendent, or the superintendent’s designee, subject to county board approval. During the first year of employment as a service person, a service person may not transfer to another position of employment during the first one half of the instructional term unless mutually agreed upon by the service person and county superintendent, subject to county board approval, except as follows:

(1) Upon return from an approved leave of absence, a service person may fill a vacant position for which he or she is qualified or holds valid certification;

(2) A service person may apply for a posted, vacant position at any time. The successful applicant for the position may not assume the position until the beginning of the next one half of the instructional term; and

(3) Extracurricular assignments for school bus operators pursuant to section sixteen, article four of this chapter are exempt from the requirements of this subsection.

§18A-2-8a. Notice to probationary personnel of rehiring or nonrehiring; hearing.

The superintendent at a meeting of the board on or before May 1 of each year shall provide in writing to the board a list of all probationary teachers that he or she recommends to be rehired for the next ensuing school year. The board shall act upon the superintendent’s recommendations at that meeting in accordance with section one of this article. The board at this same meeting shall also act upon the retention of other probationary employees as provided in sections two and five of this article. Any such probationary teacher or other probationary employee who is not rehired by the board at that meeting shall
be notified in writing, by certified mail, return receipt requested, to such persons’ last known addresses within ten days following said board meeting, of their not having been rehired or not having been recommended for rehiring.

Any probationary teacher who receives notice that he or she has not been recommended for rehiring or other probationary employee who has not been reemployed may within ten days after receiving the written notice request a statement of the reasons for not having been rehired and may request a hearing before the board. The hearing shall be held at the next regularly scheduled board of education meeting or a special meeting of the board called within thirty days of the request for hearing. At the hearing, the reasons for the nonrehiring must be shown.

ARTICLE 4. SALARIES, WAGES AND OTHER BENEFITS.

§18A-4-7a. Employment, promotion and transfer of professional personnel; seniority.

(a) A county board of education shall make decisions affecting the filling of vacancies in professional positions of employment on the basis of the applicant with the highest qualifications: Provided, That the county superintendent shall be hired under separate criteria pursuant to section two, article four, chapter eighteen of this code.

(b) In judging qualifications for the filling of vacancies of professional positions of employment, consideration shall be given to each of the following:

(1) Appropriate certification, licensure or both;
11 (2) Amount of experience relevant to the position or, in the case of a classroom teaching position, the amount of teaching experience in the required certification area;

14 (3) The amount of course work, degree level or both in the relevant field and degree level generally;

16 (4) Academic achievement;

17 (5) In the case of a principal or classroom teaching position, certification by the National Board for Professional Teaching Standards;

20 (6) Specialized training relevant to performing the duties of the job;

22 (7) Past performance evaluations conducted pursuant to section twelve, article two of this chapter and section two, article three-c of this chapter or, in the case of a classroom teacher, past evaluations of the applicants performance in the teaching profession;

27 (8) Seniority;

28 (9) Other measures or indicators upon which the relative qualifications of the applicant may fairly be judged;

30 (10) In the case of a classroom teaching position, the recommendation of the principal of the school at which the applicant will be performing a majority of his or her duties; and

33 (11) In the case of a classroom teaching position, the recommendation, if any, resulting from the process established pursuant to the provisions of section five, article five-a, chapter eighteen of this code by the faculty senate of the school at which the employee will be performing a majority of his or her duties.
(c) When filling of a vacancy pursuant to this section, a county board is entitled to determine the appropriate weight to apply to each of the criterion when assessing an applicants qualifications: Provided, That if one or more permanently employed instructional personnel apply for a classroom teaching position and meet the standards set forth in the job posting, each criterion under subsection (b) of this section shall be given equal weight except that the criterion in subdivisions (10) and (11) shall each be double weighted.

(d) For a classroom teaching position, if the principal and faculty senate recommend the same applicant pursuant to subdivisions (10) and (11), subsection (b) of this section, and the superintendent concurs with those recommendations, then the other provisions of subsections (b) and (c) of this section do not apply and the county board shall appoint that applicant notwithstanding any other provision of this code to the contrary.

(e) The state board shall promulgate a rule, including an emergency rule if necessary, in accordance with the provisions of article three-b, chapter twenty-nine-a of this code to implement and interpret the provisions of this section. The rule may provide for a classroom teacher who directly participates in making recommendations pursuant to this section to be compensated at the appropriate daily rate during periods of participation beyond his or her individual contract.

(f) The recommendations of the principal and faculty senate made pursuant to subdivisions (10) and (11), subsection (b) of this section shall be based on a determination as to which applicant is the most highly qualified for the position: Provided, That nothing in this subsection may require principals or faculty senates to assign any amount of weight to any factor in making a recommendation.

(g) With the exception of guidance counselors, the seniority of classroom teachers, as defined in section one, article one of
this chapter, shall be determined on the basis of the length of
time the employee has been employed as a regular full-time
certified and/or licensed professional educator by the county
board of education and shall be granted in all areas that the
employee is certified, licensed or both.

(h) Upon completion of one hundred thirty-three days of
employment in any one school year, substitute teachers, except
retired teachers and other retired professional educators
employed as substitutes, shall accrue seniority exclusively for
the purpose of applying for employment as a permanent,
full-time professional employee. One hundred thirty-three days
or more of said employment shall be prorated and shall vest as
a fraction of the school year worked by the permanent, full-time
teacher.

(i) Guidance counselors and all other professional
employees, as defined in section one, article one of this chapter,
except classroom teachers, shall gain seniority in their
nonteaching area of professional employment on the basis of the
length of time the employee has been employed by the county
board of education in that area: Provided, That if an employee is
certified as a classroom teacher, the employee accrues classroom
teaching seniority for the time that employee is employed in
another professional area. For the purposes of accruing seniority
under this paragraph, employment as principal, supervisor or
central office administrator, as defined in section one, article one
of this chapter, shall be considered one area of employment.

(j) Employment for a full employment term equals one year
of seniority, but an employee may not accrue more than one year
of seniority during any given fiscal year. Employment for less
than the full employment term shall be prorated. A random
selection system established by the employees and approved by
the county board shall be used to determine the priority if two or
more employees accumulate identical seniority: Provided, That
when two or more principals have accumulated identical seniority, decisions on reductions in force shall be based on qualifications.

(k) Whenever a county board is required to reduce the number of professional personnel in its employment, the employee with the least amount of seniority shall be properly notified and released from employment pursuant to the provisions of section two, article two of this chapter. The provisions of this subsection are subject to the following:

(1) All persons employed in a certification area to be reduced who are employed under a temporary permit shall be properly notified and released before a fully certified employee in such a position is subject to release;

(2) Notwithstanding any provision of this code to the contrary, for any vacancy in an established, existing or newly created position that, on or before March 1, is known to exist for the ensuing school year, upon recommendation of the superintendent, the board shall appoint the successful applicant from among all qualified applicants. All employees subject to release shall be considered applicants for the positions for which they are qualified and shall be considered before posting such vacancies for application by nonemployees;

(3) An employee subject to release shall be employed in any other professional position where the employee is certified and was previously employed or to any lateral area for which the employee is certified, licensed or both, if the employee's seniority is greater than the seniority of any other employee in that area of certification, licensure or both;

(4) If an employee subject to release holds certification, licensure or both in more than one lateral area and if the employee's seniority is greater than the seniority of any other employee in one or more of those areas of certification, licensure
or both, the employee subject to release shall be employed in the professional position held by the employee with the least seniority in any of those areas of certification, licensure or both; and

(5) If, prior to August 1 of the year, a reduction in force is approved, the reason for any particular reduction in force no longer exists as determined by the county board in its sole and exclusive judgment, the board shall rescind the reduction in force or transfer and shall notify the released employee in writing of his or her right to be restored to his or her position of employment. Within five days of being so notified, the released employee shall notify the board, in writing, of his or her intent to resume his or her position of employment or the right to be restored shall terminate. Notwithstanding any other provision of this subdivision, if there is another employee on the preferred recall list with proper certification and higher seniority, that person shall be placed in the position restored as a result of the reduction in force being rescinded.

(l) For the purpose of this article, all positions which meet the definition of “classroom teacher” as defined in section one, article one of this chapter shall be lateral positions. For all other professional positions, the county board of education shall adopt a policy by October 31, 1993, and may modify the policy thereafter as necessary, which defines which positions shall be lateral positions. In adopting the policy, the board shall give consideration to the rank of each position in terms of title; nature of responsibilities; salary level; certification, licensure or both; and days in the period of employment.

(m) All professional personnel whose seniority with the county board is insufficient to allow their retention by the county board during a reduction in work force shall be placed upon a preferred recall list. As to any professional position opening within the area where they had previously been employed or to
any lateral area for which they have certification, licensure or both, the employee shall be recalled on the basis of seniority if no regular, full-time professional personnel, or those returning from leaves of absence with greater seniority, are qualified, apply for and accept the position.

(n) Before position openings that are known or expected to extend for twenty consecutive employment days or longer for professional personnel may be filled by the board, the board shall be required to notify all qualified professional personnel on the preferred list and give them an opportunity to apply, but failure to apply shall not cause the employee to forfeit any right to recall. The notice shall be sent by certified mail to the last known address of the employee, and it shall be the duty of each professional personnel to notify the board of continued availability annually, of any change in address or of any change in certification, licensure or both.

(o) Openings in established, existing or newly created positions shall be processed as follows:

(1) Boards shall be required to post and date notices of each opening at least once. At their discretion, boards may post an opening for a position other than classroom teacher more than once in order to attract more qualified applicants. At their discretion, boards may post an opening for a classroom teacher one additional time after the first posting in order to attract more qualified applicants only if fewer than three individuals apply during the first posting subject to the following:

(A) Each notice shall be posted in conspicuous working places for all professional personnel to observe for at least five working days;

(B) At least one notice shall be posted within twenty working days of the position openings and shall include the job description;
(C) Any special criteria or skills that are required by the position shall be specifically stated in the job description and directly related to the performance of the job;

(D) Postings for vacancies made pursuant to this section shall be written so as to ensure that the largest possible pool of qualified applicants may apply; and

(E) Job postings may not require criteria which are not necessary for the successful performance of the job and may not be written with the intent to favor a specific applicant;

(2) No vacancy may be filled until after the five-day minimum posting period of the most recent posted notice of the vacancy;

(3) If one or more applicants under all the postings for a vacancy meets the qualifications listed in the job posting, the successful applicant to fill the vacancy shall be selected by the board within thirty working days of the end of the first posting period;

(4) A position held by a teacher who is certified, licensed or both, who has been issued a permit for full-time employment and is working toward certification in the permit area shall not be subject to posting if the certificate is awarded within five years;

and

(5) Nothing provided herein may prevent the county board of education from eliminating a position due to lack of need.

(p) Notwithstanding any other provision of the code to the contrary, where the total number of classroom teaching positions in an elementary school does not increase from one school year to the next, but there exists in that school a need to realign the number of teachers in one or more grade levels, kindergarten through six, teachers at the school may be reassigned to grade
levels for which they are certified without that position being posted: Provided, That the employee and the county board mutually agree to the reassignment.

(q) Reductions in classroom teaching positions in elementary schools shall be processed as follows:

(1) When the total number of classroom teaching positions in an elementary school needs to be reduced, the reduction shall be made on the basis of seniority with the least senior classroom teacher being recommended for transfer; and

(2) When a specified grade level needs to be reduced and the least senior employee in the school is not in that grade level, the least senior classroom teacher in the grade level that needs to be reduced shall be reassigned to the position made vacant by the transfer of the least senior classroom teacher in the school without that position being posted: Provided, That the employee is certified, licensed or both and agrees to the reassignment.

(r) Any board failing to comply with the provisions of this article may be compelled to do so by mandamus and shall be liable to any party prevailing against the board for court costs and reasonable attorney fees as determined and established by the court. Further, employees denied promotion or employment in violation of this section shall be awarded the job, pay and any applicable benefits retroactive to the date of the violation and payable entirely from local funds. Further, the board shall be liable to any party prevailing against the board for any court reporter costs including copies of transcripts.

(s) The county board shall compile, update annually on July 1 and make available by electronic or other means to all employees a list of all professional personnel employed by the county, their areas of certification and their seniority.
(t) Notwithstanding any other provision of this code to the contrary, upon recommendation of the principal and approval by the classroom teacher and county board, a classroom teacher assigned to the school may at any time be assigned to a new or existing classroom teacher position at the school without the position being posted.

§18A-4-8b. Seniority rights for school service personnel.

1 (a) A county board shall make decisions affecting promotions and the filling of any service personnel positions of employment or jobs occurring throughout the school year that are to be performed by service personnel as provided in section eight of this article, on the basis of seniority, qualifications and evaluation of past service.

(b) Qualifications means the applicant holds a classification title in his or her category of employment as provided in this section and is given first opportunity for promotion and filling vacancies. Other employees then shall be considered and shall qualify by meeting the definition of the job title that relates to the promotion or vacancy, as defined in section eight of this article. If requested by the employee, the county board shall show valid cause why a service person with the most seniority is not promoted or employed in the position for which he or she applies. Qualified applicants shall be considered in the following order:

(1) Regularly employed service personnel who hold a classification title within the classification category of the vacancy;

(2) Service personnel who have held a classification title within the classification category of the vacancy whose employment has been discontinued in accordance with this section;
Regularly employed service personnel who do not hold a classification title within the classification category of vacancy;

Service personnel who have not held a classification title within the classification category of the vacancy and whose employment has been discontinued in accordance with this section;

Substitute service personnel who hold a classification title within the classification category of the vacancy;

Substitute service personnel who do not hold a classification title within the classification category of the vacancy; and

New service personnel.

(c) The county board may not prohibit a service person from retaining or continuing his or her employment in any positions or jobs held prior to the effective date of this section and thereafter.

(d) A promotion means any change in employment that the service person considers to improve his or her working circumstance within the classification category of employment.

(1) A promotion includes a transfer to another classification category or place of employment if the position is not filled by an employee who holds a title within that classification category of employment.

(2) Each class title listed in section eight of this article is considered a separate classification category of employment for service personnel, except for those class titles having Roman numeral designations, which are considered a single classification of employment:
(A) The cafeteria manager class title is included in the same classification category as cooks;

(B) The executive secretary class title is included in the same classification category as secretaries;

(C) Paraprofessional, autism mentor, early classroom assistant teacher and braille or sign support specialist class titles are included in the same classification category as aides; and

(D) The mechanic assistant and chief mechanic class titles are included in the same classification category as mechanics.

(3) The assignment of an aide to a particular position within a school is based on seniority within the aide classification category if the aide is qualified for the position.

(4) Assignment of a custodian to work shifts in a school or work site is based on seniority within the custodian classification category.

(e) For purposes of determining seniority under this section a service persons seniority begins on the date that he or she enters into the assigned duties.

(f) Extra-duty assignments. —

(1) For the purpose of this section, “extra-duty assignment” means an irregular job that occurs periodically or occasionally such as, but not limited to, field trips, athletic events, proms, banquets and band festival trips.

(2) Notwithstanding any other provisions of this chapter to the contrary, decisions affecting service personnel with respect to extra-duty assignments are made in the following manner:

(A) A service person with the greatest length of service time in a particular category of employment is given priority in
(B) An alternative procedure for making extra-duty assignments within a particular classification category of employment may be used if the alternative procedure is approved both by the county board and by an affirmative vote of two-thirds of the employees within that classification category of employment.

(g) County boards shall post and date notices of all job vacancies of existing or newly created positions in conspicuous places for all school service personnel to observe for at least five working days.

(1) Posting locations include any website maintained by or available for the use of the county board.

(2) Notice of a job vacancy shall include the job description, the period of employment, the work site, the starting and ending time of the daily shift, the amount of pay and any benefits and other information that is helpful to prospective applicants to understand the particulars of the job. The notice of a job vacancy in the aide classification categories shall include the program or primary assignment of the position. Job postings for vacancies made pursuant to this section shall be written to ensure that the largest possible pool of qualified applicants may apply. Job postings may not require criteria which are not necessary for the successful performance of the job and may not be written with the intent to favor a specific applicant.

(3) All vacancies in existing or newly created positions shall be filled within twenty working days from the closing date of the job posting for the position.
(4) The county board shall notify the successful applicant as soon as possible after the county board makes a hiring decision regarding the posted position.

(h) All decisions by county boards concerning reduction in work force of service personnel shall be made on the basis of seniority, as provided in this section.

(i) The seniority of a service person is determined on the basis of the length of time the employee has been employed by the county board within a particular job classification. For the purpose of establishing seniority for a preferred recall list as provided in this section, a service person who has been employed in one or more classifications retains the seniority accrued in each previous classification.

(j) If a county board is required to reduce the number of service personnel within a particular job classification, the following conditions apply:

(1) The employee with the least amount of seniority within that classification or grades of classification is properly released and employed in a different grade of that classification if there is a job vacancy;

(2) If there is no job vacancy for employment within that classification or grades of classification, the service person is employed in any other job classification which he or she previously held with the county board if there is a vacancy and retains any seniority accrued in the job classification or grade of classification.

(k) After a reduction in force or transfer is approved, but prior to August 1, a county board in its sole and exclusive judgment may determine that the reason for any particular reduction in force or transfer no longer exists.
(1) If the board makes this determination, it shall rescind the reduction in force or transfer and notify the affected employee in writing of the right to be restored to his or her former position of employment.

(2) The affected employee shall notify the county board of his or her intent to return to the former position of employment within five days of being notified or lose the right to be restored to the former position.

(3) The county board may not rescind the reduction in force of an employee until all service personnel with more seniority in the classification category on the preferred recall list have been offered the opportunity for recall to regular employment as provided in this section.

(4) If there are insufficient vacant positions to permit reemployment of all more senior employees on the preferred recall list within the classification category of the service person who was subject to reduction in force, the position of the released service person shall be posted and filled in accordance with this section.

(l) If two or more service persons accumulate identical seniority, the priority is determined by a random selection system established by the employees and approved by the county board.

(m) All service personnel whose seniority with the county board is insufficient to allow their retention by the county board during a reduction in work force are placed upon a preferred recall list and shall be recalled to employment by the county board on the basis of seniority.

(n) A service person placed upon the preferred recall list shall be recalled to any position openings by the county board
within the classification(s) where he or she had previously been employed, to any lateral position for which the service person is qualified or to a lateral area for which a service person has certification and/or licensure.

(o) A service person on the preferred recall list does not forfeit the right to recall by the county board if compelling reasons require him or her to refuse an offer of reemployment by the county board.

(p) The county board shall notify all service personnel on the preferred recall list of all position openings that exist from time to time. The notification shall be sent annually, with written receipt notification documented by the superintendent, and shall list instructions to access job postings on any website maintained by or available for the use of the county board.

(q) A position opening may be filled by the county board, whether temporary or permanent, until all service personnel on the preferred recall list have been properly notified of existing vacancies and have been given an opportunity to accept reemployment.

(r) A service person released from employment for lack of need as provided in sections six and eight-a, article two of this chapter is accorded preferred recall status on July 1 of the succeeding school year if he or she has not been reemployed as a regular employee.

(s) A 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.

(1) A service person denied promotion or employment in violation of this section shall be awarded the job, pay and any
applicable benefits retroactively to the date of the violation and shall be paid entirely from local funds.

(2) The county board is liable to any party prevailing against the board for any court reporter costs including copies of transcripts.

§18A-4-8e. Competency testing for service personnel; and recertification testing for bus operators.

(a) The state board shall develop and make available competency tests for all of the classification titles defined in section eight of this article and listed in section eight-a of this article for service personnel. The board shall review and, if needed, update the competency tests at least every five years. Each classification title defined and listed is considered a separate classification category of employment for service personnel and has a separate competency test, except for those class titles having Roman numeral designations, which are considered a single classification of employment and have a single competency test.

(1) The cafeteria manager class title is included in the same classification category as cooks and has the same competency test.

(2) The executive secretary class title is included in the same classification category as secretaries and has the same competency test.

(3) The classification titles of chief mechanic, mechanic and assistant mechanic are included in one classification title and have the same competency test.

(b) The purpose of these tests is to provide county boards a uniform means of determining whether school service personnel who do not hold a classification title in a particular category of
employment meet the definition of the classification title in another category of employment as defined in section eight of this article. Competency tests may not be used to evaluate employees who hold the classification title in the category of their employment.

(c) The competency test consists of an objective written or performance test, or both. Applicants may take the written test orally if requested. Oral tests are recorded mechanically and kept on file. The oral test is administered by persons who do not know the applicant personally.

(1) The performance test for all classifications and categories other than bus operator is administered by an employee of the county board or an employee of a multicounty vocational school that serves the county at a location designated by the superintendent and approved by the board. The location may be a vocational school that serves the county.

(2) A standard passing score is established by the state Department of Education for each test and is used by county boards.

(3) The subject matter of each competency test is commensurate with the requirements of the definitions of the classification titles as provided in section eight of this article. The subject matter of each competency test is designed in such a manner that achieving a passing grade does not require knowledge and skill in excess of the requirements of the definitions of the classification titles. Achieving a passing score conclusively demonstrates the qualification of an applicant for a classification title.

(4) Once an employee passes the competency test of a classification title, the applicant is fully qualified to fill vacancies in that classification category of employment as
provided in section eight-b of this article and may not be
required to take the competency test again.

(d) An applicant who fails to achieve a passing score is given
other opportunities to pass the competency test when applying
for another vacancy within the classification category.

(e) Competency tests are administered to applicants in a
uniform manner under uniform testing conditions. County
boards are responsible for scheduling competency tests,
notifying applicants of the date and time of the test. County
boards may not use a competency test other than the test
authorized by this section.

(f) When scheduling of the competency test conflicts with
the work schedule of a school employee who has applied for a
vacancy, the employee is excused from work to take the
competency test without loss of pay.

(g) Competency tests are used to determine the qualification
of new applicants seeking initial employment in a particular
classification title as either a regular or substitute employee.

(h) Notwithstanding any provisions in this code to the
contrary, once an employee holds or has held a classification title
in a category of employment, that employee is considered
qualified for the classification title even though that employee no
longer holds that classification.

(i) The requirements of this section do not alter the
definitions of class titles as provided in section eight of this
article or the procedure and requirements of section eight-b of
this article.

(j) Notwithstanding any other provision of this code to the
contrary and notwithstanding any rules of the school board
concerning school bus operator certification, the certification test
for school bus operators shall be required as follows, and school
bus operators may not be required to take the certification test
more frequently:

(1) For substitute school bus operators and for school bus
operators with regular employee status but on a probationary
contract, the certification test shall be administered annually;

(2) For school bus operators with regular employee status
and continuing contract status, the certification test shall be
administered triennially; and

(3) For substitute school bus operators who are retired from
a county board and who at the time of retirement had ten years
of experience as a regular full-time bus operator, the certification
test shall be administered triennially.

(4) School bus operator certificate.

(A) A school bus operator certificate may be issued to a
person who has attained the age of twenty-one, completed the
required training set forth in state board rule, and met the
physical requirements and other criteria to operate a school bus
set forth in state board rule.

(B) The state superintendent may, after ten days’ notice and
upon proper evidence, revoke the certificate of any bus operator
for any of the following causes:

(i) Intemperance, untruthfulness, cruelty or immorality;

(ii) Conviction of or guilty plea or plea of no contest to a
felony charge;

(iii) Conviction of or guilty plea or plea of no contest to any
charge involving sexual misconduct with a minor or a student;
(iv) Just and sufficient cause for revocation as specified by state board rule; and

(v) Using fraudulent, unapproved or insufficient credit to obtain the certificates.

(vi) Of the causes for certificate revocation listed in this paragraph (B), the following causes constitute grounds for revocation only if there is a rational nexus between the conduct of the bus operator and the performance of the job:

(I) Intemperance, untruthfulness, cruelty or immorality;

(II) Just and sufficient cause for revocation as specified by state board rule; and

(III) Using fraudulent, unapproved or insufficient credit to obtain the certificate.

(C) The certificate of a bus operator may not be revoked for either of the following unless it can be proven by clear and convincing evidence that the bus operator has committed one of the offenses listed in this subsection and his or her actions render him or her unfit to operate a school bus:

(i) Any matter for which the bus operator was disciplined, less than dismissal, by the employing county board; or

(ii) Any matter for which the bus operator is meeting or has met an improvement plan determined by the county board.

(D) The state superintendent shall designate a review panel to conduct hearings on certificate revocations or denials and make recommendations for action by the state superintendent. The state board, after consultation with employee organizations representing school service personnel, shall promulgate a rule to establish the review panel membership and composition, method of appointment, governing principles and meeting schedule.
(E) It is the duty of any county superintendent who knows of any acts on the part of a bus operator for which a certificate may be revoked in accordance with this section to report the same, together with all the facts and evidence, to the state superintendent for such action as in the state superintendent’s judgment may be proper.

(F) If a certificate has been granted through an error, oversight or misinformation, the state superintendent may recall the certificate and make such corrections as will conform to the requirements of law and state board rules.

(5) The state board shall promulgate, in accordance with article three-b, chapter twenty-nine-a of this code, revised rules in compliance with this subsection.

ARTICLE 5. AUTHORITY; RIGHTS; RESPONSIBILITY.

§18A-5-8. Authority of certain aides to exercise control over students; compensation; transfers.

(a) Within the limitations provided in this section, any aide who agrees to do so shall stand in the place of the parent or guardian and shall exercise such authority and control over students as is required of a teacher as provided in section one of this article. The principal shall designate aides in the school who agree to exercise that authority on the basis of seniority as an aide and shall enumerate the instances in which the authority shall be exercised by an aide when requested by the principal, assistant principal or professional employee to whom the aide is assigned.

(b) The authority provided for in subsection (a) of this section does not extend to suspending or expelling any student, participating in the administration of corporal punishment or performing instructional duties as a teacher or substitute teacher.
However, the authority extends to supervising students undergoing in-school suspension if the instructional duties required by the supervision are limited solely to handing out class work and collecting class work. The authority to supervise students undergoing in-school suspension does not include actual instruction.

(c) An aide designated by the principal under subsection (a) of this section shall receive a salary not less than one pay grade above the highest pay grade held by the service person under section eight-a, article four of this chapter and any county salary schedule in excess of the minimum requirements of this article.

(d) An aide may not be required by the operation of this section to perform noninstructional duties for an amount of time which exceeds that required under the aide’s contract of employment or that required of other aides in the same school unless the assignment of the duties is mutually agreed upon by the aide and the county superintendent, or the superintendent’s designated representative, subject to county board approval.

(1) The terms and conditions of the agreement shall be in writing, signed by both parties, and may include additional benefits.

(2) The agreement shall be uniform as to aides assigned similar duties for similar amounts of time within the same school.

(3) Aides have the option of agreeing to supervise students and of renewing related assignments annually. If an aide elects not to renew the previous agreement to supervise students, the minimum salary of the aide shall revert to the pay grade specified in section eight-a, article four of this chapter for the classification title held by the aide and any county salary schedule in excess of the minimum requirements of this article.
(e) For the purposes of this section, aide means any aide class title as defined in section eight, article four of this chapter regardless of numeric classification.

(f) Regular service personnel employed in a category of employment other than aide who seek employment as an aide shall hold a high school diploma or shall have received a general educational development certificate and shall have the opportunity to receive appropriate training pursuant to subsection (j), section thirteen, article five, chapter eighteen of this code and section two, article twenty of said chapter.
ARTICLE 5. COUNTY BOARD OF EDUCATION.

§18-5-44. Early childhood education programs.

(a) For the purposes of this section, an “early childhood education program” means a program created under this section for children who have attained the age of four prior to September 1 of the school year in which the children enter the program.

(b) Findings.—

(1) Among other positive outcomes, early childhood education programs have been determined to:

(A) Improve overall readiness when children enter school;

(B) Decrease behavioral problems;

(C) Improve student attendance;

(D) Increase scores on achievement tests;

(E) Decrease the percentage of students repeating a grade; and

(F) Decrease the number of students placed in special education programs;

(2) Quality early childhood education programs improve school performance and low-quality early childhood education programs may have negative effects, especially for at-risk children;

(3) West Virginia has the lowest percentage of its adult population twenty-five years of age or older with a bachelor’s

*NOTE: This section was also amended by Com. Sub. for S. B. 369 (Chapter 88), which passed prior to this act.*
degree and the education level of parents is a strong indicator of how their children will perform in school;

(4) During the 2006-2007 school year, West Virginia ranked thirty-ninth among the fifty states in the percentage of school children eligible for free and reduced lunches and this percentage is a strong indicator of how the children will perform in school;

(5) For the school year 2008-2009, 13,135 students were enrolled in prekindergarten, a number equal to approximately sixty-three percent of the number of students enrolled in kindergarten;

(6) Excluding projected increases due to increases in enrollment in the early childhood education program, projections indicate that total student enrollment in West Virginia will decline by one percent, or by approximately 2,704 students, by the school year 2012-2013;

(7) In part, because of the dynamics of the state aid formula, county boards will continue to enroll four-year-old students to offset the declining enrollments;

(8) West Virginia has a comprehensive kindergarten program for five-year-olds, but the program was established in a manner that resulted in unequal implementation among the counties, which helped create deficit financial situations for several county boards;

(9) Expansion of current efforts to implement a comprehensive early childhood education program should avoid the problems encountered in kindergarten implementation;

(10) Because of the dynamics of the state aid formula, counties experiencing growth are at a disadvantage in implementing comprehensive early childhood education programs; and
(11) West Virginia citizens will benefit from the establishment of quality comprehensive early childhood education programs.

(c) Beginning no later than the school year 2012-2013 and continuing thereafter, county boards shall provide early childhood education programs for all children who have attained the age of four prior to September 1 of the school year in which the children enter the early childhood education program. Beginning no later than the school year 2016-2017 and continuing thereafter, these early childhood education programs shall provide at least forty-eight thousand minutes annually and no less than fifteen hundred minutes of instruction per week.

(d) The program shall meet the following criteria:

(1) It shall be voluntary, except that, upon enrollment, the provisions of section one-a, article eight of this chapter apply to an enrolled student, subject to subdivision (4) of this subsection;

(2) It shall be open to all children meeting the age requirement set forth in this section;

(3) It shall provide no less than fifteen hundred minutes of instruction per week, in a full day program with at least forty-eight thousand minutes of instruction annually; and

(4) It shall permit a parent of an enrolled child to withdraw the child from that program by notifying the district in writing. A child withdrawn under this section is not subject to the attendance provisions of this chapter until that child again enrolls in a public school in this state.

(e) Enrollment of students in Head Start, or in any other program approved by the state superintendent as provided in this section, may be counted toward satisfying the requirement of subsection (c) of this section.
(f) For the purposes of implementation financing, all counties are encouraged to make use of funds from existing sources, including:

(1) Federal funds provided under the Elementary and Secondary Education Act pursuant to 20 U. S. C. §6301, et seq.;

(2) Federal funds provided for Head Start pursuant to 42 U. S. C. §9831, et seq.;

(3) Federal funds for temporary assistance to needy families pursuant to 42 U. S. C. §601, et seq.;

(4) Funds provided by the School Building Authority pursuant to article nine-d of this chapter;

(5) In the case of counties with declining enrollments, funds from the state aid formula above the amount indicated for the number of students actually enrolled in any school year; and

(6) Any other public or private funds.

(g) Each county board shall develop a plan for implementing the program required by this section. The plan shall include the following elements:

(1) An analysis of the demographics of the county related to early childhood education program implementation;

(2) An analysis of facility and personnel needs;

(3) Financial requirements for implementation and potential sources of funding to assist implementation;

(4) Details of how the county board will cooperate and collaborate with other early childhood education programs including, but not limited to, Head Start, to maximize federal and other sources of revenue;
(5) Specific time lines for implementation; and

(6) Any other items the state board may require by policy.

(h) A county board shall submit its plan to the Secretary of the Department of Health and Human Resources. The secretary shall approve the plan if the following conditions are met:

(1) The county board has maximized the use of federal and other available funds for early childhood programs; and

(2) The county board has provided for the maximum implementation of Head Start programs and other public and private programs approved by the state superintendent pursuant to the terms of this section; or

(3) The secretary finds that, if the county board has not met one or more of the requirements of this subsection, the county board has acted in good faith and the failure to comply was not the primary fault of the county board. Any denial by the secretary may be appealed to the circuit court of the county in which the county board is located.

(i) The county board shall submit its plan for approval to the state board. The state board shall approve the plan if the county board has complied substantially with the requirements of subsection (g) of this section and has obtained the approval required in subsection (h) of this section.

(j) Every county board shall submit its plan for reapproval by the Secretary of the Department of Health and Human Resources and by the state board at least every two years after the initial approval of the plan and until full implementation of the early childhood education program in the county. As part of the submission, the county board shall provide a detailed statement of the progress made in implementing its plan. The
(k) A county board may not increase the total number of students enrolled in the county in an early childhood program until its program is approved by the Secretary of the Department of Health and Human Resources and the state board.

(l) The state board annually may grant a county board a waiver for total or partial implementation if the state board finds that all of the following conditions exist:

(1) The county board is unable to comply either because:

(A) It does not have sufficient facilities available; or

(B) It does not and has not had available funds sufficient to implement the program;

(2) The county has not experienced a decline in enrollment at least equal to the total number of students to be enrolled; and

(3) Other agencies of government have not made sufficient funds or facilities available to assist in implementation.

Any county board seeking a waiver shall apply with the supporting data to meet the criteria for which they are eligible on or before March 25 for the following school year. The state superintendent shall grant or deny the requested waiver on or before April 15 of that same year.

(m) The provisions of subsections (b), (c) and (d), section eighteen of this article relating to kindergarten apply to early childhood education programs in the same manner in which they apply to kindergarten programs.

(n) Except as required by federal law or regulation, no county board may enroll students who will be less than four years of age prior to September 1 for the year they enter school.
(o) Neither the state board nor the state department may provide any funds to any county board for the purpose of implementing this section unless the county board has a plan approved pursuant to subsections (h), (i) and (j) of this section.

(p) The state board shall promulgate a rule in accordance with the provisions of article three-b, chapter twenty-nine-a of this code for the purposes of implementing the provisions of this section. The state board shall consult with the Secretary of the Department of Health and Human Resources in the preparation of the rule. The rule shall contain the following:

1. Standards for curriculum;
2. Standards for preparing students;
3. Attendance requirements;
4. Standards for personnel; and
5. Any other terms necessary to implement the provisions of this section.

(q) The rule shall include the following elements relating to curriculum standards:

1. A requirement that the curriculum be designed to address the developmental needs of four-year-old children consistent with prevailing research on how children learn;
2. A requirement that the curriculum be designed to achieve long-range goals for the social, emotional, physical and academic development of young children;
3. A method for including a broad range of content that is relevant, engaging and meaningful to young children;
4. A requirement that the curriculum incorporate a wide variety of learning experiences, materials and equipment, and
(5) A requirement that the curriculum be designed to build on what children already know in order to consolidate their learning and foster their acquisition of new concepts and skills;

(6) A requirement that the curriculum meet the recognized standards of the relevant subject matter disciplines;

(7) A requirement that the curriculum engage children actively in the learning process and provide them with opportunities to make meaningful choices;

(8) A requirement that the curriculum emphasize the development of thinking, reasoning, decision-making and problem-solving skills;

(9) A set of clear guidelines for communicating with parents and involving them in decisions about the instructional needs of their children; and

(10) A systematic plan for evaluating program success in meeting the needs of young children and for helping them to be ready to succeed in school.

(r) After the school year 2012-2013, on or before July 1 of each year, each county board shall report the following information to the Secretary of the Department of Health and Human Resources and the state superintendent:

(1) Documentation indicating the extent to which county boards are maximizing resources by using the existing capacity of community-based programs, including, but not limited to, Head Start and child care; and
(2) For those county boards that are including eligible children attending approved, contracted community-based programs in their net enrollment for the purposes of calculating state aid pursuant to article nine-a of this chapter, documentation that the county board is equitably distributing funding for all children regardless of setting.

CHAPTER 91

(S. B. 483 - By Senators Sypolt, Boley, Plymale and Ferns)

[Passed March 7, 2016; in effect July 1, 2016.]
[Approved by the Governor on March 15, 2016.]

AN ACT to amend and reenact §18-5A-3a of the Code of West Virginia, 1931, as amended, relating to granting a local school improvement council waivers for the purpose of increasing compulsory school attendance age in Marshall County and Wyoming County.

Be it enacted by the Legislature of West Virginia:

That §18-5A-3a of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 5A. LOCAL SCHOOL INVOLVEMENT.

§18-5A-3a. Waivers of statutes granted to public schools pursuant to recommendations submitted by local school improvement councils; limitations.

(a) The Legislature hereby grants a waiver from the statute or statutes indicated for the following school or schools pursuant to and for the purposes enumerated in the written statement recommending the waiver, with supporting reasons, approved by
the local school improvement council of the respective schools
and recommended by the Legislative Oversight Commission on
Education Accountability in accordance with the provisions of
section three of this article. The grant of a waiver to a statute
means that the school or schools granted the waiver may
implement the actions as specifically described in their written
statement notwithstanding the provisions of this code from
which they are specifically waived. These waivers are limited to
the purposes as specifically described in the statement upon
which the Legislative Oversight Commission on Education
Accountability made its recommendation for a waiver to the
Legislature and are expressly repealed for any modification or
implementation of the described actions which changes those
purposes. However, nothing in this section prohibits a local
school improvement council school that has been granted a
waiver from submitting a request to the Legislative Oversight
Commission on Education Accountability for modifications,
subject to approval in accordance with section three of this
article.

(b) The following waivers are granted:

(1) Section two-b, article three, chapter eighteen-a of this
code is waived for the schools of Cabell County for the purpose
of implementing a comprehensive new teacher induction
program, which purposes are as more specifically described in
the schools written statement approved by the county board and
submitted to the Legislative Oversight Commission on
Education Accountability on February 24, 2011.

(2) Section one-a, article eight, chapter eighteen of this code
is waived for the schools of Marshall County for the purpose of
increasing the compulsory school attendance age in Marshall
County from seventeen to eighteen years of age as a part of its
countywide dropout prevention initiative as requested by letter
dated January 4, 2016, and recommended by the Legislative
38 Oversight Commission on Education Accountability on January
39 18, 2016.

(3) Section one-a, article eight, chapter eighteen of this code
is waived for the schools of Wyoming County for the purpose of
increasing the compulsory school attendance age in Wyoming
County from seventeen to eighteen years of age as a part of its
countywide dropout prevention initiative as requested by letter
dated February 25, 2016 and recommended by the Legislative
Oversight Commission on Education Accountability on February
25, 2016.

CHAPTER 92

(Com. Sub. for H. B. 4295 - By Mr. Speaker (Mr. Armstead),
and Delegate Miley)
[By Request of the Executive]

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

AN ACT to amend the Code of West Virginia, 1931, as amended, by
adding thereto a new section, designated §18-5B-14; and to amend
said code by adding thereto a new article, designated §18-5E-1,
§18-5E-2, §18-5E-3, §18-5E-4, §18-5E-5, §18-5E-6 and §18-5E-7,
all relating to education innovation; terminating funding for
Innovation Zones and Local Solution Dropout Prevention and
Recovery Innovation Zones; setting forth purpose of Innovation in
Education Act; defining Innovation in Education school; allowing
incorporation of more than one of certain attributes into an
Innovation in Education school’s program design; setting forth
certain requirements for Innovation in Education school;
authorizing soliciting, accepting and expending gifts, donations
and grants with certain limits; authorizing State Board of
Education designation of Innovation in Education school; requiring state board rule for implementation and authorizing emergency rule if necessary; requiring rule to include certain provisions pertaining to the application process, minimum contents of the application, and the process by which the state board will review performance and student success, reaffirm or reconsider designation, and identify exemplary schools; allowing state board to provide for West Virginia Department of Education to independently assess applicants; setting forth requirements applicable to the state board when making a designation determination; setting forth items that Innovation in Education Plan must include; requiring operational agreement between school principal and county board of education; specifying minimum contents of operational agreement; requiring performance report on and evaluations of Innovation in Education school; allowing county superintendent to make certain recommendations to the county board and state board in the evaluation; allowing the state board to take certain actions based on the county superintendent’s evaluation and a data analysis conducted by the Department one of which is the termination of the Innovation in Education designation in certain instances; and creating Innovation in Education Fund.

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 §18-5B-14; and that said code be amended by adding thereto a new article, designated §18-5E-1, §18-5E-2, §18-5E-3, §18-5E-4, §18-5E-5, §18-5E-6 and §18-5E-7, all to read as follows:

ARTICLE 5B. SCHOOL INNOVATION ZONES ACT.

No school, group of schools, district, subdivision or department of a group of schools, or a subdivision or department of a school designated or to be designated as an Innovation Zone or Local Solution Dropout Prevention and Recovery Innovation Zone shall receive any funding pursuant to this article after June 30, 2016.

ARTICLE 5E. INNOVATION IN EDUCATION ACT.

§18-5E-1. Purpose.

The purpose of this act is to encourage and incentivize public schools to improve overall student outcomes through the implementation of key innovational priorities for improving education in the following areas:

(1) Science, technology, engineering and math (STEM);
(2) Community school partnership;
(3) Entrepreneurship;
(4) Career pathways; and
(5) The arts.

This act provides a mechanism for public schools designated by the state board as Innovation in Education schools to redesign their curriculum, instructional delivery and instructional strategies, to enhance student engagement, to develop meaningful community partnerships and to operate under greater flexibility to increase student achievement.

§18-5E-2. Innovation in Education school defined.

(a) An Innovation in Education school is a public school in this state that applies to and is designated by the state board in
accordance with this article as an Innovation in Education School with a principal focus in one of the following areas:

1. Science, technology, engineering and math (STEM);
2. Community school partnership;
3. Entrepreneurship;
4. Career pathways; and
5. The arts.

(b) Nothing in this article prohibits an Innovation in Education school from incorporating more than one of the attributes of STEM education, community school partnerships, entrepreneurship, career pathways or the arts into its program design, notwithstanding the primary designation under which it applies or is subsequently designated.

(c) An Innovation in Education school:

1. Shall provide a program of public education that includes one or more of the grade levels prekindergarten to grade twelve, including any associated post-secondary dual credit, advanced placement and industry or workforce credential programs;

2. Shall design its educational program to meet or exceed the student performance standards required under section five, article two-e of this chapter and is subject to all student assessment, accreditation and federal accountability requirements applicable to other public schools in this state. However, nothing shall prohibit an Innovation in Education school from establishing additional student assessment measures or implementing competency-based course completion strategies that go beyond state requirements;
(3) Shall operate according to an Innovation in Education plan developed by the school’s principal and faculty with input from its local school improvement council, the county board, the county superintendent and, if the school is a high school, the students of the school;

(4) Shall, if designated by the state board as an Innovation in Education Demonstration School, host visits and tours of its facility and programs to provide information and an opportunity to observe any successful innovations which may be replicated in other schools. The school may require the payment of a fee to off-set the cost of hosting such visits and tours; and

(5) May solicit and accept gifts, donations or grants for school purposes from public or private sources in any manner that is available to a local school district and expend or use such gifts, donations or grants in accordance with the conditions prescribed by the donor except that a gift, donation or grant may not be accepted if subject to a condition that is contrary to any provision of law or term of the school’s Innovation in Education plan. Any monies received by an Innovation in Education school from any source remaining in the school’s accounts at the end of a fiscal year shall remain in its accounts for use during subsequent fiscal years.

§18-5E-3. Application for Innovation in Education school designation; application review and approval; state board rule.

(a) The state board may designate a school as a STEM, community school partnership, entrepreneurship, career pathways or the arts Innovation in Education school in accordance with this article and shall promulgate a rule, including an emergency rule if necessary, in accordance with article three-b, chapter twenty-nine-a of this code to implement
the provisions of this article. The rule shall include at least the following:

(1) A process for a school to apply for designation as an Innovation in Education school in STEM, community school partnership, entrepreneurship, career pathways or the arts;

(2) Clear and concise application evaluation factors in rubric form, including standards for the state board to review and make a determination of whether to designate an applicant as an Innovation in Education school;

(3) The manner, time and process for application submission;

(4) The form and necessary contents of the application, including but not limited to, the following:

(A) The proposed mission and vision of the school as it pertains to becoming an Innovation in Education school, including identification of the designation it seeks to obtain as a primary focus on which may include: (i) Science, technology, engineering and math (STEM); (ii) community school partnership; (iii) entrepreneurship; (iv) career pathways; or (v) the arts;

(B) An executive summary;

(C) The school’s proposed academic program, including a description of the school’s instructional design, learning environment, class structure, curriculum overview, teaching methods, research basis and other elements required in the school’s Innovation in Education plan pursuant to section four of this article;

(D) A clear articulation of the areas of autonomy and flexibility in curriculum, budget, school schedule and calendar,
professional development, and staffing policies and procedures
which would require a waiver of policy or code; and

(E) The school’s Innovation in Education plan; and

(7) Following the initial evaluation of Innovation in
Education schools as provided in section six of this article, the
process by which the state board will periodically review the
performance and student success of Innovation in Education
schools, reaffirm or reconsider the designation of a school, and
identify exemplary schools to serve as demonstration sites.

(b) The state board may provide for the West Virginia
Department of Education to independently assess applicants
based on the evaluation factors rubric and provide the state board
with this assessment. The state board shall consider the
evaluation factors in rubric form in making any Innovation in
Education school designation determination. In making a
designation determination, the state board shall:

(1) Grant a designation only to applicants who have
demonstrated competence in each element of the evaluation
factors and who have demonstrated their capacity to operate an
Innovation in Education school that will increase student
achievement;

(2) Base determinations on documented evidence collected
through the application review process;

(3) If appropriate, include in a designation determination
reasonable conditions that the applicant must meet before
commencing operation under the designation, including
resubmission of the application;

(4) Decline weak or inadequate applications and clearly state
its reasons for denial;
(5) Make and announce all designations of Innovation in Education schools in a meeting open to the public and clearly state in a resolution the reasons for the decisions. A copy of the resolution shall be submitted to Legislative Oversight Commission on Education Accountability; and

(6) Convey its determination on an application in writing to the applicant.

(c) An Innovation in Education school may not commence or continue operations without a signed operational agreement as provided in section five of this article between the county board and the school principal.

§18-5E-4. Innovation in Education Plan; required contents; measurable annual performance goals; uses.

The Innovation in Education Plan for a STEM, community school partnership, entrepreneurship, career pathways or the arts Innovation in Education school shall include each of the following:

(1) A description of how the school will address the overall climate and culture of the school as a high performing learning environment in which every child may succeed to the best of his or her ability, including but not limited to measurable annual goals to:

(A) Increase overall student achievement;

(B) Address dropout prevention; and

(C) Transform school culture;

(2) A curriculum plan that includes a detailed description of the curriculum and related programs for the proposed school and
how the curriculum is expected to improve school performance and student achievement;

(3) Measurable annual performance goals to assess the school’s performance and student success across multiple measures and that will serve as the basis evaluating the Innovation in Education school, including but not limited to, goals relating to the following:

(A) Student attendance;

(B) Student safety and discipline;

(C) Student promotion and graduation and dropout rates;

(D) Student performance on the state-wide summative assessment and other assessment required by the state board;

(E) Progress in areas of academic underperformance;

(F) Progress among subgroups of students, including, but not limited to, low-income students and students receiving special education;

(G) With respect to high school, postsecondary readiness, including the percentage of graduates submitting applications to postsecondary institutions, and postsecondary enrollment or employment; and

(H) Parent and community engagement; and

(4) A budget plan that includes a detailed description of how funds will be used in the proposed school to support school performance and student achievement that is or may be different than how funds are used in other public schools in the district;

(5) A school schedule plan that includes a detailed description of the ways the program or calendar of the proposed school may be enhanced or expanded;
(6) A staffing plan and professional development plan that includes a detailed description of how the school may provide professional development to its administrators, teachers and other staff;

(7) A policies and procedures plan that includes:

(A) A detailed description of the unique operational policies and procedures to be used by the school seeking designation and how the procedures will support school performance and student achievement; and

(B) Any exemptions to rule, policy or statute the school is seeking: Provided, That a school may not request an exemption nor may an exemption be granted from any assessment program required by the state board or any provision of law or policy required by the Every Student Succeeds Act of 2015 or other federal law;

(8) The school’s plan, if any, for using additional internal and external metrics of the performance agreed to by the school and the county board to measure the school’s performance and student success;

(9) Opportunities and expectations for parent involvement; and

(8) Any other information the state board requires.

§18-5E-5. Operational agreement between Innovation in Education school and county board.

An Innovation in Education school designated by the state board may not commence or continue operations without a signed operational agreement between the county board and the school principal which sets forth at least the following:
(1) Any conditions which must be met before the Innovation in Education school may begin full operations. If necessary, the full implementation of an Innovation in Education school may be postponed for up to one school year following its initial designation to enable all conditions necessary for full operation to be met;

(2) Any material term of the school’s Innovation in Education Plan concerning curriculum, budget, school schedule, calendar, staffing, professional development and policies and procedures to be adhered to by both the county board and the school;

(3) An agreed-upon process for amending or refining the school’s Innovation in Education Plan to improve the school’s performance and student success, including but not limited to, the request for additional waivers of rules, policies, interpretations and statutes through the local school improvement council process;

(4) The annual performance targets set by the county board and the school to assess and evaluate the school’s progress in achieving its annual measurable goals as set forth in its Innovation in Education Plan, including any additional internal and external metrics of performance agreed to by the school and the county board to measure the school’s performance and student success. The annual performance targets may be refined or amended by mutual agreement of the county board and the school after the school has been fully operational for one year and has collected baseline performance data;

(5) The process and criteria that the county board will use to annually monitor and evaluate the overall performance and student success of the school, including a process to conduct annual site visits;
(6) Any information needed by the county board from the school for the purposes of accountability and reporting by the school on the implementation of its mission as an Innovation in Education school;

(7) The process the county board will use to notify the school of any deficiencies and the process by which the school may submit an improvement plan; and

(8) In the event that an Innovation in Education school’s performance appears unsatisfactory, specific provisions addressing the parameters under which the county board may promptly notify the school in writing of perceived problems and provide reasonable opportunity for the school to remedy the problems, or if not remedied, may intervene or recommend to the state board that it place the school’s designation on probationary status, require a remedial action plan and potentially revoke the designation. At a minimum, these parameters shall include the circumstances of poor fiscal management and a lack of academic progress.


(a) During its third full year of operation the county superintendent shall issue a performance report on the Innovation in Education school. The performance report shall summarize the school’s performance record to date based on the data collected under school’s Innovation in Education Plan and operational agreement and shall provide notice of any weaknesses or concerns perceived by the superintendent concerning the school that may jeopardize its designation if not timely rectified. The school and the superintendent shall mutually agree to a reasonable time period for the school to respond to the performance report and submit any corrections to the report.
(b) After its fourth full year of operation, and periodically thereafter as may be provided by the state board, the Innovation in Education school shall be evaluated by the county superintendent. The county superintendent shall submit the evaluation to the county board and the state board. The evaluation shall determine whether the school has met the annual goals outlined in its Innovation in Education Plan and operational agreement and assess the implementation of the Innovation in Education plan at the school.

(c) The county superintendent may recommend to the county board and state board in the evaluation:

(1) To amend or suspend one or more components of the Innovation in Education Plan and operational agreement if the county superintendent determines an amendment or suspension is necessary to improve the performance and student success of the school;

(2) To amend or suspend one or more components of the Innovation in Education Plan and operational agreement if the county superintendent determines an amendment or suspension is necessary because of subsequent changes in the district that affect one or more components of such Innovation in Education Plan;

(3) To support continued operation of the Innovation in Education school in accordance with its Innovation in Education Plan and operational agreement; or

(4) To recommend to the state board that the school be designated as an Innovation in Education demonstration school based on its exemplary performance and student success.

(d) Based on the county superintendent’s evaluation and a data analysis conducted by the West Virginia Department of Education the state board may:
(1) Amend or recommend an amendment to one or more
components of the school’s Innovation in Education Plan and
operational agreement;

(2) Suspend one or more components of the school’s
Innovation in Education Plan and operational agreement;

(3) Affirm continuation of the Innovation in Education
school under its current Innovation in Education Plan and
operational agreement; or

(4) If it is determined that the school has substantially failed
to meet the goals outlined in its Innovation in Education Plan
and operational agreement, terminate the Innovation in
Education designation of the school.

(e) An amendment, suspension or termination may not take
place before the completion of the school year.


There is hereby created in the State Treasury a special
revenue fund to be known as the “Innovation in Education
Fund.” The fund shall consist of all moneys received from
whatever source to further the purpose of this article. The fund
shall be administered by the state board solely for the purposes
of this article, including providing grants and other financial
assistance to innovation in education designated schools to
implement and carry out such schools innovation in education
plans. Any moneys remaining in the fund at the close of a fiscal
year shall be carried forward for use in the next fiscal year. Fund
balances shall be invested with the state’s consolidated
investment fund and any and all interest earnings on these
investments shall be used solely for the purposes that moneys
deposited in the fund may be used pursuant to this article.
AN ACT to amend and reenact §18-8-1 of the Code of West Virginia, 1931, as amended, relating generally to home schooling; clarifying that a child who is exempt from compulsory school attendance is not subject to prosecution for failure to attend school and is not a status offender; requiring superintendent to show probable cause when seeking order to deny home instruction; modifying who is to provide notice of intent to provide home instruction; changing notice of intent frequency from annually to a one time notification; removing requirement that notice of intent include the grade level of child; requiring notice of intent include certain assurances; requiring notice upon termination of home instruction for a child who is of compulsory attendance age or change in county of residence; removing requirement for notice of intent two weeks prior to withdrawal from school; modifying requirement that the person providing home instruction have a high school diploma or equivalent; removing requirement that person providing home instruction outline plan of instruction for ensuing year; replacing specific annual deadline for obtaining an academic assessment of the child with the requirement that the assessment be obtained annually; removing requirement to submit results of the assessment to superintendent annually; removing requirement for parent or legal guardian to pay assessment cost when given outside public school; allowing use of a nationally normed standardized achievement test normed not more than ten years from the date of administration; removing requirement that the nationally normed
standardized achievement test be administered under standardized conditions; requiring nationally normed standardized achievement test be administered by a person qualified in accordance with the test’s published guidelines; permitting parent or legal guardian to administer nationally normed standardized achievement test; modifying criteria for determining acceptable progress under the nationally normed standardized achievement test academic assessment option; removing requirement to provide written narrative of portfolio assessment to superintendent annually; removing requirement to provide certification number of the certified teacher providing written narrative; removing requirement that criteria for acceptable progress be mutually agreed upon by certain parties under the alternative academic assessment of proficiency academic assessment option; requiring parent or legal guardian to keep academic assessments for three years; making requirement for county board to notify parent or legal guardian of services available to assist in the assessment of the child’s eligibility for special education services applicable only upon request; and requiring parent or legal guardian to submit to superintendent results of required assessments at grade levels three, five, eight and eleven by certain date.

Be it enacted by the Legislature of West Virginia:

That §18-8-1 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 8. COMPULSORY SCHOOL ATTENDANCE.

§18-8-1. Compulsory school attendance; exemptions.

1 (a) Exemption from the requirements of compulsory public school attendance established in section one-a of this article shall be made on behalf of any child for the causes or conditions set forth in this section. Each cause or condition set forth in this section is subject to confirmation by the attendance authority of the county. A child who is exempt from compulsory school
attendance under this section is not subject to prosecution under
section two of this article, nor is such a child a status offender as
defined by section two hundred two, article one, chapter
forty-nine of this code.

(b) A child is exempt from the compulsory school attendance
requirement set forth in section one-a of this article if the
requirements of this subsection, relating to instruction in a
private, parochial or other approved school, are met. The
instruction shall be in a school approved by the county board and
for a time equal to the instructional term set forth in section
forty-five, article five of this chapter. In all private, parochial or
other schools approved pursuant to this subsection it is the duty
of the principal or other person in control, upon the request of
the county superintendent, to furnish to the county board such
information and records as may be required with respect to
attendance, instruction and progress of students enrolled.

(c) A child is exempt from the compulsory school attendance
requirement set forth in section one-a of this article if the
requirements of either subdivision (1) or subdivision (2) of this
subsection, both relating to home instruction, are met.

(1) The instruction shall be in the home of the child or
children or at some other place approved by the county board
and for a time equal to the instructional term set forth in section
forty-five, article five of this chapter. If the request for home
instruction is denied by the county board, good and reasonable
justification for the denial shall be furnished in writing to the
applicant by the county board. The instruction shall be conducted
by a person or persons who, in the judgment of the county
superintendent and county board, are qualified to give instruction
in subjects required to be taught in public elementary schools in
the state. The person or persons providing the instruction, upon
request of the county superintendent, shall furnish to the county
board information and records as may be required periodically
with respect to attendance, instruction and progress of students receiving the instruction. The state board shall develop guidelines for the home schooling of special education students including alternative assessment measures to assure that satisfactory academic progress is achieved.

(2) The child meets the requirements set forth in this subdivision: Provided, That the county superintendent may, after a showing of probable cause, seek from the circuit court of the county an order denying home instruction of the child. The order may be granted upon a showing of clear and convincing evidence that the child will suffer neglect in his or her education or that there are other compelling reasons to deny home instruction.

(A) Upon commencing home instruction under this section the parent of a child receiving home instruction shall present to the county superintendent or county board a notice of intent to provide home instruction that includes the name, address, and age of any child of compulsory school age to be instructed and assurance that the child shall receive instruction in reading, language, mathematics, science and social studies and that the child shall be assessed annually in accordance with this subdivision. The person providing home instruction shall notify the county superintendent upon termination of home instruction for a child who is of compulsory attendance age. Upon establishing residence in a new county, the person providing home instruction shall notify the previous county superintendent and submit a new notice of intent to the superintendent of the new county of residence: Provided, That if a child is enrolled in a public school, notice of intent to provide home instruction shall be given on or before the date home instruction is to begin.

(B) The person or persons providing home instruction shall submit satisfactory evidence of a high school diploma or equivalent, or a post-secondary degree or certificate from a
regionally accredited institution or from an institution of higher
education that has been authorized to confer a post-secondary
degree or certificate in West Virginia by the West Virginia
Council for Community and Technical College Education or by
the West Virginia Higher Education Policy Commission.

(C) Annually, the person or persons providing home
instruction shall obtain an academic assessment of the child for
the previous school year in one of the following ways:

(i) The child receiving home instruction takes a nationally
normed standardized achievement test published or normed not
more than ten years from the date of administration and
administered under the conditions as set forth by the published
instructions of the selected test and by a person qualified in
accordance with the test’s published guidelines in the subjects of
reading, language, mathematics, science and social studies. The
child is considered to have made acceptable progress when the
mean of the child’s test results in the required subject areas for
any single year is within or above the fourth stanine or, if below
the fourth stanine, shows improvement from the previous year’s
results;

(ii) The child participates in the testing program currently in
use in the state’s public schools. The test shall be administered
to the child at a public school in the county of residence.
Determination of acceptable progress shall be based on current
guidelines of the state testing program;

(iii) A portfolio of samples of the child’s work is reviewed
by a certified teacher who determines whether the child’s
academic progress for the year is in accordance with the child’s
abilities. The teacher shall provide a written narrative about the
child’s progress in the areas of reading, language, mathematics,
science and social studies and shall note any areas which, in the
professional opinion of the reviewer, show need for
improvement or remediation. If the narrative indicates that the child’s academic progress for the year is in accordance with the child’s abilities, the child is considered to have made acceptable progress; or

(iv) The child completes an alternative academic assessment of proficiency that is mutually agreed upon by the parent or legal guardian and the county superintendent.

(D) A parent or legal guardian shall maintain copies of each student’s Academic Assessment for three years. When the annual assessment fails to show acceptable progress, the person or persons providing home instruction shall initiate a remedial program to foster acceptable progress. The county board upon request shall notify the parents or legal guardian of the child, in writing, of the services available to assist in the assessment of the child’s eligibility for special education services. Identification of a disability does not preclude the continuation of home schooling. In the event that the child does not achieve acceptable progress for a second consecutive year, the person or persons providing instruction shall submit to the county superintendent additional evidence that appropriate instruction is being provided.

(E) The parent or legal guardian shall submit to the county superintendent the results of the academic assessment of the child at grade levels three, five, eight and eleven, as applicable, by June 30 of the year in which the assessment was administered.

(3) This subdivision applies to both home instruction exemptions set forth in subdivisions (1) and (2) of this subsection. The county superintendent or a designee shall offer such assistance, including textbooks, other teaching materials and available resources, all subject to availability, as may assist the person or persons providing home instruction. Any child
receiving home instruction may upon approval of the county board exercise the option to attend any class offered by the county board as the person or persons providing home instruction may consider appropriate subject to normal registration and attendance requirements.

(d) A child is exempt from the compulsory school attendance requirement set forth in section one-a of this article if the requirements of this subsection, relating to physical or mental incapacity, are met. Physical or mental incapacity consists of incapacity for school attendance and the performance of school work. In all cases of prolonged absence from school due to incapacity of the child to attend, the written statement of a licensed physician or authorized school nurse is required. Incapacity shall be narrowly defined and in any case the provisions of this article may not allow for the exclusion of the mentally, physically, emotionally or behaviorally handicapped child otherwise entitled to a free appropriate education.

(e) A child is exempt from the compulsory school attendance requirement set forth in section one-a of this article if conditions rendering school attendance impossible or hazardous to the life, health or safety of the child exist.

(f) A child is exempt from the compulsory school attendance requirement set forth in section one-a of this article upon regular graduation from a standard senior high school or alternate secondary program completion as determined by the state board.

(g) A child is exempt from the compulsory school attendance requirement set forth in section one-a of this article if the child is granted a work permit pursuant to the subsection. After due investigation the county superintendent may grant work permits to youths under the termination age designated in section one-a of this article, subject to state and federal labor laws and regulations. A work permit may not be granted on behalf of any youth who has not completed the eighth grade of school.
(h) A child is exempt from the compulsory school attendance requirement set forth in section one-a of this article if a serious illness or death in the immediate family of the child has occurred. It is expected that the county attendance director will ascertain the facts in all cases of such absences about which information is inadequate and report the facts to the county superintendent.

(i) A child is exempt from the compulsory school attendance requirement set forth in section one-a of this article if the requirements of this subsection, relating to destitution in the home, are met. Exemption based on a condition of extreme destitution in the home may be granted only upon the written recommendation of the county attendance director to the county superintendent following careful investigation of the case. A copy of the report confirming the condition and school exemption shall be placed with the county director of public assistance. This enactment contemplates every reasonable effort that may properly be taken on the part of both school and public assistance authorities for the relief of home conditions officially recognized as being so destitute as to deprive children of the privilege of school attendance. Exemption for this cause is not allowed when the destitution is relieved through public or private means.

(j) A child is exempt from the compulsory school attendance requirement set forth in section one-a of this article if the requirements of this subsection, relating to church ordinances and observances of regular church ordinances, are met. The county board may approve exemption for religious instruction upon written request of the person having legal or actual charge of a child or children. This exemption is subject to the rules prescribed by the county superintendent and approved by the county board.

(k) A child is exempt from the compulsory school attendance requirement set forth in section one-a of this article if the
requirements of this subsection, relating to alternative private, parochial, church or religious school instruction, are met. Exemption shall be made for any child attending any private school, parochial school, church school, school operated by a religious order or other nonpublic school which elects to comply with the provisions of article twenty-eight of this chapter.

(l) Completion of the eighth grade does not exempt any child under the termination age designated in section one-a of this article from the compulsory attendance provision of this article.

CHAPTER 94

(H. B. 4461 - By Delegates Arvon, Duke, Espinosa, Howell, Hill, Blackwell and Border)

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

AN ACT to amend and reenact §18-9D-15 of the Code of West Virginia, 1931, as amended, relating to School Building Authority School Major Improvement Fund eligibility; removing requirement for certain annual amounts to be expended by county board for facility maintenance; and requiring county board to provide facility maintenance expenditure data for review to assist authority in project determinations.

Be it enacted by the Legislature of West Virginia:

That §18-9D-15 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 9D. SCHOOL BUILDING AUTHORITY.
§18-9D-15. Legislative intent; allocation of money among categories of projects; lease-purchase options; limitation on time period for expenditure of project allocation; county maintenance budget requirements; project disbursements over period of years; preference for multicounty arrangements; submission of project designs; set-aside to encourage local participation.

(a) It is the intent of the Legislature to empower the School Building Authority to facilitate and provide state funds and to administer all federal funds provided for the construction and major improvement of school facilities so as to meet the educational needs of the people of this state in an efficient and economical manner. The authority shall make funding determinations in accordance with the provisions of this article and shall assess existing school facilities and each facility’s school major improvement plan in relation to the needs of the individual student, the general school population, the communities served by the facilities and facility needs statewide.

(b) An amount that is not more than three percent of the sum of moneys that are determined by the authority to be available for distribution during the then current fiscal year from:

(1) Moneys paid into the School Building Capital Improvements Fund pursuant to section ten, article nine-a of this chapter;

(2) The issuance of revenue bonds for which moneys in the School Building Debt Service Fund or the Excess Lottery School Building Debt Service Fund are pledged as security;

(3) Moneys paid into the School Construction Fund pursuant to section six of this article; and
23 (4) Any other moneys received by the authority, except moneys paid into the School Major Improvement Fund pursuant to section six of this article and moneys deposited into the School Access Safety Fund pursuant to section five, article nine-f of this chapter, may be allocated and may be expended by the authority for projects authorized in accordance with the provisions of section sixteen of this article that service the educational community statewide or, upon application by the state board, for educational programs that are under the jurisdiction of the state board. In addition, upon application by the state board or the administrative council of an area vocational educational center established pursuant to article two-b of this chapter, the authority may allocate and expend under this subsection moneys for school major improvement projects authorized in accordance with the provisions of section sixteen of this article proposed by the state board or an administrative council for school facilities under the direct supervision of the state board or an administrative council, respectively. Furthermore, upon application by a county board, the authority may allocate and expend under this subsection moneys for school major improvement projects for vocational programs at comprehensive high schools, vocational programs at comprehensive middle schools, vocational schools cooperating with community and technical college programs, or any combination of the three. Each county board is encouraged to cooperate with community and technical colleges in the use of existing or development of new vocational technical facilities. All projects eligible for funds from this subsection shall be submitted directly to the authority which shall be solely responsible for the project’s evaluation, subject to the following:

53 (A) The authority may not expend any moneys for a school major improvement project proposed by the state board or the administrative council of an area vocational educational center unless the state board or an administrative council has submitted a ten-year facilities plan; and
(B) The authority shall, before allocating any moneys to the state board or the administrative council of an area vocational educational center for a school improvement project, consider all other funding sources available for the project.

(c) An amount that is not more than two percent of the moneys that are determined by the authority to be available for distribution during the current fiscal year from:

(1) Moneys paid into the School Building Capital Improvements Fund pursuant to section ten, article nine-a of this chapter;

(2) The issuance of revenue bonds for which moneys in the School Building Debt Service Fund or the Excess Lottery School Building Debt Service Fund are pledged as security;

(3) Moneys paid into the School Construction Fund pursuant to section six of this article; and

(4) Any other moneys received by the authority, except moneys deposited into the School Major Improvement Fund and moneys deposited into the School Access Safety Fund pursuant to section five, article nine-f of this chapter, shall be set aside by the authority as an emergency fund to be distributed in accordance with the guidelines adopted by the authority.

(d) An amount that is not more than five percent of the moneys that are determined by the authority to be available for distribution during the current fiscal year from:

(1) Moneys paid into the School Building Capital Improvements Fund pursuant to section ten, article nine-a of this chapter;

(2) The issuance of revenue bonds for which moneys in the School Building Debt Service Fund or the Excess Lottery School Building Debt Service Fund are pledged as security;
(3) Moneys paid into the School Construction Fund pursuant to section six of this article; and

(4) Any other moneys received by the authority, except moneys deposited into the School Major Improvement Fund and moneys deposited into the School Access Safety Fund pursuant to section five, article nine-f of this chapter, may be reserved by the authority for multiuse vocational-technical education facilities projects that may include post-secondary programs as a first priority use. The authority may allocate and expend under this subsection moneys for any purposes authorized in this article on multiuse vocational-technical education facilities projects, including equipment and equipment updates at the facilities, authorized in accordance with the provisions of section sixteen of this article. If the projects approved under this subsection do not require the full amount of moneys reserved, moneys above the amount required may be allocated and expended in accordance with other provisions of this article. A county board, the state board, an administrative council or the joint administrative board of a vocational-technical education facility which includes post-secondary programs may propose projects for facilities or equipment, or both, which are under the direct supervision of the respective body: Provided, That the authority shall, before allocating any moneys for a project under this subsection, consider all other funding sources available for the project.

(e) The remaining moneys determined by the authority to be available for distribution during the then current fiscal year from:

(1) Moneys paid into the School Building Capital Improvements Fund pursuant to section ten, article nine-a of this chapter;
The issuance of revenue bonds for which moneys in the School Building Debt Service Fund or the Excess Lottery School Building Debt Service Fund are pledged as security;

Moneys paid into the School Construction Fund pursuant to section six of this article; and

Any other moneys received by the authority, except moneys deposited into the School Major Improvement Fund and moneys deposited into the School Access Safety Fund pursuant to section five, article nine-f of this chapter, shall be allocated and expended on the basis of need and efficient use of resources for projects funded in accordance with the provisions of section sixteen of this article.

If a county board proposes to finance a project that is authorized in accordance with section sixteen of this article through a lease with an option to purchase leased premises upon the expiration of the total lease period pursuant to an investment contract, the authority may not allocate moneys to the county board in connection with the project: Provided, That the authority may transfer moneys to the state board which, with the authority, shall lend the amount transferred to the county board to be used only for a one-time payment due at the beginning of the lease term, made for the purpose of reducing annual lease payments under the investment contract, subject to the following conditions:

The loan shall be secured in the manner required by the authority, in consultation with the state board, and shall be repaid in a period and bear interest at a rate as determined by the state board and the authority and shall have any terms and conditions that are required by the authority, all of which shall be set forth in a loan agreement among the authority, the state board and the county board;
(2) The loan agreement shall provide for the state board and the authority to defer the payment of principal and interest upon any loan made to the county board during the term of the investment contract, and annual renewals of the investment contract, among the state board, the authority, the county board and a lessor, subject to the following:

(A) In the event a county board which has received a loan from the authority for a one-time payment at the beginning of the lease term does not renew the lease annually until performance of the investment contract in its entirety is completed, the county board is in default and the principal of the loan, together with all unpaid interest accrued to the date of the default, shall, at the option of the authority, in consultation with the state board, become due and payable immediately or subject to renegotiation among the state board, the authority and the county board;

(B) If a county board renews the lease annually through the performance of the investment contract in its entirety, the county board shall exercise its option to purchase the leased premises;

(C) The failure of the county board to make a scheduled payment pursuant to the investment contract constitutes an event of default under the loan agreement;

(D) Upon a default by a county board, the principal of the loan, together with all unpaid interest accrued to the date of the default, shall, at the option of the authority, in consultation with the state board, become due and payable immediately or subject to renegotiation among the state board, the authority and the county board; and

(E) If the loan becomes due and payable immediately, the authority, in consultation with the state board, shall use all means available under the loan agreement and law to collect the outstanding principal balance of the loan, together with all
unpaid interest accrued to the date of payment of the outstanding principal balance; and

(3) The loan agreement shall provide for the state board and the authority to forgive all principal and interest of the loan upon the county board purchasing the leased premises pursuant to the investment contract and performance of the investment contract in its entirety.

(g) To encourage county boards to proceed promptly with facilities planning and to prepare for the expenditure of any state moneys derived from the sources described in this section, any county board or other entity to whom moneys are allocated by the authority that fails to expend the money within three years of the allocation shall forfeit the allocation and thereafter is ineligible for further allocations pursuant to this section until it is ready to expend funds in accordance with an approved facilities plan: Provided, That the authority may authorize an extension beyond the three-year forfeiture period not to exceed an additional two years. Any amount forfeited shall be added to the total funds available in the School Construction Fund of the authority for future allocation and distribution. Funds may not be distributed for any project under this article unless the responsible entity has a facilities plan approved by the state board and the School Building Authority and is prepared to commence expenditure of the funds during the fiscal year in which the moneys are distributed.

(h) The remaining moneys that are determined by the authority to be available for distribution during the then current fiscal year from moneys paid into the School Major Improvement Fund pursuant to section six of this article shall be allocated and distributed on the basis of need and efficient use of resources for projects authorized in accordance with the provisions of section sixteen of this article, subject to the following:
(1) The moneys may not be distributed for any project under this section unless the responsible entity has a facilities plan approved by the state board and the authority and is to commence expenditures of the funds during the fiscal year in which the moneys are distributed;

(2) Any moneys allocated to a project and not distributed for that project shall be deposited in an account to the credit of the project, the principal amount to remain to the credit of and available to the project for a period of two years; and

(3) Any moneys which are unexpended after a two-year period shall be redistributed on the basis of need from the School Major Improvement Fund in that fiscal year.

(i) Local matching funds may not be required under the provisions of this section. However, this article does not negate the responsibilities of the county boards to maintain school facilities. Therefore, as a prerequisite for eligibility to receive an allocation of school major improvement funds from the authority, a county board must provide annual school facility maintenance expenditure data to the authority which shall be jointly reviewed by the authority and the state Department of Education Office of School Facilities and Transportation to assist the authority in its determination of the most meritorious projects to be funded through the School Major Improvement Fund. The state board shall promulgate rules relating to county boards’ school facility maintenance budgets, including items which shall be included in these budgets.

(j) Any county board may use moneys provided by the authority under this article in conjunction with local funds derived from bonding, special levy or other sources. Distribution to a county board, or to the state board or the administrative council of an area vocational educational center pursuant to subsection (b) of this section, may be in a lump sum or in
accordance with a schedule of payments adopted by the authority pursuant to guidelines adopted by the authority.

(k) Funds in the School Construction Fund shall first be transferred and expended as follows:

(1) Any funds deposited in the School Construction Fund shall be expended first in accordance with an appropriation by the Legislature.

(2) To the extent that funds are available in the School Construction Fund in excess of that amount appropriated in any fiscal year, the excess funds may be expended for projects authorized in accordance with the provisions of section sixteen of this article.

(l) It is the intent of the Legislature to encourage county boards to explore and consider arrangements with other counties that may facilitate the highest and best use of all available funds, which may result in improved transportation arrangements for students or which otherwise may create efficiencies for county boards and the students. In order to address the intent of the Legislature contained in this subsection, the authority shall grant preference to those projects which involve multicounty arrangements as the authority shall determine reasonable and proper.

(m) County boards shall submit all designs for construction of new school buildings to the School Building Authority for review and approval prior to preparation of final bid documents. A vendor who has been debarred pursuant to the provisions of sections thirty-three-a through thirty-three-f, inclusive, article three, chapter five-a of this code may not bid on or be awarded a contract under this section.

(n) The authority may elect to disburse funds for approved construction projects over a period of more than one year subject to the following:
(1) The authority may not approve the funding of a school construction project over a period of more than three years;

(2) The authority may not approve the use of more than fifty percent of the revenue available for distribution in any given fiscal year for projects that are to be funded over a period of more than one year; and

(3) In order to encourage local participation in funding school construction projects, the authority may set aside limited funding, not to exceed $500,000, in reserve for one additional year to provide a county the opportunity to complete financial planning for a project prior to the allocation of construction funds. Any funding shall be on a reserve basis and converted to a part of the construction grant only after all project budget funds have been secured and all county commitments have been fulfilled. Failure of the county to solidify the project budget and meet its obligations to the state within eighteen months of the date the funding is set aside by the authority will result in expiration of the reserve and the funds shall be reallocated by the authority in the succeeding funding cycle.

CHAPTER 95

(H. B. 4316 - By Delegates Espinosa, Ellington, Duke, Perry, Moye, Upson, Wagner, Ambler, Cooper, D. Evans and Kelly)

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

AN ACT to amend and reenact §18A-4-2a of the Code of West Virginia, 1931, as amended, relating to reimbursement of
certification fee for National Board for Professional Teaching Standards certification; and requiring the submission of satisfactory evidence to the West Virginia Department of Education for reimbursement.

Be it enacted by the Legislature of West Virginia:

That §18A-4-2a of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 4. SALARIES, WAGES AND OTHER BENEFITS.

§18A-4-2a. State minimum salary bonus for classroom teachers with national board certification.

1 (a) The Legislature finds and declares that the rigorous standards and processes for certification by the National Board for Professional Teaching Standards helps to promote the quality of teaching and learning. Therefore, classroom teachers in the public schools of West Virginia should be encouraged to achieve national board certification through a reimbursement of expenses and an additional salary bonus which reflects their additional certification, to be paid in accordance with the provisions of this section.

(b) (1) Three thousand five hundred dollars shall be paid annually to each classroom teacher who holds a valid certificate issued by the National Board for Professional Teaching Standards for the life of the certification, but in no event more than ten years for any one certification.

(2) Three thousand five hundred dollars shall be paid annually to each classroom teacher who holds a valid renewal certificate issued by the National Board for Professional Teaching Standards for the life of the renewal certificate, but in no event more than ten years for any one renewal certificate.

(c) The payments:
(1) Shall be in addition to any amounts prescribed in the applicable state minimum salary schedule;

(2) Shall be paid in equal monthly installments; and

(3) Shall be considered a part of the state minimum salaries for teachers.

(d) For initial certification, one half of the certification fee shall be paid for reimbursement once to each teacher who submits satisfactory evidence to the West Virginia Department of Education of enrollment in the program for the National Board for Professional Teaching Standards certification as verified by the National Board for Professional Teaching Standards. The remaining one half of the certification fee shall be paid for reimbursement once to each teacher who submits satisfactory evidence to the West Virginia Department of Education of completion of the National Board for Professional Teaching Standards certification as verified by the National Board for Professional Teaching Standards. Teachers who achieve National Board for Professional Teaching Standards certification may be reimbursed a maximum of $600 for expenses actually incurred while obtaining the National Board for Professional Teaching Standards certification.

(e) For renewal certification, each teacher who completes the National Board for Professional Teaching Standards certification renewal process shall be reimbursed for the renewal certification fee. Completion of the certification renewal process means the submission of satisfactory evidence to the West Virginia Department of Education of the successful renewal of the ten-year certification as verified by the National Board for Professional Teaching Standards.

(f) The state board shall establish selection criteria for the teachers by the legislative rule required pursuant to subsection (h) of this section.
(g) Funding for reimbursement of the initial certification fee and expenses actually incurred while obtaining the National Board for Professional Teaching Standards certifications and funding for reimbursement of the renewal certification fee shall be administered by the state Department of Education from an appropriation established for that purpose by the Legislature. If funds appropriated by the Legislature to accomplish the purposes of this subsection are insufficient, the state department shall prorate the reimbursements for expenses and shall request of the Legislature, at its next regular session, funds sufficient to accomplish the purposes of this subsection, including needed retroactive payments.

(h) The state board shall promulgate legislative rules pursuant to article three-b, chapter twenty-nine-a of this code to implement the provisions of this section.

CHAPTER 96

(Com. Sub. for H. B. 4013 - By Delegates Lane, Anderson, Blair, Hamrick, Ambler, D. Evans, Border, McCuskey, Householder, Ireland and Zatezalo)

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

AN ACT to amend and reenact §3-1-34 and §3-1-41 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §3-1-51; to amend and reenact §3-2-11 and §3-2-12 of said code; and to amend and reenact §17B-2-1 of said code, all relating to voting procedures; requiring a person desiring to vote on or after January 1, 2018 to present
valid document identifying the voter to one of the poll clerks; requiring poll clerk to inspect valid identifying document and confirm information with individual’s voter registration record; requiring poll clerk to confirm, if document contains a photograph, that displayed image is truly an image of the person presenting the document; setting forth requirements for valid identifying document; identifying documents considered to be valid identifying document; permitting registered voter to be accompanied to polling place by adult known to registered voter for at least six months; permitting voter to vote if accompanying adult signs affidavit and presents valid identifying document; authorizing poll worker to allow voter known to the poll worker for at least six months to vote without presenting valid identifying document; permitting person desiring to vote to cast provisional ballot after executing affidavit; setting conditions for counting of provisional ballot; setting content of affidavit to be used for casting provisional ballot; permitting voter who votes in person at precinct polling place located in building which is part of state licensed care facility where voter is resident without presenting valid identifying document; requiring person entering voter information into centralized voter registration database to notate when a voter has not presented valid identifying documentation and executed a voter identity affidavit; making confidential voter’s residential or mailing address if voter is participant in Address Confidentiality Program except for certain statutory and administrative purposes; directing Secretary of State to educate voters about requirement to present valid identifying document; requiring Secretary of State to develop a program to help ensure that all eligible voters obtain identification; directing members of receiving board to challenge the right of person requesting ballot to vote in election if person fails to present valid identifying documentation; modifying provisional ballot procedures; requiring clerk of county commission to send letter to voters who execute voter identity affidavit; setting deadline for letters to be mailed; specifying
contents of letter; directing clerk of county commission to cause letters returned as undeliverable to be referred to Secretary of State; directing clerk of county commission to forward to Secretary of State a list of persons who were mailed letters and notified clerk that they did not vote; requiring Secretary of State to investigate to determine whether fraudulent voting occurred; requiring Secretary of State to submit report to Joint Committee on the Judiciary and Joint Committee on Government and Finance detailing results of all investigations of voter identity affidavits; requiring Division of Motor Vehicles to collect certain information from individuals applying for issuance, renewal or change of address of driver’s license or official identification card; requiring Division of Motor Vehicles to release all information obtained to Secretary of State unless applicant affirmatively declines to become registered to vote or update voter registration; requiring Secretary of State to forward information to county clerk for relevant county to process newly registered voter or updated information for already-registered voter; requiring Division of Motor Vehicles to release certain information to Secretary of State if applicant affirmatively declines to become registered to vote; requiring Division of Motor Vehicles to notify applicant that signature submission grants written consent for submission of that information; clarifying that qualified voter who is automatically registered to vote need not present identification in order to make registration valid; directing Secretary of State to establish procedures to protect confidentiality of information obtained from Division of Motor Vehicles; permitting person registered to vote to cancel voter registration at any time; clarifying that Division of Motor Vehicles not required to determine eligibility for voter registration and voting; making changes regarding automatic voter registration effective July 1, 2017; requiring Division of Motor Vehicles report to Joint Committee on Government and Finance if unable to meet requirements by February 1, 2017; directing Secretary of State to promulgate legislative rules; permitting
certain uses of moneys in Combined Voter Registration and Driver Licensing Fund; requiring balance in Fund in excess of $100,000 be transferred to General Revenue annually; prohibiting Division of Motor Vehicles from charging fees for issuance of identification card if applicant intends to use identification card as form of identification for voting; providing certain provisions for issuance of driver’s license or identification card to persons over the age of fifty years; and providing certain provisions for issuance of driver’s license or identification card to persons over the age of seventy years.

Be it enacted by the Legislature of West Virginia:

That §3-1-34 and §3-1-41 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 §3-1-51; that §3-2-11 and §3-2-12 of said code be amended and reenacted; and that §17B-2-1 of said code be amended and reenacted, all to read as follows:

CHAPTER 3. ELECTIONS.

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.

§3-1-34. Voting procedures generally; identification; assistance to voters; voting records; penalties.

(a) A person desiring to vote in an election shall, upon entering the election room, clearly state his or her name and residence to one of the poll clerks who shall thereupon announce the same in a clear and distinct tone of voice. For elections occurring on or after January 1, 2018, the person desiring to vote shall present to one of the poll clerks a valid identifying document meeting the requirements of subdivisions (1) or (2) of this subsection, and the poll clerk shall inspect and confirm that the name on the valid identifying document conforms to the name in the individual’s voter registration record and that, if the
valid identifying document contains a photograph, the image displayed is truly an image of the person presenting the document. If that person is found to be duly registered as a voter at that precinct, he or she shall sign his or her name in the designated location provided at the precinct. If that person is physically or otherwise unable to sign his or her name, his or her mark shall be affixed by one of the poll clerks in the presence of the other and the name of the poll clerk affixing the voter’s mark shall be indicated immediately under the affixation. No ballot may be given to the person until he or she signs his or her name on the designated location or his or her signature is affixed thereon.

(1) A document shall be deemed to be a valid identifying document if it:

(A) Has been issued either by the State of West Virginia, or one of its subsidiaries, or by the United States Government; and

(B) Contains the name of the person desiring to vote.

(2) Notwithstanding the provisions of subdivision (1) of this subsection, the following documents, if they contain the voter’s name, shall be considered valid identifying documents, and a person desiring to vote may produce any of the following:

(A) A valid West Virginia driver’s license or valid West Virginia identification card issued by the West Virginia Division of Motor Vehicles;

(B) A valid driver’s license issued by a state other than the State of West Virginia;

(C) A valid United States passport or passport card;

(D) A valid employee identification card with a photograph of the eligible voter issued by any branch, department, agency,
or entity of the United States Government or of the State of West Virginia, or by any county, municipality, board, authority, or other political subdivision of West Virginia;

(E) A valid student identification card with a photograph of the eligible voter issued by an institution of higher education in West Virginia, or a valid high school identification card issued by a West Virginia high school;

(F) A valid military identification card issued by the United States with a photograph of the person desiring to vote;

(G) A valid concealed carry (pistol/revolver) permit issued by the sheriff of the county with a photograph of the person desiring to vote;

(H) A valid Medicare card or Social Security card;

(I) A valid birth certificate;

(J) A valid voter registration card issued by a county clerk in the State of West Virginia;

(K) A valid hunting or fishing license issued by the State of West Virginia;

(L) A valid identification card issued to the voter by the West Virginia Supplemental Nutrition Assistance (SNAP) program;

(M) A valid identification card issued to the voter by the West Virginia Temporary Assistance for Needy Families (TANF) program;

(N) A valid identification card issued to the voter by West Virginia Medicaid;

(O) A valid bank card or valid debit card;
(P) A valid utility bill issued within six months of the date of the election;

(Q) A valid bank statement issued within six months of the date of the election; or

(R) A valid health insurance card issued to the voter.

(3) In lieu of providing a valid identifying document, as required by this section, a registered voter may be accompanied at the polling place by an adult known to the registered voter for at least six months. That adult may sign an affidavit on a form provided to clerks and poll workers by the Secretary of State, which states under oath or affirmation that the adult has known the registered voter for at least six months, and that in fact the registered voter is the same person who is present for the purpose of voting. For the affidavit to be considered valid, the adult shall present a valid identifying document with his or her name, address, and photograph.

(4) A poll worker may allow a voter, whom the poll worker has known for at least six months, to vote without presenting a valid identifying document.

(5) If the person desiring to vote is unable to furnish a valid identifying document, or if the poll clerk determines that the proof of identification presented by the voter does not qualify as a valid identifying document, the person desiring to vote shall be permitted to cast a provisional ballot after executing an affidavit affirming his or her identity pursuant to paragraph (B) of this subdivision.

(A) The provisional ballot is entitled to be counted once the election authority verifies the identity of the individual by comparing that individual’s signature to the current signature on file with the election authority and determines that the individual was otherwise eligible to cast a ballot at the polling place where the ballot was cast.
(B) The affidavit to be used for voting shall be substantially in the following form:

“State of West Virginia

County of....................................

I do solemnly swear (or affirm) that my name is .................................................; that I reside at.............................; and that I am the person listed in the precinct register under this name and at this address.

I understand that knowingly providing false information is a violation of law and subjects me to possible criminal prosecution.

.....................................................

Signature of voter

Subscribed and affirmed before me this............ day of ...................., 20....

..............................................

Name of Election Official

..............................................

Signature of Election Official”.

(6) A voter who votes in person at a precinct polling place that is located in a building which is part of a state licensed care facility where the voter is a resident is not required to provide proof of identification as a condition before voting in an election.

(7) The person entering voter information into the centralized voter registration database shall cause the records to
indicate when a voter has not presented a valid identifying
document and has executed a voter identity affidavit.

(8) If a voter participating in the Address Confidentiality
Program established by section one hundred three, article
twenty-eight-a, chapter forty-eight of this code, executes a voter
identity affidavit, the program participant’s residential or
mailing address is subject to the confidentiality provisions of
section one hundred eight, article twenty-eight-a, chapter
tyre-eight of this code and shall be used only for those statutory
and administrative purposes authorized by this section.

(9) Prior to the primary and general elections to be held in
calendar year 2018, the Secretary of State shall educate voters
about the requirement to present a valid identifying document
and develop a program to help ensure that all eligible voters are
able to obtain a valid identifying document.

(b) The clerk of the county commission is authorized, upon
verification that the precinct at which a handicapped person is
registered to vote is not handicap accessible, to transfer that
person’s registration to the nearest polling place in the county
which is handicap accessible. A request by a handicapped person
for a transfer of registration must be received by the county clerk
no later than thirty days prior to the date of the election. A
handicapped person who has not made a request for a transfer of
registration at least thirty days prior to the date of the election
may vote a provisional ballot at a handicap accessible polling
place in the county of his or her registration. If during the
canvass the county commission determines that the person had
been registered in a precinct that is not handicap accessible, the
voted ballot, if otherwise valid, shall be counted. The
handicapped person may vote in the precinct to which the
registration was transferred only as long as the disability exists
or the precinct from which the handicapped person was
transferred remains inaccessible to the handicapped. To ensure
confidentiality of the transferred ballot, the county clerk processing the ballot shall provide the voter with an unmarked envelope and an outer envelope designated “provisional ballot/handicapped voter”. After validation of the ballot at the canvass, the outer envelope shall be destroyed and the handicapped voter’s ballot shall be placed with other approved provisional ballots prior to removal of the ballot from the unmarked envelope.

(c) When the voter’s signature is properly marked and the voter has presented a valid identifying document, the two poll clerks shall sign their names in the places indicated on the back of the official ballot and deliver the ballot to the voter to be voted by him or her without leaving the election room. If he or she returns the ballot spoiled to the clerks, they shall immediately mark the ballot “spoiled” and it shall be preserved and placed in a spoiled ballot envelope together with other spoiled ballots to be delivered to the board of canvassers and deliver to the voter another official ballot, signed by the clerks on the reverse side. The voter shall thereupon retire alone to the booth or compartment prepared within the election room for voting purposes and there prepare his or her ballot. In voting for candidates in general and special elections, the voter shall comply with the rules and procedures prescribed in section five, article six of this chapter.

(d) It is the duty of a poll clerk, in the presence of the other poll clerk, to indicate by a check mark, or by other means, inserted in the appropriate place on the registration record of each voter the fact that the voter voted in the election. In primary elections the clerk shall also insert on the registration record of each voter a distinguishing initial or initials of the political party for whose candidates the voter voted. If a person is challenged at the polls, the challenge shall be indicated by the poll clerks on the registration record, together with the name of the challenger.
The subsequent removal of the challenge shall be recorded on the registration record by the clerk of the county commission.

(e) (1) No voter may receive any assistance in voting unless, by reason of blindness, disability, advanced age or inability to read and write, that voter is unable to vote without assistance. Any voter so qualified to receive assistance in voting may:

(A) Declare his or her choice of candidates to an Election Commissioner of each political party who, in the presence of the voter and in the presence of each other, shall prepare the ballot for voting in the manner provided in this section and, on request, shall read to the voter the names of the candidates selected on the ballot;

(B) Require the Election Commissioners to indicate to him or her the relative position of the names of the candidates on the ballot, the voter shall then retire to one of the booths or compartments to prepare his or her ballot in the manner provided in this section;

(C) Be assisted by any person of the voter’s choice, other than the voter’s present or former employer or agent of that employer, the officer or agent of a labor union of which the voter is a past or present member or a candidate on the ballot or an official write-in candidate; or

(D) If he or she is handicapped, vote from an automobile outside the polling place or precinct by the absentee balloting method provided in subsection (e), section five, article three of this chapter in the presence of an Election Commissioner of each political party if all of the following conditions are met:

(i) The polling place is not handicap accessible; and

(ii) No voters are voting or waiting to vote inside the polling place.
(2) The voted ballot shall then be returned to the precinct officials and secured in a sealed envelope to be returned to the clerk of the county commission with all other election materials. The ballot shall then be tabulated using the appropriate method provided in section eight of this chapter as it relates to the specific voting system in use.

(3) A voter who requests assistance in voting but who is believed not to be qualified for assistance under the provisions of this section shall nevertheless be permitted to vote a provisional ballot with the assistance of any person herein authorized to render assistance.

(4) One or more of the Election Commissioners or poll clerks in the precinct may challenge the ballot on the ground that the voter received assistance in voting it when in his, her or their opinion the person who received assistance in voting is not so illiterate, blind, disabled or of such advanced age as to have been unable to vote without assistance. The Election Commissioner or poll clerk or commissioners or poll clerks making the challenge shall enter the challenge and the reason for such challenge on the form and in the manner prescribed or authorized by article three of this chapter.

(5) An Election Commissioner or other person who assists a voter in voting:

(A) May not in any manner request or seek to persuade or induce the voter to vote a particular ticket or for a particular candidate or for or against any public question and must not keep or make any memorandum or entry of anything occurring within the voting booth or compartment and must not, directly or indirectly, reveal to any person the name of a candidate voted for by the voter, which ticket he or she had voted or how he or she had voted on any public question or anything occurring within the voting booth, compartment, or voting machine booth.
except when required by law to give testimony as to the matter in a judicial proceeding; and

(B) Shall sign a written oath or affirmation before assisting the voter on a form prescribed by the Secretary of State stating that he or she will not override the actual preference of the voter being assisted, attempt to influence the voter’s choice or mislead the voter into voting for someone other than the candidate of voter’s choice. The person assisting the voter shall also swear or affirm that he or she believes that the voter is voting free of intimidation or manipulation. No person providing assistance to a voter is required to sign an oath or affirmation where the reason for requesting assistance is the voter’s inability to vote without assistance because of blindness as defined in section three, article fifteen, chapter five of this code and the inability to vote without assistance because of blindness is certified in writing by a physician of the voter’s choice and is on file in the office of the clerk of the county commission.

(6) In accordance with instructions issued by the Secretary of State, the clerk of the county commission shall provide a form entitled “list of assisted voters”, on a form as prescribed by the Secretary of State. The commissioners shall enter the name of each voter receiving assistance in voting the ballot, together with the poll slip number of that voter and the signature of the person or the commissioner from each party who assisted the voter. If no voter has been assisted in voting, the commissioners shall make and subscribe to an oath of that fact on the list.

(f) After preparing the ballot, the voter shall fold the ballot so that the face is not exposed and the names of the poll clerks on it are seen. The voter shall announce his or her name and present his or her ballot to one of the commissioners who shall hand the same to another commissioner, of a different political party, who shall deposit it in the ballot box if the ballot is the official one and properly signed. The commissioner of election
may inspect every ballot before it is deposited in the ballot box
to ascertain whether it is single; but without unfolding or
unrolling it so as to disclose its content. When the voter has
voted, he or she shall retire immediately from the election room
and beyond the sixty-foot limit and not return except by
permission of the commissioners.

(g) Following the election, the oaths or affirmations required
by this section from those assisting voters, together with the “list
of assisted voters”, shall be returned by the Election
Commissioners to the clerk of the county commission along with
the election supplies, records and returns. The clerk of the
county commission shall make the oaths, affirmations and list
available for public inspection and preserve them for a period of
twenty-two months or until disposition is authorized or directed
by the Secretary of State or court of record. The clerk may use
these records to update the voter registration records in
accordance with subsection (d), section eighteen, article two of
this chapter.

(h) Any person making an oath or affirmation required under
the provisions of this section who knowingly swears falsely or
any person who counsels, advises, aids or abets another in the
commission of false swearing under this section, is guilty of a
misdemeanor and, upon conviction thereof, shall be fined not
more than $1,000 or confined in jail for a period of not more
than one year, or both fined and confined.

(i) Any Election Commissioner or poll clerk who authorizes
or provides unchallenged assistance to a voter when the voter is
known to the Election Commissioner or poll clerk not to require
assistance in voting, is guilty of a felony and, upon conviction
thereof, shall be fined not more than $5,000 or imprisoned in a
state correctional facility for a period of not less than one year
nor more than five years, or both fined and imprisoned.
§3-1-41. Challenged and provisional voter procedures; counting of provisional voters’ ballots; ballots of election officials.

(a) It is the duty of the members of the receiving board, jointly or severally, to challenge the right of any person requesting a ballot to vote in any election:

(1) If the person’s registration record is not available at the time of the election;

(2) If the signature written by the person in the poll book does not correspond with the signature purported to be his or hers on the registration record;

(3) If the registration record of the person indicates any other legal disqualification;

(4) If the person fails to present a valid identifying document pursuant to section thirty-four of this article; or

(5) If any other valid challenge exists against the voter pursuant to section ten, article three of this chapter.

(b) Any person challenged shall nevertheless be permitted to vote in the election. He or she shall be furnished an official ballot not endorsed by the poll clerks. In lieu of the endorsements, the poll clerks shall complete and sign an appropriate form indicating the challenge, the reason thereof and the name or names of the challengers. The form shall be securely attached to the voter’s ballot and deposited together with the ballot in a separate box or envelope marked “provisional ballots”.

(c) At the time that an individual casts a provisional ballot, the poll clerk shall give the individual written information stating that an individual who casts a provisional ballot will be
able to ascertain under the free access system established in this section whether the vote was counted and, if the vote was not counted, the reason that the vote was not counted.

(d) Before an individual casts a provisional ballot, the poll clerk shall provide the individual written instructions, supplied by the board of ballot commissioners, stating that if the voter is casting a ballot in the incorrect precinct, the ballot cast may not be counted for that election: Provided, That if the voter is found to be in the incorrect precinct, then the poll worker shall attempt to ascertain the appropriate precinct for the voter to cast a ballot and immediately give the voter the information if ascertainable.

(e) Provisional ballots may not be counted by the election officials. The county commission shall, on its own motion, at the time of canvassing of the election returns, sit in session to determine the validity of any challenges according to the provisions of this chapter. If the county commission determines that the challenges are unfounded, each provisional ballot of each challenged voter, if otherwise valid, shall be counted and tallied together with the regular ballots cast in the election. The county commission, as the board of canvassers, shall protect the privacy of each provisional ballot cast. The county commission shall disregard technical errors, omissions or oversights if it can reasonably be ascertained that the challenged voter was entitled to vote.

(f) Any person duly appointed as an Election Commissioner or clerk under the provisions of section twenty-eight of this article who serves in that capacity in a precinct other than the precinct in which the person is legally entitled to vote may cast a provisional ballot in the precinct in which the person is serving as a commissioner or clerk. The ballot is not invalid for the sole reason of having been cast in a precinct other than the precinct in which the person is legally entitled to vote. The county commission shall record the provisional ballot on the voter’s
permanent registration record: Provided, That the county commission may count only the votes for the offices that the voter was legally authorized to vote for in his or her own precinct.

(g) The Secretary of State shall establish a free access system, which may include a toll-free telephone number or an Internet website, that may be accessed by any individual who casts a provisional ballot to discover whether his or her vote was counted and, if not, the reason that the vote was not counted.

§3-1-51. Identity verification of voters executing voter identity affidavit.

(a) The clerk of the county commission shall cause a letter to be mailed by first class mail to each voter who executed a voter identity affidavit pursuant to section thirty-four of this article. The letter shall be mailed within sixty days after the election. The clerk shall mark the envelope with instructions to the United States Post Office not to forward the letter and to provide address correction information. The letter shall notify the addressee that a person who did not present a valid identifying document voted using his or her name and address and instruct the addressee to contact the clerk immediately if he or she did not vote. The letter shall also inform the addressee of the procedure for obtaining an identification card from the Division of Motor Vehicles for voting purposes.

(b) The clerk of the county commission shall cause letters mailed pursuant to subsection (a) of this section that are returned as undeliverable by the United States Post Office to be referred to the Secretary of State. The clerk shall also prepare and forward to the Secretary of State a list of all persons who were mailed letters under subsection (a) of this section and who notified the clerk that they did not vote. Upon receipt of notice from a person who receives a letter mailed pursuant to
subsection (a) of this section that the person did not vote, or
upon receipt of a referral from the clerk, the Secretary of State
shall cause an investigation to be made to determine whether
fraudulent voting occurred. Beginning July 1, 2019 and each
year thereafter, the Secretary of State shall submit a report to the
Joint Committee on the Judiciary and the Joint Committee on
Government and Finance detailing the results of all
investigations of voter identity affidavits, including, but not
limited to, the number of investigations, the number of ballots
cast, and the number and results of any determinations made
regarding fraudulent voting.

ARTICLE 2. REGISTRATION OF VOTERS.

§3-2-11. Registration in conjunction with driver licensing.

(a) The Division of Motor Vehicles or other division or
department that may be established by law to perform motor
vehicle driver licensing services shall obtain, as an integral and
simultaneous part of every process of application for the
issuance, renewal or change of address of a motor vehicle
driver’s license or official identification card pursuant to the
provisions of article two, chapter seventeen-b of this code, when
the division’s regional offices are open for regular business, the
following information from each qualified registrant:

(1) Full name, including first, middle, last and any premarital
names;

(2) Date of birth;

(3) Residence address and mailing address, if different;

(4) The applicant’s electronic signature;

(5) Telephone number, if available;

(6) Email address, if available;
(7) Political party membership, if any;

(8) Driver’s license number and last four digits of social security number;

(9) A notation that the applicant has attested that he or she meets all voter eligibility requirements, including United States citizenship;

(10) Whether the applicant affirmatively declined to become registered to vote during the transaction with the Division of Motor Vehicles;

(11) Date of application; and

(12) Any other information specified in rules adopted to implement this section.

(b) Unless the applicant affirmatively declines to become registered to vote or update their voter registration during the transaction with the Division of Motor Vehicles, the Division of Motor Vehicles shall release all of the information obtained pursuant to subsection (a) of this section to the Secretary of State, who shall forward the information to the county clerk for the relevant county to process the newly registered voter or updated information for the already-registered voter pursuant to law. Notwithstanding any other provision of this code to the contrary, if the applicant affirmatively declines to become registered to vote, the Division of Motor Vehicles is required to release the first name, middle name, last name, premarital name, if applicable, complete residence address, complete date of birth of an applicant and the applicant’s electronic signature, entered in the division’s records for driver license or nonoperator identification purposes to the Secretary of State in order to facilitate any future attempt of the applicant to register to vote online, along with the notation that the applicant affirmatively
declined to become registered at that time. The Division of
Motor Vehicles shall notify that applicant that by submitting his
or her signature, the applicant grants written consent for the
submission of the information obtained and required to be
submitted to the Secretary of State pursuant to this section.

(c) Information regarding a person’s failure to sign the voter
registration application is confidential and may not be used for
any purpose other than to determine voter registration.

(d) A qualified voter who submits the required information
or update to his or her voter registration, pursuant to the
provisions of subsection (a) of this section, in person at a driver
licensing facility at the time of applying for, obtaining, renewing
or transferring his or her driver’s license or official identification
card and who presents identification and proof of age at that time
is not required to make his or her first vote in person or to again
present identification in order to make that registration valid.

(e) A qualified voter who submits by mail or by delivery by
a third party an application for registration on the form used in
conjunction with driver licensing is required to make his or her
first vote in person and present identification as required for
other mail registration in accordance with the provisions of
subsection (g), section ten of this article. If the applicant has
been previously registered in the jurisdiction and the application
is for a change of address, change of name, change of political
party affiliation or other correction, the presentation of
identification and first vote in person is not required.

(f) An application for voter registration submitted pursuant
to the provisions of this section updates a previous voter
registration by the applicant and authorizes the cancellation of
registration in any other county or state in which the applicant
was previously registered.
(g) A change of address from one residence to another within the same county which is submitted for driver licensing or nonoperator’s identification purposes in accordance with applicable law serves as a notice of change of address for voter registration purposes if requested by the applicant after notice and written consent of the applicant.

(h) Completed applications for voter registration or change of address for voting purposes received by an office providing driver licensing services shall be forwarded to the Secretary of State within five days of receipt unless other means are available for a more expedited transmission. The Secretary of State shall remove and file any forms which have not been signed by the applicant and shall forward completed, signed applications to the clerk of the appropriate county commission within five days of receipt.

(i) Voter registration application forms containing voter information which are returned to a driver licensing office unsigned shall be collected by the Division of Motor Vehicles, submitted to the Secretary of State and maintained by the Secretary of State’s office according to the retention policy adopted by the Secretary of State.

(j) The Secretary of State shall establish procedures to protect the confidentiality of the information obtained from the Division of Motor Vehicles, including any information otherwise required to be confidential by other provisions of this code.

(k) A person registered to vote pursuant to this section may cancel his or her voter registration at any time by any method available to any other registered voter.

(l) This section shall not be construed as requiring the Division of Motor Vehicles to determine eligibility for voter registration and voting.
The changes made to this section during the 2016 Regular Legislative Session shall become effective on July 1, 2017, and any costs associated therewith shall be paid by the Division of Motor Vehicles. If the Division of Motor Vehicles is unable to meet the requirements of this section by February 1, 2017, it shall make a presentation to the Joint Committee on Government and Finance explaining any resources necessary to meet the requirements or any changes to the code that it recommends immediately prior to the 2017 Regular Legislative Session.

The Secretary of State shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code in order to implement the requirements of this section.

§3-2-12. Combined voter registration and driver licensing fund; transfer of funds.

(a) Fifty cents of each license fee collected pursuant to the provisions of section one, article three, chapter seventeen of this code shall be paid into the State Treasury to the credit of a special revenue fund to be known as the “Combined Voter Registration and Driver Licensing Fund.” The moneys so credited to such fund may be used by the Secretary of State for the following purposes:

(1) Printing and distribution of combined driver licensing or other agency applications and voter registration forms, or for the printing of voter registration forms to be used in conjunction with driver licensing or other agency applications, or for implementing the automatic voter registration program authorized in section eleven of this article;

*NOTE: This section was also amended by Com. Sub. for S. B. 591 (Chapter 97), which passed prior to this act.*
(2) Printing and distribution of mail voter registration forms for purposes of this article;

(3) Supplies, postage and mailing costs for correspondence relating to voter registration for agency registration sites and for the return of completed voter registration forms to the appropriate state or county election official;

(4) Reimbursement of postage and mailing costs incurred by clerks of the county commissions for sending a verification mailing, confirmation of registration or other mailings directly resulting from an application to register, change or update a voter’s registration through a driver licensing or other agency;

(5) Reimbursement to state funded agencies, with the exception of the Division of Motor Vehicles, designated to provide voter registration services under this chapter for personnel costs associated with the time apportioned to voter registration services and assistance;

(6) The purchase, printing and distribution of public information and other necessary materials or equipment to be used in conjunction with voter registration services provided by state funded agencies designated pursuant to the provisions of this article;

(7) The development and continued maintenance of a statewide program of uniform voter registration computerization for use by each county registration office and the Secretary of State, purchase of uniform voter registration software, payment of software installation costs and reimbursement to the county commissions of not more than fifty percent of the cost per voter for data entry or data conversion from a previous voter registration software program;

(8) Efforts to maintain correct voter information and conduct general list maintenance to remove ineligible voters and ensure
new residents receive voter registration information, including collaborating with other states and non-profit corporations dedicated to improving the election system;

(9) Payment of any dues or fees associated with a program to match and transfer data to and from other states;

(10) Resources related to voter registration and list maintenance; and

(11) Payment or reimbursement of other costs associated with implementation of the requirements of the National Voter Registration Act of 1993 (42 U. S. C. 1973gg): Provided, That revenue received by the fund in any fiscal year shall first be allocated to the purposes set forth in subdivisions (1) through (10), inclusive, of this subsection.

(b) The Secretary of State shall promulgate rules pursuant to the provisions of chapter twenty-nine-a of this code to provide for the administration of the fund established in subsection (a) of this section.

(c) Any balance in the fund created by subsection (a) of this section which exceeds $100,000 as of June 30, 2017, and on June 30 of each year thereafter, shall be transferred to the General Revenue Fund.

CHAPTER 17B. MOTOR VEHICLE DRIVER’S LICENSES.

ARTICLE 2. ISSUANCE OF LICENSE, EXPIRATION AND RENEWAL.

§17B-2-1. Drivers must be licensed; types of licenses; licensees need not obtain local government license; motorcycle driver license; identification cards.

(a) (1) No person, except those hereinafter expressly exempted, may drive a motor vehicle upon a street or highway
in this state or upon a subdivision street used by the public
generally unless the person has a valid driver’s license issued
pursuant to this code for the type or class of vehicle being
driven.

(2) Any person licensed to operate a motor vehicle pursuant
to this code may exercise the privilege thereby granted in the
manner provided in this code and, except as otherwise provided
by law, is not required to obtain any other license to exercise the
privilege by a county, municipality or local board or body having
authority to adopt local police regulations.

(b) The division, upon issuing a driver’s license, shall
indicate on the license the type or general class or classes of
vehicles the licensee may operate in accordance with this code,
federal law or rule. Licenses shall be issued in different colors
for those drivers under age eighteen, those drivers age eighteen
to twenty-one and adult drivers. The commissioner is authorized
to select and assign colors to the licenses of the various age
groups.

(c) The following drivers licenses classifications are hereby
established:

(1) A Class A, B or C license shall be issued to those persons
eighteen years of age or older with two years of driving
experience who have qualified for the commercial driver’s
license established by chapter seventeen-e of this code and the
federal Motor Carrier Safety and Improvement Act of 1999 and
subsequent rules and have paid the required fee.

(2) A Class D license shall be issued to those persons
eighteen years and older with one year of driving experience
who operate motor vehicles other than those types of vehicles
which require the operator to be licensed under the provisions of
chapter seventeen-e of this code and federal law and rule and
whose primary function or employment is the transportation of persons or property for compensation or wages and have paid the required fee. For the purpose of regulating the operation of motor vehicles, wherever the term “chauffeur’s license” is used in this code, it means the Class A, B, C or D license described in this section or chapter seventeen-e of this code or federal law or rule: Provided, That anyone not required to be licensed under the provisions of chapter seventeen-e of this code and federal law or rule and who operates a motor vehicle registered or required to be registered as a Class A motor vehicle, as that term is defined in section one, article ten, chapter seventeen-a of this code, with a gross vehicle weight rating of less than eight thousand one pounds, is not required to obtain a Class D license.

(3) A Class E license shall be issued to persons who have qualified for a driver’s license under the provisions of this chapter and who are not required to obtain a Class A, B, C or D license and who have paid the required fee. The Class E license may be endorsed under the provisions of section seven-b of this article for motorcycle operation. The Class E or G license for a person under the age of eighteen may also be endorsed with the appropriate graduated driver license level in accordance with the provisions of section three-a of this article.

(4) A Class F license shall be issued to those persons who successfully complete the motorcycle examination procedure provided by this chapter and have paid the required fee but who do not possess a Class A, B, C, D or E driver’s license.

(5) A Class G driver’s license or instruction permit shall be issued to a person using bioptic telescopic lenses who has successfully completed an approved driver training program and complied with all other requirements of article two-b of this chapter.

(d) All licenses issued under this section may contain information designating the licensee as a diabetic, organ donor,
as deaf or hard-of-hearing, as having any other handicap or
disability or that the licensee is an honorably discharged veteran
of any branch of the Armed Forces of the United States,
according to criteria established by the division, if the licensee
requests this information on the license. An honorably
discharged veteran may be issued a replacement license without
charge if the request is made before the expiration date of the
current license and the only purpose for receiving the
replacement license is to get the veterans designation placed on
the license.

(e) No person, except those hereinafter expressly exempted,
may drive a motorcycle on a street or highway in this state or
on a subdivision street used by the public generally unless the
person has a valid motorcycle license, a valid license which has
been endorsed under section seven-b of this article for
motorcycle operation or a valid motorcycle instruction permit.

(f) (1) An identification card may be issued to a person who:

(A) Is a resident of this state in accordance with the
provisions of section one-a, article three, chapter seventeen-a of
this code;

(B) Has reached the age of two years or, for good cause
shown, under the age of two.

(C) Has paid the required fee of $2.50 per year: Provided,
That no fees or charges, including renewal fees, are required if
the applicant:

(i) Is sixty-five years or older;

(ii) Is legally blind; or

(iii) Will be at least eighteen years of age at the next general,
municipal or special election and intends to use this
identification card as a form of identification for voting; and
(D) Presents a birth certificate or other proof of age and identity acceptable to the division with a completed application on a form furnished by the division.

(2) The identification card shall contain the same information as a driver’s license except that the identification card shall be clearly marked as an identification card. The division may issue an identification card with less information to persons under the age of sixteen. An identification card may be renewed annually on application and payment of the fee required by this section.

(A) Every identification card issued to a person who has attained his or her twenty-first birthday expires on the licensee’s birthday in those years in which the licensee’s age is evenly divisible by five. Except as provided in paragraph (B) of this subdivision, no identification card may be issued for less than three years or for more than seven years and expires on the licensee’s birthday in those years in which the licensee’s age is evenly divisible by five.

(B) Every identification card issued to a person who has not attained his or her twenty-first birthday expires thirty days after the licensee’s twenty-first birthday.

(C) Every identification card issued to persons under the age of sixteen shall be issued for a period of two years and expire on the last day of the month in which the applicant’s birthday occurs.

(3) The division may issue an identification card to an applicant whose privilege to operate a motor vehicle has been refused, canceled, suspended or revoked under the provisions of this code.

(g) For any person over the age of fifty years who wishes to obtain a driver’s license or identification card under the provisions of this section:
(1) A raised seal or stamp on the birth certificate or certified copy of the birth certificate is not required if the issuing jurisdiction does not require one; and

(2) If documents are lacking to prove all changes of name in the history of any such applicant, applicants renewing a driver’s license or identification card under the provisions of this section may complete a Name Variance Approval Document as instituted by the division, so long as they can provide:

(A) Proof of identity;

(B) Proof of residency; and

(C) A valid Social Security number.

(3) The division may waive any documents necessary to prove a match between names, so long as the division determines the person is not attempting to:

(A) Change his or her identity;

(B) Assume another person’s identity; or

(C) Commit a fraud.

(h) A person over the age of seventy years, or who is on Social Security disability, who wishes to obtain or renew a driver’s license or identification card under the provisions of this section, may not be required to furnish a copy of a birth certificate if they can provide:

(1) Proof of identity;

(2) Proof of residency;

(3) A valid Social Security number; and

(4) One of the following identifying items:

(A) A form of military identification, including a DD214 or equivalent;
(B) A U.S. passport, whether valid or expired;

(C) School records, including a yearbook;

(D) A religious document, that in the judgment of the Division is sufficient and authentic to reflect that the person was born in the United States; or

(E) An expired driver’s license, employment identification card, or other reliable identification card with a recognizable photograph of the person.

(i) Any person violating the provisions of this section is guilty of a misdemeanor and, upon conviction, shall be fined not more than $500 and, upon a second or subsequent conviction, shall be fined not more than $500 or confined in jail not more than six months, or both fined and confined.

CHAPTER 97

(Com. Sub. for S. B. 591 - By Senators Trump, Gaunch, Walters, Ashley, Snyder, Beach, Takubo, Maynard, Kessler, Palumbo, Blair, Miller, Williams, Kirkendoll, Woelfel, Romano, Mullins, Unger, Laird, Sypolt, Stollings and Plymale)

[Passed March 11, 2016; in effect from passage.]
[Approved by the Governor on March 21, 2016.]

AN ACT to amend and reenact §3-2-3, §3-2-4a and §3-2-12 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §3-2-23a all relating to creation and maintenance of voter registration lists; creating additional duties for Secretary of State relating to voter
registration; authorizing Secretary of State to undertake voter registration list maintenance in a county under certain circumstances; requiring Secretary of State to provide written notice to clerk of county commission of need for voter registration record maintenance and allow ninety days before undertaking voter registration list maintenance in a county; delineating notice requirements; clarifying duty of Secretary of State to perform certain ongoing voter registration database maintenance; directing Secretary of State to enter into agreement with Division of Motor Vehicles for Division of Motor Vehicles to provide certain information regarding persons eligible to vote; setting forth information to be provided by Division of Motor Vehicles; permitting Secretary of State to use information for voter registration list maintenance comparison through interstate data-sharing agreement as designated by Secretary of State; identifying additional permissible uses of funds in Combined Voter Registration and Driver Licensing Fund; providing for periodic transfer of funds from that fund to General Revenue Fund under certain circumstances; authorizing cancellation of registration of deceased or ineligible voters; and granting certain rule-making authority to Secretary of State.

Be it enacted by the Legislature of West Virginia:

That §3-2-3, §3-2-4a and §3-2-12 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 as §3-2-23a, all to read as follows:

ARTICLE 2. REGISTRATION OF VOTERS.

§3-2-3. State authority relating to voter registration; chief election official.

(a) The Secretary of State, as chief election official of the state as provided in section six, article one-a of this chapter, shall
have general supervision of the voter registration procedures and
practices and the maintenance of voter registration records in the
state and shall have authority to require reports and investigate
violations to ensure the proper conduct of voter registration
throughout the state and all of its subdivisions. Upon written
notice to the clerk of the county commission of a county of the
need for voter registration record maintenance and the failure of
that clerk to complete such maintenance within ninety days of
the notice, the Secretary of State may make changes in the voter
registration data necessary to comply with list maintenance
requirements of sections four-a, twenty-three, twenty-five,
twenty-six and twenty-seven of this article: Provided, That the
secretary shall send the notice by certified mail, return receipt
requested.

(b) The Secretary of State, as chief election official of the
state, is responsible for implementing, in a uniform and
nondiscriminatory manner, a single, uniform, official,
centralized, interactive computerized statewide voter registration
list defined, maintained and administered at the state level that
contains the name and registration information of every legally
registered voter in the state and assigns a unique identifier to
each legally registered voter in the state.

(c) The Secretary of State is hereby designated as the chief
election official responsible for the coordination of this state’s
responsibilities under 42 U.S.C. §1973gg, et seq., the “National
Voter Registration Act of 1993”. The Secretary of State shall
have general supervision of voter registration procedures and
practices at agencies and locations providing services as required
by the provisions of this article and shall have the authority to
propose procedural, interpretive and legislative rules for
promulgation in accordance with the provisions of article three,
chapter twenty-nine-a of this code for application for
registration, transmission of applications, reporting and
maintenance of records required by the provisions of this article and for the development, implementation and application of other provisions of this article.

§3-2-4a. Statewide voter registration database.

(a) The Secretary of State shall implement and maintain a single, official, statewide, centralized, interactive computerized voter registration database of every legally registered voter in the state, as follows:

(1) The statewide voter registration database shall serve as the single system for storing and managing the official list of registered voters throughout the state.

(2) The statewide voter registration database shall contain the name, registration information and voter history of every legally registered voter in the state.

(3) In the statewide voter registration database, the Secretary of State shall assign a unique identifier to each legally registered voter in the state.

(4) The statewide voter registration database shall be coordinated with other agency databases within the state and elsewhere, as appropriate.

(5) The Secretary of State, any clerk of the county commission, or any authorized designee of the Secretary of State or clerk of the county commission, may obtain immediate electronic access to the information contained in the statewide voter registration database.

(6) The clerk of the county commission shall electronically enter voter registration information into the statewide voter registration database on an expedited basis at the time the information is provided to the clerk.
(7) The Secretary of State shall provide necessary support to enable every clerk of the county commission in the state to enter information as described in subdivision (6) of this subsection.

(8) The statewide voter registration database shall serve as the official voter registration list for conducting all elections in the state.

(b) The provisions of subdivision (6), subsection (a) of this section notwithstanding, the Secretary of State or any clerk of a county commission shall perform maintenance with respect to the statewide voter registration database on a regular basis as follows:

(1) If an individual is to be removed from the statewide voter registration database he or she shall be removed in accordance with the provisions of 42 U. S. C. §1973gg, et seq., the National Voter Registration Act of 1993.

(2) The Secretary of State shall coordinate the statewide voter registration database with state agency records and shall establish procedures for the removal of names of individuals who are not qualified to vote due to felony status or death. No state agency may withhold information regarding a voter’s status as deceased or as a felon unless ordered by a court of law.

(c) The list maintenance performed under subsection (b) of this section shall be conducted in a manner that ensures that:

(1) The name of each registered voter appears in the statewide voter registration database;

(2) Only voters who are not registered, who have requested in writing that their voter registration be canceled, or who are not eligible to vote are removed from the statewide voter registration database;
Duplicate names are eliminated from the statewide voter registration database; and

(4) Deceased individuals’ names are eliminated from the statewide voter registration database.

(d) The Secretary of State and the clerks of all county commissions shall provide adequate technological security measures to prevent the unauthorized access to the statewide voter registration database established under this section.

(e) The Secretary of State shall ensure, and may perform such maintenance necessary to ensure, that voter registration records in the state are accurate and updated regularly, including the following:

(1) A system of file maintenance that makes a reasonable effort to remove registrants who are ineligible to vote from the official list of eligible voters. Under the system, consistent with 42 U. S. C. §1973gg, et seq., registrants who have not responded to a notice sent pursuant to section twenty six, article two of this chapter, who have not otherwise updated their voter registration address, and who have not voted in two consecutive general elections for federal office shall be removed from the official list of eligible voters, except that no registrant may be removed solely by reason of a failure to vote;

(2) By participation in programs across state lines to share data specifically for voter registration to ensure that voters who have moved across state lines or become deceased in another state are removed in accordance with state law and 42 U. S. C. §1973gg, et seq.; and

(3) Through safeguards to ensure that eligible voters are not removed in error from the official list of eligible voters.

(f) Applications for voter registration may be accepted only when the following information is provided:
(1) Except as provided in subdivision (2) of this subsection and notwithstanding any other provision of law to the contrary, an application for voter registration may not be accepted or processed unless the application includes:

(A) In the case of an applicant who has been issued a current and valid driver’s license, the applicant’s driver’s license number;

(B) In the case of an applicant who has been issued an identification card by the Division of Motor Vehicles, the applicant’s identification number; or

(C) In the case of any other applicant, the last four digits of the applicant’s Social Security number; and

(2) If an applicant for voter registration has not been issued a current and valid driver’s license, Division of Motor Vehicles identification card, or a Social Security number, the Secretary of State shall assign the applicant a number which will serve to identify the applicant for voter registration purposes. The number assigned under this subdivision shall be the unique identifying number assigned under the statewide voter registration database.

(g)(1) The Secretary of State and the Commissioner of the Division of Motor Vehicles shall enter into an agreement to match and transfer applicable information in the statewide voter registration database with information in the database of the Division of Motor Vehicles to the extent required to enable each official to verify the accuracy of the information provided on applications for voter registration.

(2) The Secretary of State and the Commissioner of the Division of Motor Vehicles shall enter into an agreement for the Division of Motor Vehicles to provide all name fields, residence
and mailing address fields, driver’s license or state identification number, last four digits of the Social Security number, date of birth, license or identification issuance and expiration dates, and current record status of individuals eligible to register to vote to the Secretary of State for the purpose of voter registration list maintenance comparison through an interstate data-sharing agreement designated by the Secretary of State as permitted by subdivision (2), subsection (e) of this section.

(h) The Commissioner of the Division of Motor Vehicles shall enter into an agreement with the Commissioner of Social Security under 42 U. S. C. §401, et seq., the Social Security Act. All fees associated with this agreement shall be paid for from moneys in the fund created under section twelve of this article.

*§3-2-12. Combined voter registration and driver licensing fund; transfer of funds.*

(a) Fifty cents of each license fee collected pursuant to the provisions of section one, article three, chapter seventeen of this code shall be paid into the State Treasury to the credit of a special revenue fund to be known as the Combined Voter Registration and Driver Licensing Fund. The moneys so credited to such fund may be used by the Secretary of State for the following purposes:

(1) Printing and distribution of combined driver licensing or other agency applications and voter registration forms, or for the printing of voter registration forms to be used in conjunction with driver licensing or other agency applications;

(2) Printing and distribution of mail voter registration forms for purposes of this article;

*NOTE: This section was also amended by H. B. 4013 (Chapter 96), which passed subsequent to this act.*
(3) Supplies, postage and mailing costs for correspondence relating to voter registration for agency registration sites and for the return of completed voter registration forms to the appropriate state or county election official;

(4) Reimbursement of postage and mailing costs incurred by clerks of the county commissions for sending a verification mailing, confirmation of registration or other mailings directly resulting from an application to register, change or update a voter’s registration through a driver licensing or other agency;

(5) Reimbursement to state funded agencies designated to provide voter registration services under this chapter for personnel costs associated with the time apportioned to voter registration services and assistance;

(6) The purchase, printing and distribution of public information and other necessary materials or equipment to be used in conjunction with voter registration services provided by state funded agencies designated pursuant to the provisions of this article;

(7) The development of a statewide program of uniform voter registration computerization for use by each county registration office and the Secretary of State, purchase of uniform voter registration software, payment of software installation costs and reimbursement to the county commissions of not more than fifty percent of the cost per voter for data entry or data conversion from a previous voter registration software program;

(8) Payment of up to fifty percent of the costs of conducting a joint program with participating counties to identify ineligible voters by using the United States postal service information as provided in section twenty-five of this article: Provided, That such assistance shall be available only to counties which
maintain voter registration lists on the statewide uniform voter data system;

(9) Payment of any dues or fees associated with a program to match and transfer data to and from other states;

(10) Resources related to voter registration and list maintenance; and

(11) Payment or reimbursement of other costs associated with implementation of the requirements of the National Voter Registration Act of 1993 (42 U. S. C. §1973gg): Provided, That revenue received by the fund in any fiscal year shall first be allocated to the purposes set forth in subdivisions (1) through (10), inclusive, of this subsection.

(b) The Secretary of State shall promulgate rules pursuant to the provisions of chapter twenty-nine-a of this code to provide for the administration of the fund established in subsection (a) of this section.

(c) Any balance in the fund created by subsection (a) of this section which exceeds $100,000 as of June 30, 2017, and on June 30 of each year thereafter, shall be transferred to the General Revenue Fund.

§3-2-23a. Cancellation of registration of deceased or ineligible voter.

The Secretary may propose legislative rules regarding the maintenance of the security and privacy of the voter registration records and the procedures to be followed by clerks of the county commission and the Secretary to make changes in voter registration records, including cancellations.
AN ACT to amend and reenact §3-5-8 of the Code of West Virginia, 1931, as amended; and to amend and reenact §3-8-5b of said code, all relating to candidate filings; directing candidates for circuit and family court judge to pay their filing fees to the election official with whom certificate of announcement is to be filed; providing for apportionment of certain candidate filing fees to counties; and requiring campaign finance statements for circuit and family court judges to be filed with Secretary of State.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5. PRIMARY ELECTIONS AND NOMINATING PROCEDURES.

§3-5-8. Filing fees and their disposition.

(a) Every person who becomes a candidate for nomination for or election to office in any primary election shall, at the time of filing the certificate of announcement as required in this article, pay a filing fee as follows:

(1) A candidate for president of the United States, for vice president of the United States, for United States Senator, for member of the United States House of Representatives, for
Governor and for all other state elective offices shall pay a fee equivalent to one percent of the annual salary of the office for which the candidate announces: Provided, That the filing fee for any candidate for president or vice president of the United States shall not exceed $2,500 commencing with the 2004 filing period;

(2) A candidate for the office of judge of a circuit court and judge of a family court shall pay a fee equivalent to one percent of the total annual salary of the office for which the candidate announces;

(3) A candidate for member of the House of Delegates shall pay a fee of one-half percent of the total annual salary of the office and a candidate for state Senator shall pay a fee of one percent of the total annual salary of the office;

(4) A candidate for sheriff, prosecuting attorney, circuit clerk, county clerk, assessor, member of the county commission and magistrate shall pay a fee equivalent to one percent of the annual salary, excluding any additional compensation or commission of the office for which the candidate announces. A candidate for county board of education shall pay a fee of $25. A candidate for any other county office shall pay a fee of $10;

(5) Delegates to the national convention of any political party shall pay the following filing fees:

(A) A candidate for delegate-at-large shall pay a fee of $20; and

(B) A candidate for delegate from a congressional district shall pay a fee of $10;

(6) Candidates for members of political executive committees and other political committees shall pay the following filing fees:

(A) A candidate for member of a state executive committee of any political party shall pay a fee of $20;
(B) A candidate for member of a county executive committee of any political party shall pay a fee of $10; and

(C) A candidate for member of a congressional, senatorial or delegate district committee of any political party shall pay a fee of $5.

(b) Candidates shall pay the filing fee to the election official with whom the certificate of announcement is filed according to the provisions of section seven of this article at the time of filing their certificates of announcement and no certificate of announcement shall be received until the filing fee is paid.

(c) All moneys received by the clerk from the fees shall be credited to the general county fund. Moneys received by the Secretary of State from fees paid by candidates for offices to be filled by all the voters of the state shall be deposited in a special fund for that purpose and shall be apportioned and paid by him or her to the several counties on the basis of population and that received from candidates from a district or judicial circuit of more than one county shall be apportioned to the counties comprising the district or judicial circuit in like manner. When such moneys are received by sheriffs it shall be credited to the general county fund. Moneys received by the Secretary of State from fees paid by candidates for judicial or legislative offices to be filled by the voters of one county shall be apportioned to the county in which the boundaries of the district lie.

ARTICLE 8. REGULATION AND CONTROL OF ELECTION.

*§3-8-5b. Where financial statements shall be filed; filing date prescribed.*

(a) The financial statements provided in this article shall be filed, by or on behalf of candidates, with:

*NOTE: This section was also amended by Com. Sub. for H. B. 2588 (Chapter 100), which passed subsequent to this act.*
(1) The Secretary of State for legislative offices, circuit judge and family court judge and for statewide and other offices to be nominated or elected by the voters of a political division greater than a county;

(2) The clerk of the county commission by candidates for offices to be nominated or elected by the voters of a single county or a political division within a single county except circuit judge and family court judge; or

(3) The proper municipal officer by candidates for office to be nominated or elected to municipal office.

(b) The statements may be filed by mail, in person, or by facsimile or other electronic means of transmission: Provided, That the financial statements filed by or on behalf of candidates for Governor, Secretary of State, Attorney General, Auditor, Treasurer, Commissioner of Agriculture and Supreme Court of Appeals shall be filed electronically by the means of an Internet program to be established by the Secretary of State.

(c) Committees required to report electronically may apply to the State Election Commission for an exemption from mandatory electronic filing in the case of hardship. An exemption may be granted at the discretion of the State Election Commission.

(d) For purposes of this article, the filing date of a financial statement shall, in the case of mailing, be the date of the postmark of the United States Postal Service and, in the case of hand delivery or delivery by facsimile or other electronic means of transmission, the date delivered to the office of the Secretary of State or to the office of the clerk of the county commission, in accordance with the provisions of subsection (a) of this section, during regular business hours of such office.
(e) The sworn financial statements required to be filed by this section with the Secretary of State shall be posted on the Internet by the Secretary of State within ten business days from the date the financial statement was filed.

CHAPTER 99

(S. B. 32 - By Senators Palumbo, Beach and Miller)

[Passed February 6, 2016; in effect from passage.]
[Approved by the Governor on February 11, 2016.]

AN ACT to amend and reenact §3-5-11, §3-5-18 and §3-5-19 of the Code of West Virginia, 1931, as amended, all relating to withdrawal of candidates for office and filling vacancies; requiring Secretary of State to create a notarized statement of withdrawal form; setting certain deadlines for filing of notarized statement of withdrawal form in order to withdraw as a candidate and to have one’s name removed from ballot; setting deadline for when Secretary of State shall certify names of general election candidates to counties; requiring certification of names of candidates that are the nominee of the party following the filling of a vacancy; prohibiting certification of names of candidates who timely filed a notarized statement of withdrawal; clarifying process for determining if candidate is disqualified; designating proper filing officer; removing State Election Commission from the process of voluntary withdrawal of candidates; authorizing executive committee to replace candidate who files a timely notarized statement of withdrawal and whose name would have otherwise appeared on the general election ballot; and setting and adjusting certain deadlines.
Be it enacted by the Legislature of West Virginia:

That §3-5-11, §3-5-18 and §3-5-19 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 5. PRIMARY ELECTIONS AND NOMINATING PROCEDURES.

§3-5-11. Withdrawals; filling vacancies in candidacy; publication.

(a) A candidate who has filed a certificate of announcement and wishes to withdraw and decline to stand as a candidate for the office shall file a signed and notarized statement of withdrawal on a form provided by the Secretary of State with the same officer with whom the certificate of announcement was filed. If the notarized statement of withdrawal is received by the proper officer by the deadlines set forth in subsection (b) of this section then the candidate’s withdrawal is final and his or her name shall not be certified as a candidate nor printed on any ballot. If a candidate files a notarized statement of withdrawal after the deadlines set forth in subsection (b) of this section, the candidate shall not be withdrawn and the candidate’s name shall remain on the ballot.

(b) Deadlines for withdrawing as a candidate:

(1) For primary or special primary elections or nonpartisan elections held in conjunction with a primary election: The notarized statement of withdrawal must be received by the same officer with whom the certificate of announcement was filed by the close of business of that officer not later than the third Tuesday following the close of the candidate filing period.

(2) For general or special general elections or nonpartisan elections held in conjunction with a general election: The notarized statement of withdrawal must be received by the same
24 officer with whom the certificate of announcement was filed by
25 the close of business of that officer not later than eighty-four
26 days before the general election.

27 (c) Upon request of the candidate’s family, the board of
28 ballot commissioners may remove the name of a candidate who
29 dies before the ballots are printed. If a candidate dies after the
30 ballots are printed but before the election, the clerk of the county
31 commission shall give a written notice which shall be posted
32 with the sample ballot at each precinct with the county to the
33 following effect: “To the voter: (name) of (residence), a
34 candidate for (office) is deceased.”

35 (d) If after the time is closed for announcing as a candidate
36 there is a vacancy on the ballot caused by failure of any person
37 of a party to file for each available seat of each available office,
38 the executive committee of the party for the political division
39 within which such candidate was to be voted for, or its chair if
40 the committee fails to act, may fill the vacancy and certify the
41 candidate named to the appropriate filing officer. Certification
42 of the appointment by the executive committee or its chair, the
43 candidate’s certificate of announcement and the filing fee must
44 be received by the appropriate filing officer as follows: For an
45 appointment by an executive committee, no later than the second
46 Friday following the close of filing, for an appointment by its
47 chair, no later than the third Tuesday following the close of
48 filing. A candidate appointed to fill a vacancy on the ballot
49 under this subsection shall have his or her name printed on the
50 primary ballot for that party.

§3-5-18. Disposition of certificates of results.

1 (a) The certificates of the board of canvassers made pursuant
2 to the preceding section shall be by them disposed of as follows:
3 One of the certificates showing the votes received by each
candidate of each party for each office to be filled by the voters of a political division greater than a county, including members of the state Executive Committee, shall be filed with the Secretary of State, and preserved in his or her office, and a copy thereof filed in the office of the clerk of the county commission of the county of such board, to be preserved by the clerk, and which shall be open to public inspection; one certificate showing the votes received by each candidate of each party for each office to be filled by the voters of the county or magisterial district within such county, including members of the county executive committee, shall be filed with the clerk of the county commission, and preserved in his or her office. If requested, the board of canvassers shall furnish to the county chairman of each political party a certificate showing the number of votes received by each of the candidates of such party in the county or any magisterial district therein.

(b) The Secretary of State shall certify by the seventy-first day next preceding the date of the general election, under the seal of the state, to the clerk of the county commission of each county in which a candidate is to be voted for, the name of the candidate of each political party receiving the highest number of votes in the political division in which he or she is a candidate, and who is entitled to have his or her name placed on the official ballot in the general election as the nominee of the party for such office. However, the certification shall include any candidates entitled to have their name placed on the official ballot in the general election as the nominee of the party following the filling of vacancies made pursuant to section nineteen of this article or other relevant state law. The Secretary of State shall also certify in the same manner the names of all candidates nominated by political parties or by groups of citizens, not constituting a political party, in any manner provided for making such nominations in this chapter.
(c) The Secretary of State may not include in the certification any person who has timely filed a notarized statement of withdrawal according to section eleven of this article.

§3-5-19. Vacancies in nominations; how filled; fees.

(a) If any vacancy occurs in the party nomination of candidates for office nominated at the primary election or by appointment under the provisions of section eleven of this article, the vacancies may be filled, subject to the following requirements and limitations:

(1) Each appointment made under this section shall be made by the executive committee of the political party for the political division in which the vacancy occurs: Provided, That if the executive committee holds a duly called meeting in accordance with section nine, article one of this chapter but fails to make an appointment or fails to certify the appointment of the candidate to the proper filing officer within the time required, the chairperson of the executive committee may make the appointment not later than two days following the deadline for the executive committee.

(2) Each appointment made under this section is complete only upon the receipt by the proper filing officer of the certificate of appointment by the executive committee, or its chairperson, as the case may be, the certificate of announcement of the candidate as prescribed in section seven of this article and, except for appointments made under subdivision (4), (5), (6) or (7) of this subsection, the filing fee or waiver of fee as prescribed in section eight or eight-a of this article. The proper filing officer is the officer with whom the original certificate of announcement is regularly filed for that office.

(3) If a vacancy in nomination will be caused by the failure of a candidate to file for an office, or by withdrawal of a
candidate no later than the third Tuesday following the close of
candidate filing pursuant to the provisions of section eleven of
this article, a nominee may be appointed by the executive
committee and certified to the proper filing officer no later than
thirty days after the last day to file a certificate of announcement
pursuant to section seven of this article.

(4) If a vacancy in nomination is caused by the
disqualification of a candidate and the vacancy occurs not later
than eighty-four days before the general election, a nominee may
be appointed by the executive committee and certified to the
proper filing officer no later than seventy-eight days before the
general election. A candidate may be determined disqualified if
a written request is made by an individual with information to
show a candidate’s ineligibility to the State Election
Commission no later than eighty-four days before the general
election explaining grounds why a candidate is not eligible to be
placed on the general election ballot or not eligible to hold the
office, if elected. The State Election Commission shall review
the reasons for the request. If the commission finds the
circumstances warrant the disqualification of the candidate, the
commission shall authorize appointment by the executive
committee to fill the vacancy. Upon receipt of the authorization
a nominee may be appointed by the executive committee and
certified to the proper filing officer no later than seventy-eight
days before the general election.

(5) If a vacancy in nomination is caused by the incapacity of
the candidate and if the vacancy occurs not later than eighty-four
days before the general election, a nominee may be appointed by
the executive committee and certified to the proper filing officer
no later than seventy-eight days before the general election.

(6) If a vacancy in nomination is caused by the timely filing
of a notarized statement of withdrawal, according to section
eleven of this article, of a candidate whose name would
otherwise appear on the general election ballot, a replacement on
the general election ballot may be appointed by the executive
committee and certified to the proper filing officer no later than
seventy-eight days before the general election.

(7) If a vacancy in nomination is caused by the death of the
candidate occurring no later than twenty-five days before the
general election, a nominee may be appointed by the executive
committee and certified to the proper filing officer no later than
twenty-one days following the date of death or no later than
twenty-two days before the general election, whichever date
occurs first.

(b) Except as otherwise provided in article ten of this
chapter, if any vacancy occurs in a partisan office or position
other than political party executive committee, which creates an
unexpired term for a position which would not otherwise appear
on the ballot in the general election, and the vacancy occurs after
the close of candidate filing for the primary election but not later
than eighty-four days before the general election, a nominee of
each political party may be appointed by the executive
committee and certified to the proper filing officer no later than
seventy-eight days before the general election. Appointments
shall be filed in the same manner as provided in subsection (a)
of this section, except that the filing fee shall be paid before the
appointment is complete.

(c) When a vacancy occurs in the board of education after
the close of candidate filing for the primary election but not later
than eighty-four days before the general election, a special
candidate filing period shall be established. Candidates seeking
election to any unexpired term for board of education shall file
a certificate of announcement and pay the filing fee to the clerk
of the county commission no earlier than the first Monday in
August and no later than seventy-seven days before the general
election.
CHAPTER 100

(Com. Sub. for H. B. 2588 - By E. Nelson, Lane, Howell, Kurcaba, O’Neal, Westfall, McCuskey, Byrd, Gearheart, Storch and Espinosa)

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

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AN ACT to amend and reenact §3-8-5b of the Code of West Virginia, 1931, as amended, relating to the filing of financial statements with Secretary of State; requiring all candidates who file financial statements with Secretary of State to file electronically beginning January 1, 2018; making candidates required to file electronically eligible for exemption in the case of hardship; providing for exceptions in instances where a candidate has been unable to file the financial statement; directing candidates unable to file financial statement electronically to file by certified mail; and providing for exceptions in the case of hardship.

Be it enacted by the Legislature of West Virginia:

That §3-8-5b of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 8. REGULATION AND CONTROL OF ELECTIONS.

*§3-8-5b. Where financial statements shall be filed; filing date prescribed.

1 (a) The financial statements provided for in this article shall be filed, by or on behalf of candidates, with:

* Note: This section was also amended by S. B. 379 (Chapter 98), which passed prior to this act.
3 (1) The Secretary of State for legislative offices, circuit
4 judge and family court judge, and for statewide and other offices
to be nominated or elected by the voters of a political division
greater than a county;

7 (2) The clerk of the county commission by candidates for
offices to be nominated or elected by the voters of a single
county or a political division within a single county except
circuit judge and family court judge; or

11 (3) The proper municipal officer by candidates for office to
be nominated or elected to municipal office.

13 (b) The statements may be filed by mail, in person, or by
facsimile or other electronic means of transmission: Provided,
That the financial statements filed by or on behalf of candidates
for Governor, Secretary of State, Attorney General, Auditor,
Treasurer, Commissioner of Agriculture and Supreme Court of
Appeals shall be filed electronically by the means of an Internet
program that has been established by the Secretary of State on
forms or in a format prescribed by the Secretary of State:
Provided, however, That after January 1, 2018, unless a
committee has been granted an exemption in case of hardship
pursuant to subsection (c) of this section, all such statements
required to be filed with the Secretary of State, on or behalf of a
candidate for any elective office, shall be filed electronically by
means of the internet program that has been established by the
Secretary of State. If through or by no fault of the candidate, the
candidate is unable to file the campaign financial statement, the
candidate shall then file said statement in person, via facsimile
or other electronic means of transmission, or by certified mail
postmarked at the first reasonable opportunity.

32 (c) Committees required to report electronically may apply
to the State Election Commission for an exemption from
mandatory electronic filing in the case of hardship. An
exemption may be granted at the discretion of the State Election Commission.

(d) For purposes of this article, the filing date of a financial statement shall, in the case of mailing, be the date of the postmark of the United States Postal Service, and in the case of hand delivery or delivery by facsimile or other electronic means of transmission, the date delivered to the office of the Secretary of State or to the office of the clerk of the county commission, in accordance with the provisions of subsection (a) of this section, during regular business hours of that office.

(e) The sworn financial statements required to be filed by this section with the Secretary of State shall be posted on the internet by the Secretary of State within ten business days from the date the financial statement is filed.

CHAPTER 101

(Com. Sub. for H. B. 4587 - By Delegates Moffatt and Miller)

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

AN ACT to amend and reenact §3-9-19 of the Code of West Virginia, 1931, as amended, relating to violations associated with absent voters’ ballots; changing reference of clerk of circuit court to clerk of county commission; making clerk of county commission guilty of misdemeanor if he or she refuses or neglects to perform duties required by him or her related to voting by absentees; making clerk of county commission guilty of misdemeanor if he or she discloses to any other person or persons how any absent voter voted; changing gender references; and making other technical and
grammatical changes relating to the language in the misdemeanor provisions of this section.

Be it enacted by the Legislature of West Virginia:

That §3-9-19 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 9. OFFENSES AND PENALTIES.

§3-9-19. Violations concerning absent voters’ ballots; penalties.

(a) Any person who, with the intent to commit fraud, obtains, removes, or disseminates an absent voter’s ballot, intimidates an absent voter, or completes or alters an absent voter’s ballot, is guilty of a felony and, upon conviction thereof, shall be fined not less than $10,000 nor more than $20,000, imprisoned in a state correctional facility for not less than one nor more than five years, or both fined and imprisoned.

(b) Notwithstanding subsection (a) of this section, any person who, having procured an absent voter’s official ballot or ballots, shall willfully neglect or refuse to return the same as provided in article three of this chapter, or who shall otherwise willfully violate any of the provisions of said article three of this chapter, is guilty of a misdemeanor and, on conviction thereof, shall be fined not more than $250, or confined in jail for not more than three months. If the clerk of the county commission of any county, or any member of the board of ballot commissioners, or any member of the board of canvassers refuses or neglects to perform any of the duties required of him or her by any of the provisions of articles three, five and six of this chapter relating to voting by absentees or discloses to any other person or persons how any absent voter voted, he or she shall, in each instance, be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $500, or confined in jail for not more than six months.
AN ACT to amend and reenact §3-10-3 of the Code of West Virginia, 1931, as amended, all relating to providing the procedures for the filling of vacancies in the offices of Justices of the Supreme Court of Appeals, circuit judge, family court judge or magistrate and making certain clarifications concerning procedures to be followed when an unexpired term is for a period of more than two years.

Be it enacted by the Legislature of West Virginia:

That §3-10-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 10. FILLING VACANCIES.

§3-10-3. Vacancies in offices of state officials, United States Senators, Justices, judges, and magistrates.

1 (a) Any vacancy occurring in the offices of Secretary of State, Auditor, Treasurer, Attorney General, Commissioner of Agriculture, or in any office created or made elective to be filled by the voters of the entire state, is filled by the Governor of the state by appointment and subsequent election to fill the remainder of the term, if required by section one of this article.

(b) Any vacancy occurring in the offices of Justice of the Supreme Court of Appeals, judge of a circuit court or judge of a
family court is filled by the Governor of the state by appointment
and, if the unexpired term be for a period of more than two
years, by a subsequent election to fill the remainder of the term,
as required by subsection (d) of this section. If an election is
required under subsection (d) of this section, the Governor,
circuit court or the chief judge thereof in vacation, is responsible
for the proper proclamation by order and notice required by
section one of this article.

(c) Any vacancy in the office of magistrate is appointed
according to the provisions of section six, article one, chapter
fifty of this code, and, if the unexpired term be for a period of
more than two years, by a subsequent election to fill the
remainder of the term, as required by subsection (d) of this
section.

(d) (1) When the vacancy in the office of Justice of the
Supreme Court of Appeals, judge of the circuit court, judge of a
family court or magistrate occurs after the eighty-fourth day
before a general election, and the affected term of office ends on
the thirty-first day of December following the succeeding
general election two years later, the person appointed to fill the
vacancy shall continue in office until the completion of the term.

(2) When the vacancy occurs before the close of the
candidate filing period for the primary election, and, if the
unexpired term be for a period of greater than two years, the
vacancy shall be filled by election in the nonpartisan judicial
election held concurrently with the primary election, and the
appointment shall continue until a successor is elected and
certified.

(3) When the vacancy occurs after the close of candidate
filing for the primary election and not later than eighty-four days
before the general election, and, if the unexpired term be for a
period of greater than two years, the vacancy shall be filled by
41 election in a nonpartisan judicial election held concurrently with
42 the general election, and the appointment shall continue until a
43 successor is elected and certified.

44 (e) When an election to fill a vacancy is required to be held
45 at the general election according to the provisions of subsection
46 (d) of this section, a special candidate filing period shall be
47 established. Candidates seeking election to any unexpired term
48 for Justice of the Supreme Court of Appeals, judge of a circuit
49 court, judge of the family court or magistrate shall file a
50 certificate of announcement and pay the filing fee no earlier than
51 the first Monday in August and no later than seventy-seven days
52 before the general election.

CHAPTER 103

(Com. Sub. for H. B. 4586 - By Delegate Cowles)

[Passed on March 11, 2016; in effect ninety days from passage.]
[Approved by the Governor on March 29, 2016.]

AN ACT to amend and reenact §54-2-4 of the Code of West Virginia,
1931, as amended, relating to representation in condemnation
proceedings where a property owner or other party is under a legal
disability; providing that the court shall protect the rights of any
person who is under a legal disability because he or she is a
protected person, incarcerated, or whose ownership interest, lien,
or other claim to property requires them to be a party in a
condemnation action; providing that a protected person who is a
party in a condemnation action may be represented by a
conservator or guardian or by a limited guardian appointed by the
court; providing that an incarcerated person who is a party in a
condemnation action and has an attorney or committee shall be represented by the attorney or committee; providing that an incarcerated person who is a party in a condemnation action who does not have an attorney or committee shall be represented by a court appointed attorney; providing that the court shall appoint a guardian ad litem to defend the interests of an unknown owner or owners of property subject to condemnation; clarifying that the statutory procedures for condemnation actions control; and authorizing payment for court appointed attorneys to be paid in an amount to be fixed by the court or judge, to be taxed as costs and paid by the applicant.

Be it enacted by the Legislature of West Virginia:

That §54-2-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2. PROCEDURE.

§54-2-4. Persons under disability.

(a) The court shall protect the rights of any person who is under a legal disability because he or she is a protected person, as defined in section two (a), article one, chapter forty-four-a of this code, or incarcerated, and whose ownership interest, lien or other claim to property requires them to be a party in a condemnation action brought pursuant to the provisions of this chapter.

(b) A protected person who is a party in a condemnation action may be represented by a conservator or guardian or by a limited guardian appointed by the court to represent the protected person in the condemnation action.

(c) An incarcerated person who is a party in a condemnation action and who has an attorney or committee shall be
represented by the attorney or committee. An incarcerated person who is a party in a condemnation action who does not have an attorney or committee shall be represented by an attorney appointed by the court.

(d) The court shall appoint a guardian ad litem to defend the interests of an unknown owner or owners of property subject to condemnation.

(e) Notwithstanding any other provisions of this code to the contrary, the provisions of this chapter regarding the procedure in condemnation actions shall be followed.

(f) The court may direct payment of a limited guardian, attorney or guardian ad litem appointed in an amount to be fixed by the court or judge, to be taxed as costs and paid by the applicant.

CHAPTER 104

(Com. Sub. for S. B. 484 - By Senators Romano, Leonhardt, Plymale and Kessler)

[Passed March 9, 2016; in effect ninety days from passage.]
[Approved by the Governor on March 23, 2016.]

AN ACT to amend and reenact §15-1F-8 of the Code of West Virginia, 1931, as amended, relating to the reemployment rights of military personnel; extending reemployment rights protection to members of the organized militia in the active service of another state; and clarifying that the Uniformed Services Employment and Reemployment Rights Act of 1994 is considered applicable federal law.
Be it enacted by the Legislature of West Virginia:

That §15-1F-8 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 1F. PRIVILEGES AND PROHIBITIONS.

§15-1F-8. Reemployment rights of members of the organized militia.

Members of the organized militia in the active service of the state or another state shall be entitled to the same reemployment rights granted to members of the reserve components of the Armed Forces of the United States by applicable federal law, including rights protected by the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), as amended, 38 U. S. C. §§4301-4334.

CHAPTER 105

(Com. Sub. for H. B. 4507 - By Delegates Upson, J. Nelson, Cooper, Blair, Trecost, Householder, Espinosa and Frich)

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

AN ACT to amend and reenact §5-11-9 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §5-11-9a, all relating to granting preference in hiring to veteran or disabled veteran; defining “veteran”; providing that veteran or disabled veteran meet knowledge, skill and eligibility requirements of job; and clarifying that preference does not violate state equal employment opportunity law.
Be it enacted by the Legislature of West Virginia:

That §5-11-9 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 §5-11-9a, all to read as follows:

ARTICLE 11. HUMAN RIGHTS COMMISSION.


It shall be an unlawful discriminatory practice, unless based upon a bona fide occupational qualification, or except where based upon applicable security regulations established by the United States or the State of West Virginia or its agencies or political subdivisions:

(1) For any employer to discriminate against an individual with respect to compensation, hire, tenure, terms, conditions or privileges of employment if the individual is able and competent to perform the services required even if such individual is blind or disabled: Provided, That it shall not be an unlawful discriminatory practice for an employer to observe the provisions of any bona fide pension, retirement, group or employee insurance or welfare benefit plan or system not adopted as a subterfuge to evade the provisions of this subdivision: Provided, however, That an employer may grant preference in hiring to a veteran or a disabled veteran in accordance with the provisions of section nine-a of this article without violating the provisions of this article.

(2) For any employer, employment agency or labor organization, prior to the employment or admission to membership, to: (A) Elicit any information or make or keep a record of or use any form of application or application blank containing questions or entries concerning the race, religion,
color, national origin, ancestry, sex or age of any applicant for
employment or membership; (B) print or publish or cause to be
printed or published any notice or advertisement relating to
employment or membership indicating any preference,
limitation, specifications or discrimination based upon race,
religion, color, national origin, ancestry, sex, disability or age;
or (C) deny or limit, through a quota system, employment or
membership because of race, religion, color, national origin,
ancestry, sex, age, blindness or disability;

(3) For any labor organization because of race, religion,
color, national origin, ancestry, sex, age, blindness or disability
of any individual to deny full and equal membership rights to
any individual or otherwise to discriminate against such
individual with respect to hire, tenure, terms, conditions or
privileges of employment or any other matter, directly or
indirectly, related to employment;

(4) For an employer, labor organization, employment agency
or any joint labor-management committee controlling apprentice
training programs to:

(A) Select individuals for an apprentice training program
registered with the State of West Virginia on any basis other than
their qualifications as determined by objective criteria which
permit review;

(B) Discriminate against any individual with respect to his
or her right to be admitted to or participate in a guidance
program, an apprenticeship training program, on-the-job training
program or other occupational training or retraining program;

(C) Discriminate against any individual in his or her pursuit
of such programs or to discriminate against such a person in the
terms, conditions or privileges of such programs;
(D) Print or circulate or cause to be printed or circulated any statement, advertisement or publication, or to use any form of application for these programs or to make any inquiry in connection with a program which expresses, directly or indirectly, discrimination or any intent to discriminate unless based upon a bona fide occupational qualification;

(5) For any employment agency to fail or refuse to classify properly, refer for employment or otherwise to discriminate against any individual because of his or her race, religion, color, national origin, ancestry, sex, age, blindness or disability;

(6) For any person being the owner, lessee, proprietor, manager, superintendent, agent or employee of any place of public accommodations to:

(A) Refuse, withhold from or deny to any individual because of his or her race, religion, color, national origin, ancestry, sex, age, blindness or disability, either directly or indirectly, any of the accommodations, advantages, facilities, privileges or services of the place of public accommodations;

(B) Publish, circulate, issue, display, post or mail, either directly or indirectly, any written or printed communication, notice or advertisement to the effect that any of the accommodations, advantages, facilities, privileges or services of any such place shall be refused, withheld from or denied to any individual on account of race, religion, color, national origin, ancestry, sex, age, blindness or disability, or that the patronage or custom thereat of any individual, belonging to or purporting to be of any particular race, religion, color, national origin, ancestry, sex or age, or who is blind or disabled, is unwelcome, objectionable, not acceptable, undesired or not solicited; or

(7) For any person, employer, employment agency, labor organization, owner, real estate broker, real estate salesman or financial institution to:
(A) Engage in any form of threats or reprisal, or to engage in, or hire, or conspire with others to commit acts or activities of any nature, the purpose of which is to harass, degrade, embarrass or cause physical harm or economic loss or to aid, abet, incite, compel or coerce any person to engage in any of the unlawful discriminatory practices defined in this section;

(B) Willfully obstruct or prevent any person from complying with the provisions of this article, or to resist, prevent, impede or interfere with the commission or any of its members or representatives in the performance of a duty under this article; or

(C) Engage in any form of reprisal or otherwise discriminate against any person because he or she has opposed any practices or acts forbidden under this article or because he or she has filed a complaint, testified or assisted in any proceeding under this article.

§5-11-9a. Veterans preference not a violation of equal employment opportunity under certain circumstances.

An employer may grant preference in hiring to a veteran or disabled veteran who has been honorably discharged from the United States Armed Services: Provided, That the veteran or disabled veteran meets all of the knowledge, skills, and eligibility requirements of the job, and provided further that, granting the preference does not violate any state equal employment opportunity law. For purposes of this section, the term “veteran” means any person who has received an honorable discharge and: (a) Has provided more than one hundred eighty consecutive days of full-time, active-duty service in the United States Armed Services or Reserve components thereof, including the National Guard; or (b) has a service-connected disability rating fixed by the United States Department of Veterans Affairs.
CHAPTER 106


[Passed March 11, 2016; in effect ninety days from passage.]
[Approved by the Governor on April 1, 2016.]

AN ACT to repeal §22-3A-1, §22-3A-2, §22-3A-3, §22-3A-4, §22-3A-5, §22-3A-6, §22-3A-7, §22-3A-8, §22-3A-9 and §22-3A-10 of the Code of West Virginia, 1931, as amended; to amend and reenact §16-4C-6c of said code; to amend and reenact §22-1-7 of said code; to amend and reenact §22-3-2, §22-3-4, §22-3-13, §22-3-13a, §22-3-22a and §22-3-30a of said code; to amend said code by adding thereto six new sections, designated §22-3-34, §22-3-35, §22-3-36, §22-3-37 and §22-3-38; to amend and reenact §22-11-6 of said code; to amend and reenact §22A-1-13, §22A-1-14, §22A-1-15, §22A-1-19, §22A-1-20, §22A-1-31 and §22A-1-35 of said code; to amend and reenact §22A-1A-2 of said code; to amend and reenact §22A-2-3, §22A-2-8, §22A-2-14, §22A-2-20, §22A-2-25, §22A-2-36, §22A-2-55, §22A-2-66 and §22A-2-77 of said code; and to amend and reenact §22A-7-7 of said code, all relating generally to coal mining; making findings; eliminating the Department of Environmental Protection Office of Explosives and Blasting and consolidating the remaining duties and responsibilities related to blasting to the Department of Environmental Protection Division of Mining and Reclamation; adding blasting oversight; providing that the Department of Environmental Protection to revise rules on hydrologic protection and stormwater runoff analyses on mining operations and to promulgate rules that conform with the federal
regulations requirements to minimize the disturbances to the prevailing hydrologic balance at a mine site and in associated off-site areas; providing that cumulative hydrologic impact assessment may be conducted; requiring a statement of probable hydrologic consequences and to prevent flooding; modifying certain findings, ventilation requirements, and roof or rib requirements; requiring the Department of Environmental Protection to follow deadlines for approving or denying applications for site specific water quality criteria; providing that state mine rescue teams may serve as backup mine rescue teams for mines in this state; providing that the Board of Mine Health and Safety have the authority to propose rules for the use of diesel equipment in the state’s mines; transferring certification authority to the Director of the Office of Miners’ Health, Safety and Training for mining emergency medical technicians; requiring the State Board of Appeals to allow evidence of testing procedures and test results be introduced through notarized affidavits from Medical Review Officers and testify if necessary; providing for telephonic testimony under oath; providing that the penalty for not reporting accidents in fifteen minutes to the Office of Miners’ Health, Safety and Training be modified to up to $100,000; providing that the Director of Office of Miners’ Health, Safety and Training shall have the authority to modify assessed penalties and penalties may be modified by the State Board of Appeals based on a vote of two Board members; providing a method in case a miners’ wireless emergency communications device fails; and allowing company input into state supervisory training and how it is scheduled during the year.

Be it enacted by the Legislature of West Virginia:

That §22-3A-1, §22-3A-2, §22-3A-3, §22-3A-4, §22-3A-5, §22-3A-6, §22-3A-7, §22-3A-8, §22-3A-9 and §22-3A-10 of the Code of West Virginia, 1931, as amended, be repealed; that §16-4C-6c of said code be amended and reenacted; that §22-1-7 of said code be amended and reenacted; that §22-3-2, §22-3-4, §22-3-13, §22-3-13a,
§22-3-22a, §22-3-30a of said code be amended and reenacted; that said code be amended by adding thereto six new sections, designated §22-3-34, §22-3-35, §22-3-36, §22-3-37 and §22-3-38; that §22-11-6 of said code be amended and reenacted; that §22A-1-13, §22A-1-14, §22A-1-15, §22A-1-19, §22A-1-20, §22A-1-31 and §22A-1-35 of said code be amended and reenacted; that §22A-1A-2 of said code be amended and reenacted; that §22A-2-3, §22A-2-8, §22A-2-14, §22A-2-20, §22A-2-25, §22A-2-36, §22A-2-55, §22A-2-66 and §22A-2-77 of said code be amended and reenacted; and that §22A-7-7 of said code be amended and reenacted; all to read as follows:

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 4C. EMERGENCY MEDICAL SERVICES ACT.

§16-4C-6c. Certification requirements for emergency medical technician-mining.

1 (a) Commencing July 1, 2016, an applicant for certification as an emergency medical technician-mining shall:

2 (1) Be at least eighteen years old;

3 (2) Apply on a form prescribed by the Director of Miners’ Health, Safety and Training;

4 (3) Pay the application fee;

5 (4) Possess a valid cardiopulmonary resuscitation (CPR) certification;

6 (5) Successfully complete an emergency medical technician-mining education program authorized by the Director of Miners’ Health, Safety and Training in consultation with the Board of Miner Training, Education and Certification; and

7 (6) Successfully complete emergency medical technician-mining cognitive and skills examinations authorized
by the Director of Miners’ Health, Safety and Training in
consultation with the Board of Miner Training, Education and
Certification.

(b) The emergency medical technician-mining certification
is valid for three years.

c) A certified emergency medical technician-mining may
only practice on mining operations, as defined in section three,
article thirteen-c, chapter eleven of this code.

d) To be recertified as an emergency medical
technician-mining, a certificate holder shall:

(1) Apply on a form prescribed by the Director of Miners’
Health, Safety and Training;

(2) Pay the application fee;

(3) Possess a valid cardiopulmonary resuscitation (CPR)
certification;

(4) Successfully complete one of the following:

(A) A one-time thirty-two hour emergency medical
technician- mining recertification course authorized by the
Director of Miners’ Health, Safety and Training in consultation
with the Board of Miner Training, Education and Certification;
or

(B) Three annual eight-hour retraining and testing programs
authorized by the Director of Miners’ Health, Safety and
Training in consultation with the Board of Miner Training,
Education and Certification; and

(5) Successfully complete emergency medical technician-l
mining cognitive and skills recertification examinations
authorized by the Director of Miners’ Health, Safety and
Training in consultation with the Board of Miner Training, Education and Certification.

(e) The education program, training, courses, and cognitive and skills examinations required for certification and recertification as an emergency medical technician-miner, also known as emergency medical technician-mining, in existence on January 1, 2014, shall remain in effect for the certification and recertification of emergency medical technician-industrial until they are changed by legislative rule by the commissioner in consultation with the Board of Miner Training, Education and Certification.

(f) The administration of the emergency medical technician mining certification and recertification program by the Director of Miners’ Health, Safety and Training shall be done in consultation with the Board of Miner Training, Education and Certification.

(g) The Director of Miners’ Health, Safety and Training shall propose rules for legislative approval, pursuant to the provisions of article three, chapter twenty-nine-a of this code, in consultation with the Board of Miner Training, Education and Certification, and may propose emergency rules, to:

(1) Establish emergency medical technician-mining certification and recertification courses and examinations;

(2) Authorize providers to administer the certification and recertification courses and examinations, including mine training personnel, independent trainers, community and technical colleges, and Regional Educational Service Agencies (RESA): Provided, That the mine training personnel and independent trainers must have a valid cardiopulmonary resuscitation (CPR) certification and must be an approved MSHA or OSHA certified instructor;
(3) Establish a fee schedule: Provided, That the application fee may not exceed $10 and there shall be no fee for a certificate; and

(4) Implement the provisions of this section.

CHAPTER 22. ENVIRONMENTAL RESOURCES.

ARTICLE 1. DEPARTMENT OF ENVIRONMENTAL PROTECTION.

§22-1-7. Offices within division.

Consistent with the provisions of this article, the secretary shall, at a minimum, maintain the following offices within the division:

(1) The Office of Abandoned Mine Lands and Reclamation, which is charged, at a minimum, with administering and enforcing, under the supervision of the secretary, the provisions of article two of this chapter;

(2) The Division of Mining and Reclamation, which is charged, at a minimum, with administering and enforcing, under the supervision of the secretary, the provisions of articles three and four of this chapter;

(3) The Division of Air Quality, which is charged, at a minimum, with administering and enforcing, under the supervision of the secretary, the provisions of article five of this chapter;

(4) The Office of Oil and Gas, which is charged, at a minimum, with administering and enforcing, under the supervision of the secretary, the provisions of articles six, seven, eight, nine and ten of this chapter; and
(5) The Division of Water and Waste Management, which is charged, at a minimum, with administering and enforcing, under the supervision of the secretary, the provisions of articles eleven, twelve, thirteen, fourteen, fifteen, sixteen, seventeen, eighteen, nineteen and twenty of this chapter.

ARTICLE 3. SURFACE COAL MINING AND RECLAMATION ACT.

§22-3-2. Legislative findings and purpose; jurisdiction vested in Division of Environmental Protection; authority of secretary; inter-departmental cooperation.

(a) The Legislature finds that it is essential to the economic and social well-being of the citizens of the State of West Virginia to strike a careful balance between the protection of the environment and the economical mining of coal needed to meet energy requirements.

(1) Further, the Legislature finds that there is great diversity in terrain, climate, biological, chemical and other physical conditions in parts of this nation where mining is conducted; that the State of West Virginia in particular needs an environmentally sound and economically healthy mining industry; and therefor it may be necessary for the secretary to promulgate rules which vary from federal regulations as is provided for in sections 101 (f) and 201 (c)(9) of the federal Surface Mining Control and Reclamation Act of 1977, as amended, “Public Law 95-87.”

(2) Further, the Legislature finds that unregulated surface coal mining operations may result in disturbances of surface and underground areas that burden and adversely affect commerce, public welfare and safety by destroying or diminishing the utility of land for commercial, industrial, residential, recreational, agricultural and forestry purposes; by causing erosion and landslides; by contributing to floods; by polluting the water and
river and stream beds; by destroying fish, aquatic life and
wildlife habitats; by impairing natural beauty; by damaging the
property of citizens; by creating hazards dangerous to life and
property; and by degrading the quality of life in local
communities, all where proper mining and reclamation is not
practiced.

(3) Further, the Legislature finds that the reasonable control
of blasting associated with surface mining within the State of
West Virginia is in the public interest and will promote the
protection of the citizens of the State of West Virginia and their
property without sacrificing economic development. It is the
policy of the State of West Virginia, in cooperation with other
governmental agencies, public and private organizations, and the
citizens of this state, to use reasonable means and measures to
prevent harm from the effects of blasting to its property and
citizens.

(b) Therefore, it is the purpose of this article to:

(1) Expand the established and effective statewide program
to protect the public and the environment from the adverse
effects of surface-mining operations;

(2) Assure that the rights of surface and mineral owners and
other persons with legal interest in the land or appurtenances to
land are adequately protected from the operations;

(3) Assure that surface-mining operations are not conducted
where reclamation as required by this article is not feasible;

(4) Assure that surface-mining operations are conducted in
a manner to adequately protect the environment;

(5) Assure that adequate procedures are undertaken to
reclaim surface areas as contemporaneously as possible with the
surface-mining operations;
(6) Assure that adequate procedures are provided for public participation where appropriate under this article;

(7) Assure the exercise of the full reach of state common law, statutory and constitutional powers for the protection of the public interest through effective control of surface-mining operations;

(8) Assure that the coal production essential to the nation’s energy requirements and to the State’s economic and social well-being is provided; and

(9) Vest in the secretary the authority to enforce all of the laws, regulations and rules established to regulate blasting consistent with the authority granted in sections thirty-four through thirty-nine of this article.

(c) In recognition of these findings and purposes, the Legislature vests authority in the secretary of the Department of Environmental Protection to:

(1) Administer and enforce the provisions of this article as it relates to surface mining to accomplish the purposes of this article;

(2) Conduct hearings and conferences or appoint persons to conduct them in accordance with this article;

(3) Promulgate, administer and enforce rules pursuant to this article;

(4) Enter into a cooperative agreement with the Secretary of the United States Department of the Interior to provide for state regulation of surface-mining operations on federal lands within West Virginia consistent with section 523 of the federal Surface Mining Control and Reclamation Act of 1977, as amended; and
(5) Administer and enforce rules promulgated pursuant to this chapter to accomplish the requirements of programs under the federal Surface Mining Control and Reclamation Act of 1977, as amended.

(d) The secretary of the Department of Environmental Protection and the director of the Office of Miners Health, Safety and Training shall cooperate with respect to each agency’s programs and records to effect an orderly and harmonious administration of the provisions of this article. The secretary of the Department of Environmental Protection may avail himself or herself of any services which may be provided by other state agencies in this State and other states or by agencies of the federal government, and may reasonably compensate them for those services. Also, he or she may receive any federal funds, state funds or any other funds, and enter into cooperative agreements, for the reclamation of land affected by surface mining.

§22-3-4. Reclamation; duties and functions of secretary.

(a) The secretary shall administer the provisions of this article relating to surface-mining operations. The secretary has within his or her jurisdiction and supervision all lands and areas of the State, mined or susceptible of being mined, for the removal of coal and all other lands and areas of the State deforested, burned over, barren or otherwise denuded, unproductive and subject to soil erosion and waste. Included within the lands and areas are lands seared and denuded by chemical operations and processes, abandoned coal mining areas, swamplands, lands and areas subject to flowage easements and backwaters from river locks and dams, and river, stream, lake and pond shore areas subject to soil erosion and waste. The jurisdiction and supervision exercised by the secretary shall be consistent with other provisions of this chapter.
(b) The secretary may:

(1) Propose rules for promulgation, in accordance with the provisions of article three, chapter twenty-nine-a of this code, to implement the provisions of this article: Provided, That the secretary shall give notice by publication of the public hearing required in article three, chapter twenty-nine-a of this code: Provided, however, That any forms, handbooks or similar materials having the effect of a rule as defined in article three, chapter twenty-nine-a of this code were issued, developed or distributed by the director pursuant to or as a result of a rule are subject to the provisions of article three, chapter twenty-nine-a of this code;

(2) Make investigations or inspections necessary to ensure complete compliance with the provisions of this code;

(3) Conduct hearings or appoint persons to conduct hearings under provisions of this article or rules adopted by the secretary; and for the purpose of any investigation or hearing under this article, the secretary or his or her designated representative, may administer oaths or affirmations, subpoena witnesses, compel their attendance, take evidence and require production of any books, papers, correspondence, memoranda, agreements or other documents or records relevant or material to the inquiry;

(4) Enforce the provisions of this article as provided in this article;

(5) Appoint such advisory committees as may be of assistance to the secretary in the development of programs and policies: Provided, That such advisory committees shall, in each instance, include members representative of the general public; and

(6) In relation to blasting on all surface-mining operations and all surface-blasting activities related to underground mining operations:
(A) Regulate blasting on all surface-mining operations;

(B) Implement and oversee the preblast survey process, as set forth in section thirteen-a, article three of this chapter;

(C) Maintain and operate a system to receive and address questions, concerns and complaints relating to mining operations;

(D) Set the qualifications for individuals and firms performing preblast surveys;

(E) Educate, train, examine and certify blasters; and

(F) Propose rules for legislative approval pursuant to the provisions of section fifteen, article three, chapter twenty-nine-a of this code for the implementation of sections thirty-four through thirty-nine of this article.

(c)(1) After the secretary has adopted the rules required by this article, any person may petition the secretary to initiate a proceeding for the issuance, amendment or appeal of a rule under this article.

(2) The petition shall be filed with the secretary and shall set forth the facts which support the issuance, amendment or appeal of a rule under this article.

(3) The secretary may hold a public hearing or may conduct such investigation or proceeding as he or she considers appropriate in order to determine whether the petition should be granted or denied.

(4) Within ninety days after filing of a petition described in subdivision (1) of this subsection, the secretary shall either grant or deny the petition. If the secretary grants the petition, he or she shall promptly commence an appropriate proceeding in
accordance with the provisions of chapter twenty-nine-a of this code. If the secretary denies the petition, he or she shall notify the petitioner in writing setting forth the reasons for the denial.


(a) Any permit issued by the secretary pursuant to this article to conduct surface mining operations shall require that the surface mining operations meet all applicable performance standards of this article and other requirements set forth in legislative rules proposed by the secretary.

(b) The following general performance standards are applicable to all surface mines and require the operation, at a minimum, to:

(1) Maximize the utilization and conservation of the solid fuel resource being recovered to minimize reaffecting the land in the future through surface mining;

(2) Restore the land affected to a condition capable of supporting the uses which it was capable of supporting prior to any mining, or higher or better uses of which there is reasonable likelihood so long as the use or uses do not present any actual or probable hazard to public health or safety or pose any actual or probable threat of water diminution or pollution and the permit applicant’s declared proposed land use following reclamation is not considered to be impractical or unreasonable, inconsistent with applicable land use policies and plans, involves unreasonable delay in implementation or is violative of federal, state or local law;

(3) Except as provided in subsection (c) of this section, with respect to all surface mines, backfill, compact where advisable to ensure stability or to prevent leaching of toxic materials and
grade in order to restore the approximate original contour: Provided, That in surface mining which is carried out at the same location over a substantial period of time where the operation transects the coal deposit and the thickness of the coal deposits relative to the volume of the overburden is large and where the operator demonstrates that the overburden and other spoil and waste materials at a particular point in the permit area or otherwise available from the entire permit area is insufficient, giving due consideration to volumetric expansion, to restore the approximate original contour, the operator, at a minimum, shall backfill, grade and compact, where advisable, using all available overburden and other spoil and waste materials to attain the lowest practicable grade, but not more than the angle of repose, to provide adequate drainage and to cover all acid-forming and other toxic materials in order to achieve an ecologically sound land use compatible with the surrounding region: Provided, however, That in surface mining where the volume of overburden is large relative to the thickness of the coal deposit and where the operator demonstrates that due to volumetric expansion the amount of overburden and other spoil and waste materials removed in the course of the mining operation is more than sufficient to restore the approximate original contour, the operator shall, after restoring the approximate contour, backfill, grade and compact, where advisable, the excess overburden and other spoil and waste materials to attain the lowest grade, but not more than the angle of repose, and to cover all acid-forming and other toxic materials in order to achieve an ecologically sound land use compatible with the surrounding region and the overburden or spoil shall be shaped and graded in a way as to prevent slides, erosion and water pollution and revegetated in accordance with the requirements of this article: Provided further, That the secretary shall propose rules for legislative approval in accordance with article three, chapter twenty-nine-a of this code governing variances to the requirements for return to approximate original contour or highwall elimination and
where adequate material is not available from surface mining operations permitted after the effective date of this article for:

(A) Underground mining operations existing prior to August 3, 1977; or (B) for areas upon which surface mining prior to July 1, 1977, created highwalls;

(4) Stabilize and protect all surface areas, including spoil piles, affected by the surface mining operation to effectively control erosion and attendant air and water pollution;

(5) Remove the topsoil from the land in a separate layer, replace it on the backfill area or, if not utilized immediately, segregate it in a separate pile from other spoil and, when the topsoil is not replaced on a backfill area within a time short enough to avoid deterioration of the topsoil, maintain a successful vegetative cover by quick growing plants or by other similar means in order to protect topsoil from wind and water erosion and keep it free of any contamination by other acid or toxic material: Provided, That if topsoil is of insufficient quantity or of poor quality for sustaining vegetation, or if other strata can be shown to be more suitable for vegetation requirements, then the operator shall remove, segregate and preserve in a like manner any other strata which is best able to support vegetation;

(6) Restore the topsoil or the best available subsoil which is best able to support vegetation;

(7) Ensure that all prime farmlands are mined and reclaimed in accordance with the specifications for soil removal, storage, replacement and reconstruction established by the United States Secretary of Agriculture and the Soil Conservation Service pertaining thereto. The operator, at a minimum, shall: (A) Segregate the A horizon of the natural soil, except where it can be shown that other available soil materials will create a final soil having a greater productive capacity and, if not utilized
immediately, stockpile this material separately from other spoil and provide needed protection from wind and water erosion or contamination by other acid or toxic material; (B) segregate the B horizon of the natural soil, or underlying C horizons or other strata, or a combination of the horizons or other strata that are shown to be both texturally and chemically suitable for plant growth and that can be shown to be equally or more favorable for plant growth than the B horizon, in sufficient quantities to create in the regraded final soil a root zone of comparable depth and quality to that which existed in the natural soil and, if not utilized immediately, stockpile this material separately from other spoil and provide needed protection from wind and water erosion or contamination by other acid or toxic material; (C) replace and regrade the root zone material described in paragraph (B) of this subdivision with proper compaction and uniform depth over the regraded spoil material; and (D) redistribute and grade in a uniform manner the surface soil horizon described in paragraph (A) of this subdivision;

(8) Create, if authorized in the approved surface mining and reclamation plan and permit, permanent impoundments of water on mining sites as part of reclamation activities in accordance with rules promulgated by the secretary;

(9) Where augering is the method of recovery, seal all auger holes with an impervious and noncombustible material in order to prevent drainage except where the secretary determines that the resulting impoundment of water in the auger holes may create a hazard to the environment or the public welfare and safety: Provided, That the secretary may prohibit augering if necessary to maximize the utilization, recoverability or conservation of the mineral resources or to protect against adverse water quality impacts;

(10) Minimize the disturbances to the prevailing hydrologic balance at the mine site and in associated off-site areas and to the
quality and quantity of water in surface and groundwater systems both during and after surface mining operations and during reclamation by: (A) Avoiding acid or other toxic mine drainage by such measures as, but not limited to: (i) Preventing or removing water from contact with toxic producing deposits; (ii) treating drainage to reduce toxic content which adversely affects downstream water upon being released to water courses; and (iii) casing, sealing or otherwise managing boreholes, shafts and wells and keep acid or other toxic drainage from entering ground and surface waters; (B) conducting surface mining operations so as to prevent to the extent possible, using the best technology currently available, additional contributions of suspended solids to streamflow or runoff outside the permit area, but in no event may contributions be in excess of requirements set by applicable state or federal law; (C) constructing an approved drainage system pursuant to paragraph (B) of this subdivision, prior to commencement of surface mining operations, the system to be certified by a person approved by the secretary to be constructed as designed and as approved in the reclamation plan; (D) avoiding channel deepening or enlargement in operations requiring the discharge of water from mines; (E) unless otherwise authorized by the secretary, cleaning out and removing temporary or large settling ponds or other siltation structures after disturbed areas are revegetated and stabilized, and depositing the silt and debris at a site and in a manner approved by the secretary; (F) restoring recharge capacity of the mined area to approximate premining conditions; and (G) any other actions prescribed by the secretary;

(11) With respect to surface disposal of mine wastes, tailings, coal processing wastes and other wastes in areas other than the mine working excavations: (A) Stabilize all waste piles in designated areas through construction in compacted layers, including the use of noncombustible and impervious materials if necessary, and assure the final contour of the waste pile will be
compatible with natural surroundings and that the site will be stabilized and revegetated according to the provisions of this article; and (B) assure that the construction of any coal waste pile or other coal waste storage area utilizes appropriate technologies, such as capping or the use of liners, or any other demonstrated technologies or measures which are consistent with good engineering practices, to prevent an acid mine drainage discharge;

(12) Design, locate, construct, operate, maintain, enlarge, modify and remove or abandon, in accordance with standards and criteria developed pursuant to subsection (f) of this section, all existing and new coal mine waste piles consisting of mine wastes, tailings, coal processing wastes or other liquid and solid wastes and used either temporarily or permanently as dams or embankments;

(13) Refrain from surface mining within five hundred feet of any active and abandoned underground mines in order to prevent breakthroughs and to protect health or safety of miners: Provided, That the secretary shall permit an operator to mine near, through or partially through an abandoned underground mine or closer to an active underground mine if: (A) The nature, timing and sequencing of the approximate coincidence of specific surface mine activities with specific underground mine activities are coordinated jointly by the operators involved and approved by the secretary; and (B) the operations will result in improved resource recovery, abatement of water pollution or elimination of hazards to the health and safety of the public: Provided, however, That any breakthrough which does occur shall be sealed;

(14) Ensure that all debris, acid-forming materials, toxic materials or materials constituting a fire hazard are treated or buried and compacted, or otherwise disposed of in a manner designed to prevent contamination of ground or surface waters,
and that contingency plans are developed to prevent sustained combustion: Provided, That the operator shall remove or bury all metal, lumber, equipment and other debris resulting from the operation before grading release;

(15) Ensure that explosives are used only in accordance with existing state and federal law and the rules promulgated by the secretary, which shall include provisions to:

(A) Maintain for a period of at least three years and make available for public inspection, upon written request, a log detailing the location of the blasts, the pattern and depth of the drill holes, the amount of explosives used per hole and the order and length of delay in the blasts; and

(B) Require that all blasting operations be conducted by persons certified by the Division of Mining and Reclamation.

(16) Ensure that all reclamation efforts proceed in an environmentally sound manner and as contemporaneously as practicable with the surface mining operations. Time limits shall be established by the secretary requiring backfilling, grading and planting to be kept current: Provided, That where surface mining operations and underground mining operations are proposed on the same area, which operations must be conducted under separate permits, the secretary may grant a variance from the requirement that reclamation efforts proceed as contemporaneously as practicable to permit underground mining operations prior to reclamation:

(A) If the secretary finds in writing that:

(i) The applicant has presented, as part of the permit application, specific, feasible plans for the proposed underground mining operations;
(ii) The proposed underground mining operations are necessary or desirable to assure maximum practical recovery of the mineral resource and will avoid multiple disturbance of the surface;

(iii) The applicant has satisfactorily demonstrated that the plan for the underground mining operations conforms to requirements for underground mining in the jurisdiction and that permits necessary for the underground mining operations have been issued by the appropriate authority;

(iv) The areas proposed for the variance have been shown by the applicant to be necessary for the implementing of the proposed underground mining operations;

(v) No substantial adverse environmental damage, either on-site or off-site, will result from the delay in completion of reclamation as required by this article; and

(vi) Provisions for the off-site storage of spoil will comply with subdivision (22), subsection (b) of this section;

(B) If the secretary has promulgated specific rules to govern the granting of the variances in accordance with the provisions of this subparagraph and has imposed any additional requirements as the secretary considers necessary;

(C) If variances granted under the provisions of this paragraph are reviewed by the secretary not more than three years from the date of issuance of the permit: Provided, That the underground mining permit shall terminate if the underground operations have not commenced within three years of the date the permit was issued, unless extended as set forth in subdivision (3), section eight of this article; and

(D) If liability under the bond filed by the applicant with the secretary pursuant to subsection (b), section eleven of this article
is for the duration of the underground mining operations and 
until the requirements of subsection (g), section eleven of this 
article and section twenty-three of this article have been fully 
complied with;

(17) Ensure that the construction, maintenance and 
post-mining conditions of access and haul roads into and across 
the site of operations will control or prevent erosion and 
siltation, pollution of water, damage to fish or wildlife or their 
habitat, or public or private property: Provided, That access 
roads constructed for and used to provide infrequent service to 
surface facilities, such as ventilators or monitoring devices, are 
exempt from specific construction criteria provided adequate 
stabilization to control erosion is achieved through alternative 
measures;

(18) Refrain from the construction of roads or other access 
ways up a stream bed or drainage channel or in proximity to the 
channel so as to significantly alter the normal flow of water;

(19) Establish on the regraded areas, and all other lands 
affected, a diverse, effective and permanent vegetative cover of 
the same seasonal variety native to the area of land to be affected 
or of a fruit, grape or berry producing variety suitable for human 
consumption and capable of self-regeneration and plant 
succession at least equal in extent of cover to the natural 
vegetation of the area, except that introduced species may be 
used in the revegetation process where desirable or when 
necessary to achieve the approved post-mining land use plan;

(20) Assume the responsibility for successful revegetation, 
as required by subdivision (19) of this subsection, for a period of 
not less than five growing seasons, as defined by the secretary, 
after the last year of augmented seeding, fertilizing, irrigation or 
other work in order to assure compliance with subdivision (19) 
of this subsection: Provided, That when the secretary issues a
written finding approving a long-term agricultural post-mining land use as a part of the mining and reclamation plan, the director may grant exception to the provisions of subdivision (19) of this subsection: Provided, however, That when the director approves an agricultural post-mining land use, the applicable five growing seasons of responsibility for revegetation begins on the date of initial planting for the agricultural post-mining land use;

On lands eligible for remining assume the responsibility for successful revegetation, as required by subdivision (19) of this subsection, for a period of not less than two growing seasons, as defined by the director after the last year of augmented seeding, fertilizing, irrigation or other work in order to assure compliance with subdivision (19) of this subsection;

(21) Protect off-site areas from slides or damage occurring during surface mining operations and not deposit spoil material or locate any part of the operations or waste accumulations outside the permit area: Provided, That spoil material may be placed outside the permit area if approved by the secretary after a finding that environmental benefits will result from the placing of spoil material outside the permit area;

(22) Place all excess spoil material resulting from surface mining activities in a manner that: (A) Spoil is transported and placed in a controlled manner in position for concurrent compaction and in a way as to assure mass stability and to prevent mass movement; (B) the areas of disposal are within the bonded permit areas and all organic matter is removed immediately prior to spoil placements; (C) appropriate surface and internal drainage system or diversion ditches are used to prevent spoil erosion and movement; (D) the disposal area does not contain springs, natural water courses or wet weather seeps, unless lateral drains are constructed from the wet areas to the main under drains in a manner that filtration of the water into the
spoil pile will be prevented; (E) if placed on a slope, the spoil is placed upon the most moderate slope among those upon which, in the judgment of the secretary, the spoil could be placed in compliance with all the requirements of this article, and is placed, where possible, upon, or above, a natural terrace, bench or berm, if placement provides additional stability and prevents mass movement; (F) where the toe of the spoil rests on a downslope, a rock toe buttress, of sufficient size to prevent mass movement, is constructed; (G) the final configuration is compatible with the natural drainage pattern and surroundings and suitable for intended uses; (H) the design of the spoil disposal area is certified by a qualified registered professional engineer in conformance with professional standards; and (I) all other provisions of this article are met: Provided, That where the excess spoil material consists of at least eighty percent, by volume, sandstone, limestone or other rocks that do not slake in water and will not degrade to soil material, the secretary may approve alternate methods for disposal of excess spoil material, including fill placement by dumping in a single lift, on a site-specific basis: Provided, however, That the services of a qualified registered professional engineer experienced in the design and construction of earth and rockfill embankment are utilized: Provided further, That the approval may not be unreasonably withheld if the site is suitable;

(23) Meet any other criteria necessary to achieve reclamation in accordance with the purposes of this article, taking into consideration the physical, climatological and other characteristics of the site;

(24) To the extent possible, using the best technology currently available, minimize disturbances and adverse impacts of the operation on fish, wildlife and related environmental values, and achieve enhancement of these resources where practicable; and
(25) Retain a natural barrier to inhibit slides and erosion on permit areas where outcrop barriers are required: Provided, That constructed barriers may be allowed where: (A) Natural barriers do not provide adequate stability; (B) natural barriers would result in potential future water quality deterioration; and (C) natural barriers would conflict with the goal of maximum utilization of the mineral resource: Provided, however, That at a minimum, the constructed barrier shall be of sufficient width and height to provide adequate stability and the stability factor shall equal or exceed that of the natural outcrop barrier: Provided further, That where water quality is paramount, the constructed barrier shall be composed of impervious material with controlled discharge points.

(c)(1) The secretary may prescribe procedures pursuant to which he or she may permit surface mining operations for the purposes set forth in subdivision (3) of this subsection.

(2) Where an applicant meets the requirements of subdivisions (3) and (4) of this subsection, a permit without regard to the requirement to restore to approximate original contour set forth in subsection (b) or (d) of this section may be granted for the surface mining of coal where the mining operation will remove an entire coal seam or seams running through the upper fraction of a mountain, ridge or hill, except as provided in paragraph (A), subdivision (4) of this subsection, by removing all of the overburden and creating a level plateau or a gently rolling contour with no highwalls remaining and capable of supporting post-mining uses in accordance with the requirements of this subsection.

(3) In cases where an industrial, commercial, agricultural, commercial forestry, residential or public facility including recreational uses is proposed for the post-mining use of the affected land, the secretary may grant a permit for a surface mining operation of the nature described in subdivision (2) of
this subsection where: (A) The proposed post-mining land use is determined to constitute an equal or better use of the affected land, as compared with premining use; (B) the applicant presents specific plans for the proposed post-mining land use and appropriate assurances that the use will be: (i) Compatible with adjacent land uses; (ii) practicable with respect to achieving the expected use; (iii) obtainable according to data regarding public agencies where appropriate; (v) practicable with respect to private financial capability for completion of the proposed use; (vi) planned pursuant to a schedule attached to the reclamation plan so as to integrate the mining operation and reclamation with the post-mining land use; and (vii) designed by a person approved by the secretary in conformance with standards established to assure the stability, drainage and configuration necessary for the intended use of the site; (C) the proposed use would be compatible with adjacent land uses, and existing state and local land use plans and programs; (D) the secretary provides the county commission of the county in which the land is located and any state or federal agency which the secretary, in his or her discretion, determines to have an interest in the proposed use, an opportunity of not more than sixty days to review and comment on the proposed use; and (E) all other requirements of this article will be met.

(4) In granting any permit pursuant to this subsection, the secretary shall require that: (A) A natural barrier be retained to inhibit slides and erosion on permit areas where outcrop barriers are required: Provided, That constructed barriers may be allowed where: (i) Natural barriers do not provide adequate stability; (ii) natural barriers would result in potential future water quality deterioration; and (iii) natural barriers would conflict with the goal of maximum utilization of the mineral resource: Provided, however, That, at a minimum, the constructed barrier shall be sufficient in width and height to provide adequate stability and the stability factor shall equal or exceed that of the natural
outcrop barrier: *Provided further,* That where water quality is paramount, the constructed barrier shall be composed of impervious material with controlled discharge points; (B) the reclaimed area is stable; (C) the resulting plateau or rolling contour drains inward from the outslopes except at specific points; (D) no damage will be done to natural watercourses; (E) spoil will be placed on the mountaintop bench as is necessary to achieve the planned post-mining land use: *And provided further,* That all excess spoil material not retained on the mountaintop shall be placed in accordance with the provisions of subdivision (22), subsection (b) of this section; and (F) ensure stability of the spoil retained on the mountaintop and meet the other requirements of this article.

(5) All permits granted under the provisions of this subsection shall be reviewed not more than three years from the date of issuance of the permit; unless the applicant affirmatively demonstrates that the proposed development is proceeding in accordance with the terms of the approved schedule and reclamation plan.

(d) In addition to those general performance standards required by this section, when surface mining occurs on slopes of twenty degrees or greater, or on lesser slopes as may be defined by rule after consideration of soil and climate, no debris, abandoned or disabled equipment, spoil material or waste mineral matter will be placed on the natural downslope below the initial bench or mining cut: *Provided,* That soil or spoil material from the initial cut of earth in a new surface mining operation may be placed on a limited specified area of the downslope below the initial cut if the permittee can establish to the satisfaction of the secretary that the soil or spoil will not slide and that the other requirements of this section can still be met.

(e) The secretary may propose rules for legislative approval in accordance with article three, chapter twenty-nine-a of this code that permit variances from the approximate original contour
requirements of this section: Provided, That the watershed control of the area is improved: Provided, however, That complete backfilling with spoil material is required to completely cover the highwall, which material will maintain stability following mining and reclamation.

(f) The secretary shall propose rules for legislative approval in accordance with article three, chapter twenty-nine-a of this code for the design, location, construction, maintenance, operation, enlargement, modification, removal and abandonment of new and existing coal mine waste piles. In addition to engineering and other technical specifications, the standards and criteria developed pursuant to this subsection shall include provisions for review and approval of plans and specifications prior to construction, enlargement, modification, removal or abandonment; performance of periodic inspections during construction; issuance of certificates of approval upon completion of construction; performance of periodic safety inspections; and issuance of notices and orders for required remedial or maintenance work or affirmative action: Provided, That whenever the secretary finds that any coal processing waste pile constitutes an imminent danger to human life, he or she may, in addition to all other remedies and without the necessity of obtaining the permission of any person prior or present who operated or operates a pile or the landowners involved, enter upon the premises where any coal processing waste pile exists and may take or order to be taken any remedial action that may be necessary or expedient to secure the coal processing waste pile and to abate the conditions which cause the danger to human life: Provided, however, That the cost reasonably incurred in any remedial action taken by the secretary under this subsection may be paid for initially by funds appropriated to the division for these purposes and the sums expended shall be recovered from any responsible operator or landowner, individually or jointly, by suit initiated by the Attorney General at the request of the
486 secretary. For purposes of this subsection, operates or operated
487 means to enter upon a coal processing waste pile, or part of a
488 coal processing waste pile, for the purpose of disposing,
489 depositing, dumping coal processing wastes on the pile or
490 removing coal processing waste from the pile, or to employ a
491 coal processing waste pile for retarding the flow of or for the
492 impoundment of water.

493 (g) The secretary shall promulgate for review and
494 consideration by the West Virginia Legislature during the 2017
495 Regular Session of the West Virginia Legislature revisions to the
496 rules for minimizing the disturbances to the prevailing
497 hydrologic balance at a mine site and in associated off-site areas
498 both during and after surface mining operations and during
499 reclamation as required under subdivision (10), subsection (b) of
500 this section, including specifically the rules for stormwater
501 runoff and control plans. The secretary shall specifically
502 conform these rules to the federal standards codified at 30 C.F.R.
503 §816.41 (1983) and 30 C.F.R. §816.45-47 (1983) when
504 proposing revisions to the state rule. The secretary shall not
505 propose rules more stringent than the federal standards codified
507 when proposing revisions to the state rule.

§22-3-13a. Preblast survey requirements.

1 (a) At least thirty days prior to commencing blasting, as
2 defined in section twenty-two-a of this article, an operator or an
3 operator’s designee shall make the following notifications in
4 writing to all owners and occupants of man-made dwellings or
5 structures that the operator or operator’s designee will perform
6 preblast surveys in accordance with subsection (f) of this section:

7 (1) For surface mining operations that are less than two
8 hundred acres in a single permitted area or less than three
9 hundred acres of contiguous or nearly contiguous area of two or
more permitted areas, the required notifications shall be to all owners and occupants of man-made dwellings or structures within five tenths of a mile of the permitted area or areas;

(2) For all other surface mining operations, the required notifications shall be to all owners and occupants of man-made dwellings or structures within five tenths of a mile of the permitted area or areas or seven tenths of a mile of the proposed blasting site, whichever is greater; and

(3) For permitted surface disturbance of underground mines, the required notifications shall be to all owners and occupants of man-made dwellings or structures within five tenths of a mile of the permitted surface area or areas.

(b) Any operator identified in subdivision (2), subsection (a) of this section that has already completed preblast surveys for man-made dwellings or structures within five tenths of a mile of the permit area and has commenced operations by the effective date of this section shall notify in writing all additional owners and occupants of man-made dwellings or structures within seven tenths of a mile of the proposed blasting site. Except for those dwellings or structures for which the operator secures a written waiver or executes an affidavit in accordance with the requirements of subsection (c) of this section, the operator or the operator’s designee must perform the additional preblast surveys in accordance with subsection (f) of this section.

(c) An occupant or owner of a man-made dwelling or structure within the areas described in subdivision (1) or (2), subsection (a) of this section may waive the right to a preblast survey in writing. If a dwelling is occupied by a person other than the owner, both the owner and the occupant must waive the right to a preblast survey in writing. If an occupant or owner of a man-made dwelling or structure refuses to allow the operator or the operator’s designee access to the dwelling or structure and
refuses to waive in writing the right to a preblast survey or to the extent that access to any portion of the structure, underground water supply or well is impossible or impractical under the circumstances, the preblast survey shall indicate that access was refused, impossible or impractical. The operator or the operator’s designee shall execute a sworn affidavit explaining the reasons and circumstances surrounding the refusals. The Division of Mining and Reclamation may not determine the preblast survey to be incomplete because it indicates that access to a particular structure, underground water supply or well was refused, impossible or impractical. The operator shall send copies of all written waivers and affidavits executed pursuant to this subsection to the Division of Mining and Reclamation.

(d) If a preblast survey was waived by the owner and was within the requisite area and the property was sold, the new owner may request a preblast survey from the operator.

(e) An owner within the requisite area may request, from the operator, a preblast survey on structures constructed after the original preblast survey.

(f) The preblast survey shall include:

(1) The names, addresses or description of structure location and telephone numbers of the owner and the residents of the structure being surveyed and the structure number from the permit blasting map;

(2) The current home insurer of the owner and the residents of the structure;

(3) The names, addresses and telephone numbers of the surface mining operator and the permit number;

(4) The current general liability insurer of the surface mining operator;
(5) The name, address and telephone number of the person or firm performing the preblast survey;

(6) The current general liability insurer of the person or firm performing the preblast survey;

(7) The date of the preblast survey and the date it was mailed or delivered to the Division of Mining and Reclamation.

(8) A general description of the structure and its appurtenances, including, but not limited to: (A) The number of stories; (B) the construction materials for the frame and the exterior and interior finish; (C) the type of construction including any unusual or substandard construction; and (D) the approximate age of the structure;

(9) A general description of the survey methods and the direction of progression of the survey, including a key to abbreviations used;

(10) Written documentation and drawings, videos or photographs of the preblast defects and other physical conditions of all structures, appurtenances and water sources which could be affected by blasting;

(11) Written documentation and drawings, videos or photographs of the exterior and interior of the structure to indicate preblast defects and condition;

(12) Written documentation and drawings, videos or photographs of the exterior and interior of any appurtenance of the structure to indicate preblast defects and condition;

(13) Sufficient exterior and interior photographs or videos, using a variety of angles, of the structure and its appurtenances to indicate preblast defects and the condition of the structure and appurtenances;
(14) Written documentation and drawings, videos or photographs of any unusual or substandard construction technique and materials used on the structure or its appurtenances or both structure and appurtenances;

(15) Written documentation relating to the type of water supply, including a description of the type of system and treatment being used, an analysis of untreated water supplies, a water analysis of water supplies other than public utilities and information relating to the quantity and quality of water;

(16) When the water supply is a well, written documentation, where available, relating to the type of well; the well log; the depth, age and type of casing or lining; the static water level; flow data; the pump capacity; the drilling contractor; and the source or sources of the documentation;

(17) A description of any portion of the structure and appurtenances not documented or photographed and the reasons;

(18) The signature of the person performing the survey; and

(19) Any other information required by the secretary which additional information shall be established by rule in accordance with article three, chapter twenty-nine-a of this code.

(g) Except for additional preblast surveys prepared within one hundred twenty days of the effective date of this section, pursuant to subsection (b) of this section, the preblast survey shall be submitted to the Division of Mining and Reclamation at least fifteen days prior to the commencement of any production blasting. The Division of Mining and Reclamation shall review each preblast survey as to form and completeness only and notify the operator of any deficiencies: Provided, That once all required surveys have been reviewed and accepted by the Division of Mining and Reclamation, blasting may commence sooner than fifteen days after submittal. The Division of Mining
and Reclamation shall provide a copy of the preblast survey to the owner or occupant.

(h) The surface mining operator shall file notice of the preblast survey or the waiver in the office of the county clerk of the county commission of the county where the man-made dwelling or structure is located to notify the public that a preblast survey has been conducted or waived. The notice shall be on a form prescribed by the Division of Mining and Reclamation.

(i) The secretary shall propose rules for legislative approval in accordance with article three, chapter twenty-nine-a of this code dealing with preblast survey requirements and setting the qualifications for individuals and firms performing preblast surveys.

(j) The provisions of this section do not apply to the extraction of minerals by underground mining methods.

§22-3-22a. Blasting restrictions; site specific blasting design requirement.

(a) For purposes of this section, the term “production blasting” means blasting that removes the overburden to expose underlying coal seams and does not include construction blasting.

(b) For purposes of this section, the term “construction blasting” means blasting to develop haul roads, mine access roads, coal preparation plants, drainage structures or underground coal mine sites and does not include production blasting.

(c) For purposes of this section, the term “protected structure” means any of the following structures that are situated outside the permit area: An occupied dwelling; a temporarily
unoccupied dwelling which has been occupied within the past ninety days; a public building; a structure for commercial purposes; a school; a church; a community or institutional building; and a public park or a water well.

(d) Production blasting is prohibited within three hundred feet of a protected structure or within one hundred feet of a cemetery.

(e) Blasting within one thousand feet of a protected structure shall have a site-specific blast design approved by the Division of Mining and Reclamation. The site-specific blast design shall limit the type of explosives and detonating equipment, the size, the timing and frequency of blasts to do the following:

(1) Prevent injury to persons; (2) prevent damage to public and private property outside the permit area; (3) prevent adverse impacts on any underground mine; (4) prevent change in the course, channel or availability of ground or surface water outside the permit area; and (5) reduce dust outside the permit area.

In the development of a site-specific blasting plan, consideration shall be given, but is not limited to, the physical condition, type and quality of construction of the protected structure, the current use of the protected structure and the concerns of the owner or occupant living in the protected structures identified in the blasting schedule notification area.

(f) An owner or occupant of a protected structure may waive the blasting prohibition within three hundred feet. If a protected structure is occupied by a person other than the owner, both the owner and the occupant of the protected structure shall waive the blasting prohibition within three hundred feet in writing. The operator shall send copies of all written waivers executed pursuant to this subsection to the Division of Mining and Reclamation. Written waivers executed and filed with the
Division of Mining and Reclamation are valid during the life of the permit or any renewals of the permit and are enforceable against any subsequent owners or occupants of the protected structure.

(g) The provisions of this section do not apply to the following: (1) Underground coal mining operations; (2) the surface operations and surface impacts incident to an underground coal mine; and (3) the extraction of minerals by underground mining methods or the surface impacts of the underground mining methods: Provided, That nothing contained in this section may be construed to exempt any coal mining operation from the general performance standards as contained in section thirteen of this article and any rules promulgated pursuant to said section.

§22-3-30a. Blasting requirements; liability and civil penalties in the event of property damage.

(a) Blasting shall be conducted in accordance with the rules and laws established to regulate blasting.

(b) If the Department of Environmental Protection establishes after an inspection that a blast at a surface coal mine operation as defined by the provisions of subdivision (2), subsection (a), section thirteen-a of this article was not in compliance with the regulations governing blasting parameters and resulted in property damage to a protected structure, as defined in section twenty-two-a of this article, other than water wells, the following penalties shall be imposed for each permit area or contiguous permit areas where the blasting was out of compliance:

(1) For the first offense, the operator shall be assessed a penalty of not less than $1,000 nor more than $5,000.
(2) For the second offense and each subsequent offense within one year of the first offense, the surface mining operator shall be assessed a penalty of not less than $5,000 nor more than $10,000.

(3) For the third offense and any subsequent offense within one year of the first offense, or for the failure to pay any assessment set forth within a reasonable time established by the secretary, the surface mining operator’s permit is subject to an immediate issuance of a cessation order, as set out in section sixteen of this article. The cessation order shall only be released upon written order of the secretary of the Department of Environmental Protection when the following conditions have been met:

(A) A written plan has been established and filed with the secretary assuring that additional violations will not occur;

(B) The permittee has provided compensation for the property damages or the assurance of adequate compensation for the property damages that have occurred; and

(C) A permittee shall provide such monetary and other assurances as the secretary considers appropriate to compensate for future property damages. The monetary assurances required shall be in an amount at least equal to the amount of compensation required in paragraph (B), subdivision (3) of this subsection.

(4) In addition to the penalties described in subdivisions (1), (2) and (3) of this subsection for the second and subsequent offenses on any one permitted area regardless of the time period, the owner of the protected structure is entitled to a rebuttable presumption that the property damage is a result of the blast if:

(A) A preblast survey was performed; and (B) the blasting site
to which the second or subsequent offense relates is within seven
tenths of a mile of the protected structure.

(5) No more than one offense may arise out of any one shot.
For purposes of this section, “shot” means a single blasting event
composed of one or multiple detonations of explosive material
or the assembly of explosive materials for this purpose. One
“shot” may be composed of numerous explosive charges
detonated at intervals measured in milliseconds.

(c) Notwithstanding the provisions of subsections (a) and (b)
of this section, the Department of Environmental Protection may
not impose penalties, as provided for in subsection (b) of this
section, on an operator for the violation of any rule identified in
subsection (b) of this section that is merely administrative in
nature.

(d) The remedies provided in this section are not exclusive
and may not bar an owner or occupant from any other remedy
accorded by law.

(e) Where inspection by the Department of Environmental
Protection establishes that production blasting, in violation of
section twenty-two-a of this article, was done within three
hundred feet of a protected structure, without an approved
site-specific blast design or not in accordance with an approved
site-specific blast design for production blasting within one
thousand feet of any protected structure as defined in section
twenty-two-a of this article or within one hundred feet of a
cemetery, the monetary penalties and revocation, as set out in
subsection (b) of this section, apply.

(f) All penalties and liabilities as set forth in subsection (b)
of this section shall be assessed by the secretary, collected by the
secretary and deposited with the Treasurer of the State of West
Virginia in the General School Fund.
(g) The secretary shall propose rules for legislative approval pursuant to article three, chapter twenty-nine-a of this code for the implementation of this section.

(h) The provisions of this section do not apply to the extraction of minerals by underground mining methods: Provided, That nothing contained in this section may be construed to exempt any coal mining operation from the general performance standards as contained in section thirteen of this article and any rules promulgated pursuant thereto.

§22-3-34. Office of explosives and blasting terminated; transfer of functions; responsibilities, personnel and assets.

The office of explosives and blasting within the Department of Environmental Protection is hereby terminated, and its authority and functions are transferred to the Division of Mining and Reclamation. With this transfer, all records, assets, and contracts, along with the rights and obligations thereunder, obtained or signed on behalf of the office of explosives and blasting are hereby transferred and assigned to the Division of Mining and Reclamation. The secretary shall transfer from the office of explosives and blasting to the Division of Mining and Reclamation any personnel and assets presently used in the performance of the duties and functions required by sections thirty-four through thirty-seven of this article.

§22-3-35. Legislative rules on surface-mining blasting; disciplinary procedures for certified blasters.

(a) All authority to promulgate rules pursuant to article three, chapter twenty-nine-a of this code is hereby transferred from the office of explosives and blasting to the Division of Mining and Reclamation as of the effective date of enactment of this section and article during the 2016 session of the Legislature: Provided, That any rule promulgated by the office of explosives and
blasting shall remain in force and effect as though promulgated by the Division of Mining and Reclamation until the secretary amends the rules in accordance with the provisions of article three, chapter twenty-nine-a of this code. Any rules promulgated by the secretary shall include, but not be limited to, the following:

(1) A procedure for the review, modification and approval, prior to the issuance of any permit, of any blasting plan required to be submitted with any application for a permit to be issued by the secretary pursuant to article three of this chapter, which sets forth procedures for the inspection and monitoring of blasting operations for compliance with blasting laws and rules, and for the review and modification of the blasting plan of any operator against whom an enforcement action is taken by the Department of Environmental Protection;

(2) Specific minimum requirements for preblast surveys, as set forth in section thirteen-a, article three of this chapter;

(3) A procedure for review of preblast surveys required to be submitted under section thirteen-a, article three of this chapter;

(4) A procedure for the use of seismographs for production blasting which shall be made part of the blasting log;

(5) A procedure to warn of impending blasting to the owners or occupants adjoining the blasting area;

(6) A procedure to limit the type of explosives and detonating equipment, the size, the timing and frequency of blasts based upon the physical conditions of the site so as to: (A) Prevent injury to persons; (B) prevent damage to public and private property outside the permit area; (C) prevent adverse impacts on any underground mine; (D) prevent change in the course, channel or availability of ground or surface water outside the permit area; and (E) reduce dust outside the permit area;
(7) Provisions for requiring mining operators to publish the planned blasting schedule in a newspaper of general circulation in the locality of the mining operation;

(8) Provisions for requiring mining operators to provide adequate advance written notice of the proposed blasting schedule to local governments, owners and occupants living within the distances prescribed in subsection (a), section thirteen-a, article three of this chapter;

(9) Provisions for establishing a process for the education, training, examination and certification of blasters working on surface-mining operations;

(10) Provisions for establishing disciplinary procedures for all certified blasters responsible for blasting on surface-mining operations conducted within this state in violation of any law or rule promulgated by the Department of Environmental Protection to regulate blasting; and

(11) Provisions for establishing a fee on each quantity of explosive material used for any purpose on surface mining operations, which fee shall be calculated to generate sufficient money to provide for the operation of the explosives and blasting program and the Division of Energy. The secretary shall deposit all moneys received from these fees into a special revenue fund in the State Treasury known as the Mountaintop Removal Fund to be expended by the secretary and the Division of Energy in the performance of their duties.

§22-3-36. Claims process for blasting.

(a) The Division of Mining and Reclamation shall establish and manage a process for the filing, administration and resolution of claims related to blasting.
(b) Claims which may be filed and determined under the provisions of this section shall be those arising from both of the following:

(1) Damage to property arising from blasting activities conducted pursuant to a permit granted under article three of this chapter; and

(2) The damage is incurred by a claimant who is the owner or occupant of the property.

(c) The claims process established by the Division of Mining and Reclamation shall include the following:

(1) An initial determination by the Division of Mining and Reclamation of the merit of the claim; and

(2) An arbitration process whereby the claim can be determined and resolved by an arbitrator in a manner which is inexpensive, prompt and fair to all parties.

(d) If the operator disagrees with the initial determination made by the Division of Mining and Reclamation and requests arbitration, then the following shall apply:

(1) Any party may be represented by a representative of their choice;

(2) At the request of the claimant, the Division of Mining and Reclamation shall provide the claimant with representation in the arbitration process, which representation shall not necessarily be an attorney-at-law; and

(3) If the claim is upheld, in whole or in part, then the operator shall pay the costs of the proceeding, as well as reasonable representation fees and costs of the claimant, in an amount not to exceed $1,000.
(e) Participation in the claims process created by this section shall be voluntary for the claimant. However, once the claimant has submitted a claim for determination under the provisions of this section, it is intended that the finding of the Division of Mining and Reclamation, if not taken to arbitration, shall be final. If arbitration is requested, it is intended that the results of such arbitration shall be final. The Division of Mining and Reclamation shall provide written notification to the claimant of the provisions of this subsection and shall secure a written acknowledgment from the claimant prior to processing a claim pursuant to the provisions of this section.

(f) The operator shall pay any claim for which the operator is adjudged liable within thirty days of a final determination. If the claim is not paid within thirty days, the secretary shall issue a cessation order pursuant to section sixteen, article three of this chapter for all sites operated by the operator.

(g) No permit to mine coal shall be granted unless the permit applicant agrees to be subject to the terms of this section.

(h) To fulfill its responsibilities pursuant to this section, the Division of Mining and Reclamation may retain the services of inspectors, experts and other persons or firms as may be necessary.

§22-3-37. Rules, orders and permits to remain in effect regarding blasting; proceedings not affected.

(a) All orders, determinations, rules, permits, grants, contracts, certificates, licenses, waivers, bonds, authorizations and privileges which have been issued, made, granted or allowed to become effective prior to the enactment of this article shall remain in effect according to their terms until modified, terminated, superseded, set aside or revoked pursuant to this article, by a court of competent jurisdiction, or by operation of law.
§22-3-38. Transfer of personnel and assets.

The secretary shall transfer to the Division of Mining and Reclamation any personnel and assets presently used to perform or used in the performance of the duties and functions required by sections thirty-four through thirty-nine of this article.

ARTICLE 11. WATER POLLUTION CONTROL ACT.

§22-11-6. Requirement to comply with standards of water quality and effluent limitations.

All persons affected by rules establishing water quality standards and effluent limitations shall promptly comply with the rules: Provided, That:

(1) Where necessary and proper, the secretary may specify a reasonable time for persons not complying with the standards and limitations to comply with the rules and upon the expiration of that 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 the waters below the standards and limitations established therefor by rules of the board or secretary;

(2) For purposes of both this article and sections 309 and 505 of the federal Water Pollution Control Act, compliance with a permit issued pursuant to this article shall be considered compliance for purposes of both this article and sections 301, 302, 303, 306, 307 and 403 of the federal Water Pollution Control Act and with all applicable state and federal water...
quality standards, except for any standard imposed under section
307 of the federal Water Pollution Control Act for a toxic
pollutant injurious to human health. Notwithstanding any
 provision of this code or rule or permit condition to the contrary,
water quality standards themselves shall not be considered
“effluent standards or limitations” for the purposes of both this
article and sections 309 and 505 of the federal Water Pollution
Control Act and shall not be independently or directly enforced
or implemented except through the development of terms and
conditions of a permit issued pursuant to this article. 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; 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 the 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.

(7) Within thirty days of the effective date of this section, the secretary shall promulgate an emergency rule revising the statewide aluminum water quality criteria for the protection of aquatic life to incorporate aluminum criteria values using a hardness-based equation. Concurrent with issuing an emergency rule, the secretary shall also submit the proposed revisions and supporting documentation to the administrator of the Environmental Protection Agency.
(8) The secretary shall, within ninety days of receipt of any completed request for a site specific water quality criterion, approve or deny the request. Any denial or approval of an application shall detail the specific basis for the denial or approval and any revisions needed to the application. Any denial or approval of a request may be appealed to the environmental quality board pursuant to section twenty-one of this article.

CHAPTER 22A. MINERS’ HEALTH, SAFETY AND TRAINING.

ARTICLE 1. OFFICE OF MINERS’ HEALTH, SAFETY AND TRAINING; ADMINISTRATION; ENFORCEMENT.

§22A-1-13. Employment of surface mine inspectors; eligibility; qualifications; examinations; salary; provisions relating to underground mine inspectors applicable to surface mine inspectors.

(a) The office shall employ as many surface mine inspectors as the director determines to be reasonably necessary in fully and effectively carrying out the applicable provisions of this chapter.

(b) To be eligible for employment as a surface mine inspector the applicant shall be: (1) a citizen of West Virginia, in good health, not less than twenty-four years of age, of good character and reputation and of temperate habits; (2) a person who has had at least five years of practical experience in coal mines, at least two years of which have been on surface mines in this State: Provided, That graduation from any accredited college of mining engineering may be considered the equivalent of two years of practical experience; and (3) a person who has a good theoretical and practical knowledge of surface mines, surface mining methods, sound safety practices and applicable mining laws and rules. For the purpose of this section, practical
experience means the performance of normal mining duties requiring a person to hold a certificate of competency and qualification as an experienced surface miner prior to actually performing the duties.

(c)(1) In order to qualify for appointment as a surface mine inspector, an eligible applicant shall submit to written, oral and practical examinations administered by the Mine Inspectors’ Examining Board and furnish evidence of good health, character and other facts establishing eligibility as the board may require. The examinations shall relate to the duties to be performed by a surface mine inspector and, subject to the approval of the mine inspectors’ examining board, may be prepared by the director.

(2) If the board finds after investigation and examination that an applicant is: (A) Eligible for appointment; and (B) has passed each required examination with a grade of at least seventy-five percent, or an overall combined average score of eighty percent, the board shall add the applicant’s name and grades to the register of qualified eligible candidates and promptly certify its action in writing to the director. The director shall then appoint one of the candidates from the three having the highest grades.

(d) Surface mine inspectors shall be paid an annual salary of not less than $37,332, which shall be fixed by the director, who shall take into consideration ability, performance of duty, and experience. Surface mine inspectors shall devote all of their time to the duties of the office.

(e) Except as expressly provided in this section to the contrary, all provisions of this article relating to the eligibility, qualification, appointment, tenure, and removal of underground mine inspectors, as well as those provisions relating to compensatory time and reimbursement for necessary expenses, are applicable to surface mine inspectors.
§22A-1-14. Director and inspectors authorized to enter mines; duties of inspectors to examine mines; no advance notice of an inspection; reports after fatal accidents.

(a) The director, or his or her authorized representative, has authority to visit, enter, and examine any mine, whether underground or on the surface, and may call for the assistance of any district mine inspector or inspectors whenever assistance is necessary in the examination of any mine. The operator of every coal mine shall furnish the director or his or her authorized representative proper facilities for entering the mine and making examination or obtaining information.

(b) If miners or one of their authorized representatives, have reason to believe, at any time, that dangerous conditions are existing or that the law is not being complied with, they may request the director to have an immediate investigation made: Provided, That miners are always encouraged to work with mine management with regards to safety concerns.

(c) Mine inspectors shall devote their full-time and undivided attention to the performance of their duties, and they shall examine all of the mines in their respective districts at least four times annually, and as often, in addition thereto, as the director may direct, or the necessities of the case or the condition of the mine or mines may require, with no advance notice of inspection provided to any person, and they shall make a personal examination of each working face and all entrances to abandoned parts of the mine where gas is known to liberate, for the purpose of determining whether an imminent danger, referred to in section fifteen of this article, exists in the mine, or whether any provision of article two of this chapter is being violated or has been violated within the past forty-eight hours in the mine. No other person shall, with the intent of undermining the integrity of an unannounced mine inspection, provide advance notice of any inspection or of an inspector’s presence at
a mine to any person at that mine. Any person who, with the
requisite intent, knowingly causes or conspires to provide
advance notice of any inspection or of an inspector’s presence at
a mine is guilty of a felony and, upon conviction thereof, shall be
fined not more than $15,000 or imprisoned in a state correctional
facility not less than one year and not more than five years, or
both fined and imprisoned.

(d) In addition to the other duties imposed by this article and
article two of this chapter, it is the duty of each inspector to note
each violation he or she finds and issue a finding, order, or
notice, as appropriate for each violation so noted. During the
investigation of any accident, any violation may be noted
whether or not the inspector actually observes the violation and
whether or not the violation exists at the time the inspector notes
the violation, so long as the inspector has clear and convincing
evidence the violation has occurred or is occurring.

(e) An inspector shall require the operator or other employer
to investigate all complaints received by the Office of Miners’
Health, Safety and Training involving a certified person’s
substance abuse or alcohol related impairment at a mine. Within
thirty days following notification by the Office of Miners’
Health, Safety and Training to the operator or other employer of
the complaint, the operator or other employer shall file with the
Director a summary of its investigation into the alleged
substance abuse or alcohol related impairment of a certified
person.

(f) The mine inspector shall visit the scene of each fatal
accident occurring in any mine within his or her district and shall
make an examination into the particular facts of the accident;
make a report to the director, setting forth the results of the
examination, including the condition of the mine and the cause
or causes of the fatal accident, if known, and all the reports shall
be made available to the interested parties, upon written requests.
(g) At the commencement of any inspection of a coal mine by an authorized representative of the director, the authorized representative of the miners at the mine, as well as a salaried employee of management, at the time of the inspection shall be given an opportunity to accompany the authorized representative of the director on the inspection.


(a) If upon any inspection of a coal mine an authorized representative of the director finds that an imminent danger exists, the representative shall determine the area throughout which the danger exists and shall immediately issue an order requiring the operator of the mine or the operator’s agent to cause immediately all persons, except those referred to in subdivisions (1), (2), (3) and (4), subsection (e) of this section, to be withdrawn from and to be prohibited from entering the area until an authorized representative of the director determines that the imminent danger no longer exists.

(b) If upon any inspection of a coal mine an authorized representative of the director finds that there has been a violation of the law, but the violation has not created an imminent danger, he or she shall issue a notice to the operator or the operator’s agent fixing a reasonable time for the abatement of the violation. If upon the expiration of the period of time, as originally fixed or subsequently extended, an authorized representative of the director finds that the violation has not been totally abated, and if the director also finds that the period of time should not be further extended, the director shall find the extent of the area affected by the violation and shall promptly issue an order requiring the operator of the mine or the operator’s agent to cause immediately all persons, except those referred to in subdivisions (1), (2), (3) and (4), subsection (e) of this section, to be withdrawn from and to be prohibited from entering the area until an authorized representative of the director determines that the violation has been abated.
(c) If upon any inspection of a coal mine an authorized representative of the director finds that an imminent danger exists in an area of the mine, in addition to issuing an order pursuant to subsection (a) of this section, the director shall review the compliance record of the mine.

(1) A review of the compliance record conducted in accordance with this subsection shall, at a minimum, include a review of the following:

(A) Any closure order issued pursuant to subsection (a) of this section;

(B) Any closure order issued pursuant to subsection (b) of this section;

(C) Any enforcement measures taken pursuant to this chapter, other than those authorized under subsections (a) and (b) of this section;

(D) Any evidence of the operator’s lack of good faith in abating significant and substantial violations at the mine;

(E) Any accident, injury or illness record that demonstrates a serious safety or health management problem at the mine; and

(F) Any mitigating circumstances.

(2) If, after review of the mine’s compliance record, the director determines that the mine has a history of repeated significant and substantial violations of a particular standard caused by unwarrantable failure to comply or a history of repeated significant and substantial violations of standards related to the same hazard caused by unwarrantable failure to comply and the history or histories demonstrate the operator’s disregard for the health and safety of miners, the director shall issue a closure order for the entire mine or area throughout
which the director determines the dangerous condition exists and shall immediately issue an order requiring the operator of the mine or the operator’s agent to cause immediately all persons, except those referred to in subdivisions (1), (2), (3) and (4), subsection (e) of this section, to be withdrawn from and to be prohibited from entering the mine or area throughout which the director determines the dangerous condition until a thorough inspection of the mine or area has been conducted by the office and the director determines that the operator has abated all violations related to the imminent danger and any violations unearthed in the course of the inspection.

(d) All employees on the inside and outside of a mine who are idled as a result of the posting of a withdrawal order by a mine inspector shall be compensated by the operator at their regular rates of pay for the period they are idled, but not for more than the balance of the shift. If the order is not terminated prior to the next working shift, all the employees on that shift who are idled by the order are entitled to full compensation by the operator at their regular rates of pay for the period they are idled, but for not more than four hours of the shift.

(e) The following persons are not required to be withdrawn from or prohibited from entering any area of the coal mine subject to an order issued under this section:

(1) Any person whose presence in the area is necessary, in the judgment of the operator or an authorized representative of the director, to eliminate the condition described in the order;

(2) Any public official whose official duties require him or her to enter the area;

(3) Any representative of the miners in the mine who is, in the judgment of the operator or an authorized representative of the director, qualified to make coal mine examinations or who is
accompanied by such a person and whose presence in the area is necessary for the investigation of the conditions described in the order; and

(4) Any consultant to any of the persons set forth in this subsection.

(f) Notices and orders issued pursuant to this section shall contain a detailed description of the conditions or practices which cause and constitute an imminent danger or a violation of any mandatory health or safety standard and, where appropriate, a description of the area of the coal mine from which persons must be withdrawn and prohibited from entering.

(g) Each notice or order issued under this section shall be given promptly to the operator of the coal mine or the operator’s agent by an authorized representative of the director issuing the notice or order and all the notices and orders shall be in writing and shall be signed by the representative and posted on the bulletin board at the mine.

(h) A notice or order issued pursuant to this section may be modified or terminated by an authorized representative of the director.

(i) Each finding, order and notice made under this section shall promptly be given to the operator of the mine to which it pertains by the person making the finding, order or notice.

(j) Definitions. — For the purposes of this section only, the following terms have the following meanings:

(1) “Unwarrantable failure” means aggravated conduct, constituting more than ordinary negligence, by a mine operator in relation to a violation of this chapter of the code; and

(2) “Significant and substantial violation” shall have the same meaning as that established in 6 FMSHRC 1 (1984).

(a) Any order or decision issued by the director under this law, is subject to judicial review by the circuit court of the county in which the mine affected is located upon the filing in such court or with the judge thereof in vacation of a petition by any person aggrieved by the order or decision praying that the order or decision be modified or set aside, in whole or in part, except that the court shall not consider such petition unless such person has exhausted the administrative remedies available under this law and files within thirty days from date of such order or decision.

(b) The party making such appeal shall forthwith send a copy of such petition for appeal, by registered mail, to the other party. Upon receipt of such petition for appeal, the director shall promptly certify and file in such court a complete transcript of the record upon which the order or decision complained of was issued. The court shall hear such petition on the record made before the director. The findings of the director, if supported by substantial evidence on the record considered as a whole, shall be conclusive. The court may affirm, vacate or modify any order or decision or may remand the proceedings to the director for such further action as it may direct.

(c) In the case of a proceeding to review any order or decision issued by the director under this law, except an order or decision pertaining to an order issued under subsection (a), section fifteen of this article or an order or decision pertaining to a notice issued under subsection (b), section fifteen of this article, the court may, under such conditions as it may prescribe, grant such temporary relief as it deems appropriate pending final determination of the proceedings if:

(A) All parties to the proceeding have been notified and given an opportunity to be heard on a request for temporary relief;
(B) The person requesting such relief shows that there is a substantial likelihood that the person will prevail on the merits of the final determination of the proceeding; and

(C) Such relief will not adversely affect the health and safety of miners in the coal mine.

(d) The judgment of the court is subject to review only by the Supreme Court of Appeals of West Virginia upon a writ of certiorari filed in such court within sixty days from the entry of the order and decision of the circuit court upon such appeal from the director.

(e) The commencement of a proceeding under this section shall not, unless specifically ordered by the court, operate as a stay of the order or decision of the director.

(f) Subject to the direction and control of the attorney general, attorneys appointed for the director may appear for and represent the director in any proceeding instituted under this section.


The director may institute a civil action for relief, including a permanent or temporary injunction, restraining order, or any other appropriate order in the circuit court of the county in which the mine is located whenever the operator or the operator’s agent: (a) Violates or fails or refuses to comply with any order or decision issued under this law; or (b) interferes with, hinders or delays the director or his or her authorized representative in carrying out the provisions of this law; or (c) refuses to admit such representatives to the mine; or (d) refuses to permit the inspection of the mine, or the investigation of an accident or occupational disease occurring in, or connected with, such mine; or (e) refuses to furnish any information or report requested by
the director in furtherance of the provisions of this law; or (f) refuses to permit access to, and copying of, such records as the director determines necessary in carrying out the provisions of this law. The court shall have jurisdiction to provide such relief as may be appropriate. Except as otherwise provided herein, any relief granted by the court to enforce an order under clause (a) of this section shall continue in effect until the completion or final termination of all proceedings for review of such order under this law, unless, prior thereto, the circuit court granting such relief sets it aside or modifies it. In any action instituted under this section to enforce an order or decision issued by the director after a public hearing, the findings of the director, if supported by substantial evidence on the record considered as a whole, shall be conclusive.


(a) Charge of breach of duty. — A mine inspector or the director may charge a mine foreman, assistant mine foreman, fire boss or any other certified person with neglect or failure to perform any duty mandated pursuant to this article or article two of this chapter. The charge shall state the name of the person charged, the duty or duties he or she is alleged to have violated, the approximate date and place so far as is known of the violation of duty, the capacity of the person making the charge, and shall be verified on the basis of information and belief or personal knowledge. The charge is initiated by filing it with the director or with the board of appeals. A copy of any charge filed with the board of appeals or any member thereof, shall be transmitted promptly to the director. The director shall maintain a file of each charge and of all related documents which shall be open to the public.

(b) Evaluation of charge by board of appeals. — Within twenty days after receipt of the charge the board shall evaluate the charge and determine whether or not a violation of duty has
been stated. In making such a determination the board shall evaluate all documents submitted to it by all persons to determine as nearly as possible the substance of the charge and if the board of appeals is unable to determine the substance of the charge it may request the director to investigate the charge. Upon request, the director shall cause the charge to be investigated and report the results of the investigation to the board of appeals within ten days of the director’s receipt of the charge. If the board determines that probable cause exists to support the allegation that the person charged has violated his or her duty, the board by the end of the twenty-day period shall set a date for hearing which date shall be within eighty days of the filing of the charge. Notice of the hearing or notice of denial of the hearing for failure to state a charge and a copy of the charge shall be mailed by certified mail, return receipt requested, to the charging party, the charged party, the director, the representative of the miner or miners affected and to any interested person of record. Thereafter the board shall maintain the file of the charge which shall contain all documents, testimony and other matters filed which shall be open for public inspection.

(c) Hearing. — The board of appeals shall hold a hearing, may appoint a hearing examiner to take evidence and report to the board of appeals within the time allotted, may direct or authorize taking of oral depositions under oath by any participant, or adopt any other method for the gathering of sworn evidence which affords the charging party, the charged party, the director and any interested party of record due process of law and a fair opportunity to present and make a record of evidence. Any member of the board shall have the power to administer oaths. The board may subpoena witnesses and require production of any books, papers, records or other documents relevant or material to the inquiry. The board shall consider all evidence offered in support of the charge and on behalf of the persons so charged at the time and place designated in the notice. Each witness shall be sworn and a transcript shall be made of all
evidence presented in any such hearing. No continuance shall be granted except for good cause shown.

The board of appeals may accept as evidence a notarized affidavit of drug testing procedures and results from a Medical Review Officer (MRO) in lieu of live testimony by the MRO. If the Board of Appeals desires testimony in lieu of a notarized affidavit, the MRO may testify under oath telephonically or by an Internet based program in lieu of physically attending the hearing.

At the conclusion of the hearing the board shall proceed to determine the case upon consideration of all the evidence offered and shall render a decision containing its findings of fact and conclusions of law. If the board finds by a preponderance of the evidence that the certificate or certificates of the charged person should be suspended or revoked, as hereinafter provided, it shall enter an order to that effect. No renewal of the certificate shall be granted except as herein provided.

(d) *Failure to cooperate.* — Any person charged who without just cause refuses or fails to appear before the board or cooperate in the investigation or gathering of evidence shall forfeit his or her certificate or certificates for a period to be determined by the board, not to exceed five years, and such certificate or certificates may not be renewed except upon a successful completion of the examination prescribed by the law for mine foremen, assistant mine foremen, fire bosses or other certified persons.

(e) *Penalties.* — The board may suspend or revoke the certificate or certificates of a charged party for a minimum of thirty days or more including an indefinite period or may revoke permanently the certificate or certificates of the charged party, as it sees fit, subject to the prescribed penalties and monetary fines imposed elsewhere in this chapter.
(f) **Integrity of penalties imposed.** — No person whose certification is suspended or revoked under this provision can perform any duties under any other certification issued under this chapter, during the period of the suspension imposed herein.

(g) Any party adversely affected by a final order or decision issued by the board hereunder is entitled to judicial review thereof pursuant to section four, article five, chapter twenty-nine-a of this code.

§22A-1-35. **Mine rescue teams.**

(a) The operator shall provide mine rescue coverage at each active underground mine.

(b) Mine rescue coverage may be provided by:

(1) Establishing at least two mine rescue teams which are available at all times when miners are underground; or

(2) Entering into an arrangement for mine rescue services which assures that at least two mine rescue teams are available at all times when miners are underground.

(3) A West Virginia Office of Miners’ Health, Safety and Training Mine Rescue Team may serve as a second or backup team for mines within the state and qualify as one of the two teams required under subdivision (1) of this subsection and in accordance with 30 CFR, Part 49.20(4). The operator shall contact the office and obtain the state’s agreement to serve as a backup team in the form of a written notification signed by the director and this notification shall be kept posted at the mine.

(c) As used in this section, mine rescue teams shall be considered available where teams are capable of presenting themselves at the mine site(s) within a reasonable time after notification of an occurrence which might require their services.
21 Rescue team members will be considered available even though
22 performing regular work duties or while in an off-duty capacity.
23 The requirement that mine rescue teams be available does not
24 apply when teams are participating in mine rescue contests or
25 providing rescue services to another mine.

(d) In the event of a fire, explosion or recovery operations in
27 or about any mine, the director is hereby authorized to assign
28 any mine rescue team to said mine to protect and preserve life
29 and property. The director may also assign mine rescue and
30 recovery work to inspectors, instructors or other qualified
31 employees of the office as he or she deems necessary.

(e) The ground travel time between any mine rescue station
32 and any mine served by that station shall not exceed two hours.
33 To ensure adequate rescue coverage for all underground mines,
34 no mine rescue station may provide coverage for more than
35 seventy mines within the two-hour ground travel limit as defined
36 in this subsection.

(f) Each mine rescue team shall consist of five members and
38 one alternate, who are fully qualified, trained and equipped for
39 providing emergency mine rescue service. Each mine rescue
40 team shall be trained by a state certified mine rescue instructor.

(g) Each member of a mine rescue team must have been
42 employed in an underground mine for a minimum of one year.
43 For the purpose of mine rescue work only, miners who are
44 employed on the surface but work regularly underground meet
45 the experience requirement. The underground experience
46 requirement is waived for those members of a mine rescue team
47 on the effective date of this statute.

(h) An applicant for initial mine rescue training shall pass,
49 on at least an annual basis, a physical examination by a licensed
50 physician certifying his or her fitness to perform mine rescue
51 work. A record that such examination was taken, together with
pertinent data relating thereto, shall be kept on file by the
operator and a copy shall be furnished to the director.

(i) Upon completion of the initial training, all mine rescue
team members shall receive at least forty hours of refresher
training annually. This training shall be given at least four hours
each month, or for a period of eight hours every two months, and
shall include:

(1) Sessions underground at least once every six months;

(2) The wearing and use of a breathing apparatus by team
members for a period of at least two hours, while under oxygen,
once every two months;

(3) Where applicable, the use, care, capabilities and
limitations of auxiliary mine rescue equipment, or a different
breathing apparatus;

(4) Mine map training and ventilation procedures.

(j) When engaged in rescue work required by an explosion,
fire or other emergency at a mine, all members of mine rescue
teams assigned to rescue operations shall, during the period of
their rescue work, be employees of the operator of the mine
where the emergency exists, and shall be compensated by the
operator at the rate established in the area for such work. In no
case shall this rate be less than the prevailing wage rate in the
industry for the most skilled class of inside mine labor. During
the period of their emergency employment, members of mine
rescue teams shall be protected by the workers’ compensation
subscription of the mine operator.

(k) During the recovery work and prior to entering any mine
at the start of each shift, all rescue or recovery teams shall be
properly informed of existing conditions and work to be
performed by the designated company official in charge.
For every two teams performing rescue or recovery work underground, one six-member team shall be stationed at the mine portal.

Each rescue or recovery team performing work with a breathing apparatus shall be provided with a backup team of equal number, stationed at each fresh air base.

The mine operator shall provide two-way communication and a lifeline or its equivalent at each fresh air base for all mine rescue or recovery teams and no mine rescue team member shall advance more than one thousand feet inby the fresh air base:

Provided, That if a life may possibly be saved and existing conditions do not create an unreasonable hazard to mine rescue team members, the rescue team may advance a distance agreed upon by those persons directing the mine rescue or recovery operations: Provided, however, That the mine operator shall provide a lifeline or its equivalent in each fresh air base for all mine rescue or recovery teams.

A rescue or recovery team shall immediately return to the fresh air base when the atmospheric pressure of any member’s breathing apparatus depletes to sixty atmospheres, or its equivalent.

Mine rescue stations shall provide a centralized storage location for rescue equipment. This storage location may be either at the mine site, affiliated mines or a separate mine rescue structure. All mine rescue teams shall be guided by the mine rescue apparatus and auxiliary equipment manual. Each mine rescue station shall be provided with at least the following equipment:

Twelve self-contained oxygen breathing apparatuses, each with a minimum of two hours capacity, and any necessary equipment for testing such breathing apparatuses;
(2) A portable supply of liquid air, liquid oxygen, pressurized oxygen, oxygen generating or carbon dioxide absorbent chemicals, as applicable to the supplied breathing apparatuses and sufficient to sustain each team for six hours while using the breathing apparatuses during rescue operations;

(3) One extra, fully charged, oxygen bottle for each self-contained compressed oxygen breathing apparatus, as required under subdivision (1) of this subsection;

(4) One oxygen pump or a cascading system, compatible with the supplied breathing apparatuses;

(5) Twelve permissible cap lamps and a charging rack;

(6) Two gas detectors appropriate for each type of gas which may be encountered at the mines served;

(7) Two oxygen indicators;

(8) One portable mine rescue communication system or a sound-powered communication system. The wires or cable to the communication system shall be of sufficient tensile strength to be used as a manual communication system. The communication system shall be at least one thousand feet in length; and

(9) Necessary spare parts and tools for repairing the breathing apparatuses and communication system, as presently prescribed by the manufacturer.

(m) Mine rescue apparatuses and equipment shall be maintained in a manner that will ensure readiness for immediate use. A person trained in the use and care of breathing apparatuses shall inspect and test the apparatuses at intervals not exceeding thirty days and shall certify by signature and date that the inspections and tests were done. When the inspection indicates that a corrective action is necessary, the corrective
143 action shall be made and recorded by said person. The 144 certification and corrective action records shall be maintained at 145 the mine rescue station for a period of one year and made 146 available on request to an authorized representative of the 147 director.

148 (n) Authorized representatives of the director have the right 149 of entry to inspect any designated mine rescue station.

150 (o) When an authorized representative finds a violation of 151 any of the mine rescue requirements, the representative shall 152 take appropriate corrective action in accordance with section 153 fifteen of this article.

154 (p) Operators affiliated with a station issued an order by an 155 authorized representative will be notified of that order and that 156 their mine rescue program is invalid. The operators shall have 157 twenty-four hours to submit to the director a revised mine rescue 158 program.

159 (q) Every operator of an underground mine shall develop and 160 adopt a mine rescue program for submission to the director 161 within thirty days of the effective date of this statute: Provided, 162 That a new program need only be submitted when conditions 163 exist as defined in subsection (p) of this section, or when 164 information contained within the program has changed.

165 (r) A copy of the mine rescue program shall be posted at the 166 mine and kept on file at the operator’s mine rescue station or 167 rescue station affiliate and the state regional office where the 168 mine is located. A copy of the mine emergency notification plan 169 filed pursuant to 30 CFR §49.9(a) will satisfy the requirements 170 of subsection (q) of this section if submitted to the director.

171 (s) The operator shall immediately notify the director of any 172 changed conditions materially affecting the information 173 submitted in the mine rescue program.
ARTICLE 1A. OFFICE OF MINERS’ HEALTH, SAFETY AND TRAINING; ADMINISTRATION; SUBSTANCE ABUSE.

§22A-1A-2. Board of Appeals hearing procedures.

(a) Any hearing conducted after the temporary suspension of a certified person’s certificate pursuant to this article, shall be conducted within sixty days of the temporary suspension. The Board of Appeals shall make every effort to hold the hearing within forty days of the temporary suspension.

(b) All hearings of the Board of Appeals pursuant to this section shall be conducted in accordance with the provisions of subsection (c), section thirty-one, article one of this chapter. In addition to the rules and procedures in section thirty-one, article one of this chapter in hearings under this section, the Board of Appeals may accept as evidence a notarized affidavit of drug testing procedures and results from a Medical Review Officer (MRO) in lieu of live testimony by the MRO. If the Board of Appeals desires testimony in lieu of a notarized affidavit, the MRO may testify under oath telephonically or by an Internet based program in lieu of physically attending the hearing. The Board of Appeals may suspend the certificate or certificates of a certified person for violation of this article or for any other violation of this chapter pertaining to substance abuse. The Board of Appeals may impose further disciplinary actions for repeat violations. The director shall have the authority to propose legislative rules for promulgation in accordance with article three, chapter twenty-nine-a of this code to establish the disciplinary actions referenced in this section following the receipt of recommendations from the Board of Coal Mine Health and Safety following completion of the study required pursuant to section fourteen, article six of this chapter. The legislative rules authorized by this subsection shall not, however, include any provisions requiring an employer to take or refrain from
30 taking any specific personnel action or mandating any employer
31 to establish or maintain an employer-funded substance abuse
32 rehabilitation program.
33
34 (c) No person whose certification is suspended or revoked
35 under this section may perform any duties under any other
36 certification issued under this chapter, during the period of the
37 suspension imposed by the Board of Appeals.
38
39 (d) Any party adversely affected by a final order or decision
40 issued by the Board of Appeals hereunder is entitled to judicial
41 review thereof pursuant to section four, article five, chapter
42 twenty-nine-a of this code.

ARTICLE 2. UNDERGROUND MINES.


1 (a) The ventilation of mines, the systems for which extend
2 for more than two hundred feet underground and which are
3 opened after the effective date of this article, shall be produced
4 by a mechanically operated fan or mechanically operated fans.
5 Ventilation by means of a furnace is prohibited in any mine. The
6 fan or fans shall be kept in continuous operation, unless written
7 permission to do otherwise be granted by the director. In case of
8 interruption to a ventilating fan or its machinery whereby the
9 ventilation of the mine is interrupted, immediate action shall be
10 taken by the mine operator or the operator’s management
11 personnel, in all mines, to cut off the power and withdraw the
12 men from the face regions or other areas of the mine affected. If
13 ventilation is restored in fifteen minutes, the face regions and
14 other places in the affected areas where gas (methane) is likely
15 to accumulate, shall be reexamined by a certified person; and if
16 found free of explosive gas, power may be restored and work
17 resumed. If ventilation is not restored in fifteen minutes, all
18 underground employees shall be removed from the mine, all
19 power shall be cut off in a timely manner, and the underground
employees shall not return until ventilation is restored and the mine examined by certified persons, mine examiners or other persons holding a certificate to make preshift examination. If ventilation is restored to the mine before miners reach the surface, the miners may return to underground working areas only after an examination of the areas is made by a certified person and the areas are determined to be safe.

(b) All main fans installed after the effective date of this article shall be located on the surface in fireproof housings offset not less than fifteen feet from the nearest side of the mine opening, equipped with fireproof air ducts, provided with explosion doors or a weak wall, and operated from an independent power circuit. In lieu of the requirements for the location of fans and pressure-relief facilities, a fan may be directly in front of, or over a mine opening: Provided, That such opening is not in direct line with possible forces coming out of the mine if an explosion occurs: Provided, however, That there is another opening having a weak wall stopping or explosion doors that would be in direct line with forces coming out of the mine. All main fans shall be provided with pressure-recording gauges or water gauges. A daily inspection shall be made of all main fans and machinery connected therewith by a certified electrician and a record kept of the same in a book prescribed for this purpose or by adequate facilities provided to permanently record the performance of the main fans and to give warning of an interruption to a fan.

(c) Auxiliary fans and tubing shall be permitted to be used in lieu of or in conjunction with line brattice to provide adequate ventilation to the working faces: Provided, That auxiliary fans be so located and operated to avoid recirculation of air at any time. Auxiliary fans shall be approved and maintained as permissible.

(d) If the auxiliary fan is stopped or fails, the electrical equipment in the place shall be stopped and the power disconnected at the power source until ventilation in the working
place is restored. During such stoppage, the ventilation shall be by means of the primary air current conducted into the place in a manner to prevent accumulation of methane.

(e) In places where auxiliary fans and tubing are used, the ventilation between shifts, weekends and idle shifts shall be provided to face areas with line brattice or the equivalent to prevent accumulation of methane.

(f) The director may require that when continuous mine equipment is being used, all face ventilating systems using auxiliary fans and tubing shall be provided with machine-mounted diffuser fans, and such fans shall be continuously operated during mining operations.

(g) In the event of a fire or explosion in any coal mine, the ventilating fan or fans shall not intentionally be started, stopped, speed increased or decreased or the direction of the air current changed without the approval of the general mine foreman, and, if he or she is not immediately available, a representative of the Office of Miners’ Health, Safety and Training. A duly authorized representative of the employees should be consulted if practical under the circumstances.

§22A-2-8. Duties; ventilation; loose coal, slate or rocks; props; drainage of water; man doors; instruction of apprentice miners.

(a) The duties of the mine foreman shall be to keep a careful watch over the ventilating apparatus, the airways, traveling ways, pumps and drainage. He or she shall see that, as the miners advance their excavations, proper breakthroughs are made so as to ventilate properly the mine; that all loose coal, slate and rock overhead in the working places and along the haulways are removed or carefully secured so as to prevent danger to persons employed in such mines, and that sufficient suitable props, caps,
timbers, roof bolts or other approved methods of roof supports are furnished for the places where they are to be used and delivered at suitable points. The mine foreman shall have all water drained or hauled out of the working places where practicable, before the miners enter, and such working places shall be kept dry as far as practicable while the miners are at work. It shall be the duty of the mine foreman to see that proper crosscuts are made, and that the ventilation is conducted by means of such crosscuts through the rooms by means of checks or doors placed on the entries or other suitable places, and he or she shall not permit any room to be opened in advance of the ventilation current. The mine foreman, or other certified persons designated by him or her, shall measure the air current with an anemometer or other approved device at least weekly at the inlet and outlet at or near the faces of the advanced headings, and shall keep a record of such measurements in a book or upon a form prescribed by the director. Signs directing the way to outlets or escapeways shall be conspicuously placed throughout the mine.

(b) After July 1, 1971, hinged man doors, at least thirty inches square or the height of the coal seam, shall be installed between the intake and return at intervals of three hundred feet when the height of the coal is below forty-eight inches and at intervals of six hundred feet when the height of the coal is above forty-eight inches.

(c) The duties of the mine foreman and assistant mine foreman shall include the instruction of apprentice miners in the hazards incident to any new work assignments; to assure that any individual given a work assignment in the working face without prior experience on the face is instructed in the hazards incident thereto and supervised by a miner with experience in the tasks to be performed.

It shall be the duty of the mine foreman, assistant mine foreman or fire boss to examine all working places under his or her supervision for hazards at least once every two hours during each coal-producing shift, or more often if necessary for safety. In all mines such examinations shall include tests with an approved detector for methane and oxygen deficiency. It shall also be his or her duty to remove as soon as possible after its discovery any accumulations of explosive or noxious gases in active workings, and where practicable, any accumulations of explosive or noxious gases in the worked out and abandoned portions of the mine. It shall be the duty of the mine foreman, assistant mine foreman or fire boss to examine each mine within three hours prior to the beginning of a shift and before any miner in such shift enters the active workings of the mine.

§22A-2-20. Preparation of danger signal by fire boss or certified person acting as such prior to examination; report; records open for inspection.

(a) It is the duty of the fire boss, or a certified person acting as such, to prepare a danger signal (a separate signal for each shift) with red color at the mine entrance at the beginning of his or her shift or prior to his or her entering the mine to make his or her examination and, except for those persons already on assigned duty, no person except the mine owner, operator or agent, and only then in the case of necessity, shall pass beyond this danger signal until the mine has been examined by the fire boss or other certified person and the mine or certain parts thereof reported by him or her to be safe. When reported by him or her to be safe, the danger sign or color thereof shall be changed to indicate that the mine is safe in order that employees going on shift may begin work. Each person designated to make the fire boss examinations shall be assigned a definite underground area of the mine, and, in making his or her
examination shall examine all active working places in the
assigned area and make tests with an approved device for
accumulations of methane and oxygen deficiency; examine seals
and doors; examine and test the roof, face and ribs in the
working places and on active roadways and travelways,
approaches to abandoned workings, accessible falls in active
sections and areas where any person is scheduled to work or
travel underground. He or she shall place his or her initials and
the date at or near the face of each place he or she examines.
Should he or she find a condition which he or she considers
dangerous to persons entering the areas, he or she shall place a
conspicuous danger sign at all entrances to the place or places.
Only persons authorized by the mine management may enter the
places while the sign is posted and only for the purpose of
eliminating the dangerous condition. Upon completing his or her
examination he or she shall report by suitable communication
system or in person the results of this examination to a certified
person trained as a certified miner with at least two years mining
experience designated by mine management to receive and
record the report, at a designated station on the surface of the
premises of the mine or underground, before other persons enter
the mine to work in coal-producing shifts. He or she shall also
record the results of his or her examination with ink or indelible
pencil in a book prescribed by the director, kept for the purpose
at a place on the surface of the mine designated by mine
management. All records of daily and weekly reports, as
prescribed herein, shall be open for inspection by interested
persons.

(b) Supplemental examination. - When it becomes necessary
to have workers enter areas of the mine not covered during the
preshift examination, a supplemental examination shall be
performed by a fire boss or certified person acting as such within
three hours before any person enters the area. The fire boss or
certified person acting as such shall examine the area for
hazardous conditions, determine if air is traveling in its proper
direction and test for oxygen deficiency and methane.

(c) Each examined area shall be certified by date, time and
the initials of the examiner.

(d) The results of the examination shall be recorded with ink
or indelible pencil by the examiner in the book referenced in
subsection (a) of this section before he or she leaves the mine on
that shift.

ROOF-FACE-RIBS

§22A-2-25. Roof control programs and plans; refusal to work
under unsupported roof.

(a) Each operator shall undertake to carry out on a
continuing basis a program to improve the roof control system
of each coal mine and the means and measures to accomplish
such system. The roof and ribs of all active underground
roadways, travelways and working places shall be supported or
otherwise controlled adequately to protect persons from falls of
the roof or ribs. A roof control plan and revisions thereof
suitable to the roof conditions and mining systems of each coal
mine and approved by the director shall be adopted and set out
in printed form before new operations. The safety committee of
the miners of each mine where such committee exists shall be
afforded the opportunity to review and submit comments and
recommendations to the director and operator concerning the
development, modification or revision of such roof control plans.
The plan shall show the type of support and spacing approved by
the director. Such plan shall be reviewed periodically, at least
every six months by the director, taking into consideration any
falls of roof or rib or inadequacy of support of roof or ribs. A
copy of the plan shall be furnished to the director or his or her
authorized representative and shall be available to the miners and
their representatives.
(b) The operator, in accordance with the approved plan, shall provide at or near each working face and at such other locations in the coal mine, as the director may prescribe, an ample supply of suitable materials of proper size with which to secure the roof thereof of all working places in a safe manner. Safety posts, jacks, or other approved devices shall be used to protect the workmen when roof material is being taken down, crossbars are being installed, roof bolt holes are being drilled, roof bolts are being installed and in such other circumstances as may be appropriate. Loose roof and overhanging or loose faces and ribs shall be taken down or supported. When overhangs or brows occur along rib lines they shall be promptly removed. All sections shall be maintained as near as possible on center. Except in the case of recovery work, supports knocked out shall be replaced promptly. Apprentice miners shall not be permitted to set temporary supports on a working section without the direct immediate supervision of a certified miner.

(c) The operator of a mine has primary responsibility to prevent injuries and deaths resulting from working under unsupported roof. Every operator shall require that no person may proceed beyond the last permanent support unless adequate temporary support is provided or temporary support is not required under an approved roof control plan and absence of such support will not pose a hazard to the miners.

(d) The immediate supervisor of any area in which unsupported roof is located shall not direct or knowingly permit any person to proceed beyond the last permanent support unless adequate temporary support is provided or temporary support is not required under an approved roof control plan and absence of such support will not pose a hazard to the miners.

(e) No miner shall proceed beyond the last permanent support in violation of a direct or standing order of an operator, a foreman or an assistant foreman, unless adequate temporary support is provided or temporary support is not required under
an approved roof control plan and absence of such support will not pose a hazard to the miner.

(f) The immediate supervisor of each miner who will be engaged in any activity involving the securing of roof or rib during a shift shall, at the onset of any such shift, orally review those parts of the roof control plan relevant to the type of mining and roof control to be pursued by such miner.

(g) Any action taken against a miner due, in whole or in part, to his or her refusal to work under unsupported roof, where such work would constitute a violation of this section, is prohibited as an act of discrimination pursuant to section twenty-two, article one of this chapter. Upon a finding of discrimination by the appeals board pursuant to subsection (b), section twenty-two, article one of this chapter, the miner shall be awarded by the appeals board all reliefs available pursuant to subsections (b) and (c), section twenty-two, article one of this chapter.

HOISTING

§22A-2-36. Hoisting machinery; telephones; safety devices; hoisting engineers and drum runners.

(a) The operator of every coal mine worked by shaft shall provide and maintain a metal tube, telephone or other approved means of communication from the top to the bottom and intermediate landings of such shafts, suitably adapted to the free passage of sound, through which conversation may be held between persons at the top and at the bottom of the shaft; a standard means of signaling; an approved safety catch, bridle chains, automatic stopping device, or automatic overwind; a sufficient cover overhead on every cage used for lowering or hoisting persons; an approved safety gate at the top of the shaft; and an adequate brake on the drum of every machine used to lower or hoist persons in such shaft. Such operator shall have the machinery used for lowering and hoisting persons into or out of
the mine kept in safe condition, equipped with a reliable indicator, and inspected once in each twenty-four hours by a qualified electrician. Where a hoisting engineer is required, he or she shall be readily available at all times when men are in the mine. He or she shall operate the empty cage up and down the shaft at least one round trip at the beginning of each shift there shall be cut out around the side of the hoisting shaft or driven through the solid strata at the bottom thereof, a traveling way, not less than five feet high and three feet wide to enable a person to pass the shaft in going from one side of it to the other without passing over or under the cage or other hoisting apparatus. Positive stop blocks or derrails shall be placed near the top and at all intermediate landings of slopes and surface inclines and at approaches to all shaft landings. A waiting station with sufficient room, ample clearance from moving equipment, and adequate seating facilities shall be provided where men are required to wait for man trips or man cages, and the miners shall remain in such station until the man trip or man cage is available.

(b) No operator of any coal mine worked by shaft, slope or incline, shall place in charge of any engine or drum used for lowering or hoisting persons employed in such mine any but competent and sober engineers or drum runners; and no engineer or drum runner in charge of such machinery shall allow any person, except such as may be designated for this purpose by the operator, to interfere with any part of the machinery; and no person shall interfere with any part of the machinery; and no person shall interfere with or intimidate the engineer or drum runner in the discharge of his or her duties. Where the mine is operated or worked by shaft or slope, a minimum space of two and one-half square feet per person shall be available for each person on any cage or car where men are transported. In no instance shall more than twenty miners be transported on a cage or car without the approval of the director. No person shall ride on a loaded cage or car in any shaft, slope, or incline: Provided,
48 That this does not prevent any trip rider from riding in the
49 performance of his or her authorized duties. No engineer is
50 required for automatically operated cages, elevators, or
51 platforms. Cages and elevators shall have an emergency power
52 source unless provided with other escapeway facilities.

53 (c) Each automatic elevator shall be provided with a
54 telephone or other effective communication system by which aid
55 or assistance can be obtained promptly.

56 (d) A stop switch shall be provided in the automatic elevator
57 compartment that will permit the elevator to be stopped at any
58 location in the shaft.

§22A-2-55. Protective equipment and clothing.

1 (a) Welders and helpers shall use proper shields or goggles
2 to protect their eyes. All employees shall have approved goggles
3 or shields and use the same where there is a hazard from flying
4 particles or other eye hazards.

5 (b) Employees engaged in haulage operations and all other
6 persons employed around moving equipment on the surface and
7 underground shall wear snug-fitting clothing.

8 (c) Protective gloves shall be worn when material which may
9 injure hands is handled, but gloves with gauntleted cuffs shall
10 not be worn around moving equipment.

11 (d) Safety hats and safety-toed shoes shall be worn by all
12 persons while in or around a mine: Provided, That metatarsal
13 guards are not required to be worn by persons when working in
14 those areas of underground mine workings which average less
15 than forty-eight inches in height as measured from the floor to
16 the roof of the underground mine workings.
(e) Approved eye protection shall be worn by all persons while being transported in open-type man trips.

(f)(1) A self-contained self-rescue device approved by the director shall be worn by each person underground or kept within his or her immediate reach and the device shall be provided by the operator. The self-contained self-rescue device shall be adequate to protect a miner for one hour or longer. Each operator shall train each miner in the use of the device and refresher training courses for all underground employees shall be held once each quarter. Quarters shall be based on a calendar year.

(2) In addition to the requirements of subdivision (1) of this subsection, the operator shall also provide caches of additional self-contained self-rescue devices throughout the mine in accordance with a plan approved by the director. Each additional self-contained self-rescue device shall be adequate to protect a miner for one hour or longer. The total number of additional self-contained self-rescue devices, the total number of storage caches and the placement of each cache throughout the mine shall be established by rule pursuant to subsection (i) of this section. A luminescent sign with the words “SELF-CONTAINED SELF-RESCUER” or “SELF-CONTAINED SELF-RESCUERS” shall be conspicuously posted at each cache and luminescent direction signs shall be posted leading to each cache. Lifeline cords or other similar device, with reflective material at twenty-five foot intervals, shall be attached to each cache from the last open crosscut to the surface. The operator shall conduct weekly inspections of each cache and each lifeline cord or other similar device to ensure operability.

(3) Any person that, without the authorization of the operator or the director, knowingly removes or attempts to remove any self-contained self-rescue device or lifeline cord from the mine
or mine site with the intent to permanently deprive the operator
of the device or lifeline cord or knowingly tampers with or
attempts to tamper with the device or lifeline cord shall be guilty
of a felony and, upon conviction thereof, shall be imprisoned in
a state correctional facility for not less than one year nor more
than ten years or fined not less than $10,000 nor more than
$100,000, or both.

(g) (1) A wireless emergency communication device
approved by the director and provided by the operator shall be
worn by each person underground: Provided, That if a miner’s
wireless emergency communications device shall malfunction or
cease to operate then such miner shall be assigned to be in sight
or sound of a certified miner until such time an operating device
shall be delivered. The wireless emergency communication
device shall, at a minimum, be capable of receiving emergency
communications from the surface at any location throughout the
mine. Each operator shall train each miner in the use of the
device and provide refresher training courses for all underground
employees during each calendar year. The operator shall install
in or around the mine any and all equipment necessary to
transmit emergency communications from the surface to each
wireless emergency communication device at any location
throughout the mine.

(2) Any person that, without the authorization of the operator
or the director, knowingly removes or attempts to remove any
wireless emergency communication device or related equipment,
from the mine or mine site with the intent to permanently
deprive the operator of the device or equipment or knowingly
tampers with or attempts to tamper with the device or equipment
shall be guilty of a felony and, upon conviction shall be
imprisoned in a state correctional facility for not less than one
year nor more than ten years or fined not less than $10,000 nor
more than $100,000, or both fined and confined.
(h) (1) A wireless tracking device approved by the director and provided by the operator shall be worn by each person underground. In the event of an accident or other emergency, the tracking device shall, at a minimum, be capable of providing real-time monitoring of the physical location of each person underground: Provided, That no person shall discharge or discriminate against any miner based on information gathered by a wireless tracking device during nonemergency monitoring. Each operator shall train each miner in the use of the device and provide refresher training courses for all underground employees during each calendar year. The operator shall install in or around the mine all equipment necessary to provide real-time emergency monitoring of the physical location of each person underground.

(2) Any person that, without the authorization of the operator or the director, knowingly removes or attempts to remove any wireless tracking device or related equipment, approved by the director, from a mine or mine site with the intent to permanently deprive the operator of the device or equipment or knowingly tampers with or attempts to tamper with the device or equipment shall be guilty of a felony and, upon conviction shall be imprisoned in a state correctional facility for not less than one year nor more than ten years or fined not less than $10,000 nor more than $100,000, or both fined and confined.

(i) The director may promulgate emergency and legislative rules to implement and enforce this section pursuant to the provisions of article three, chapter twenty-nine-a of this code.

§22A-2-66. Accident; notice; investigation by Office of Miners’ Health, Safety and Training.

(a) For the purposes of this section, the term accident means:

(1) The death of an individual at a mine;
(2) An injury to an individual at a mine which has a reasonable potential to cause death;

(3) The entrapment of an individual;

(4) The unplanned inundation of a mine by a liquid or gas;

(5) The unplanned ignition or explosion of gas or dust;

(6) The unplanned ignition or explosion of a blasting agent or an explosive;

(7) An unplanned fire in or about a mine not extinguished within five minutes of ignition;

(8) An unplanned roof fall at or above the anchorage zone in active workings where roof bolts are in use or an unplanned roof or rib fall in active workings that impairs ventilation or impedes passage;

(9) A coal or rock outburst that causes withdrawal of miners or which disrupts regular mining activity for more than one hour;

(10) An unstable condition at an impoundment, refuse pile or culm bank which requires emergency action in order to prevent failure, or which causes individuals to evacuate an area, or the failure of an impoundment, refuse pile or culm bank;

(11) Damage to hoisting equipment in a shaft or slope which endangers an individual or which interferes with use of the equipment for more than thirty minutes; and

(12) An event at a mine which causes death or bodily injury to an individual not at the mine at the time the event occurs.

(b) Whenever any accident occurs in or about any coal mine or the machinery connected therewith, it is the duty of the
operator or the mine foreman in charge of the mine to give notice, within fifteen minutes of ascertaining the occurrence of an accident, to the Mine and Industrial Accident Emergency Operations Center at the statewide telephone number established by the Director of the Division of Homeland Security and Emergency Management pursuant to the provisions of article five-b, chapter fifteen of this code stating the particulars of the accident: Provided, That the operator or the mine foreman in charge of the mine may comply with this notice requirement by immediately providing notice to the appropriate local organization for emergency services as defined in section eight, article five of said chapter, or the appropriate local emergency telephone system operator as defined in article six, chapter twenty-four of this code: Provided, however, That if, immediately upon ascertaining the occurrence of an accident, the operator or the mine foreman in charge of the mine provides notice to the local organization for emergency services as defined in section eight, article five, chapter fifteen of this code, or the appropriate local emergency telephone system operator as defined in article six, chapter twenty-four of this code, then, in order to comply with this subsection, the operator or mine foreman in charge of the mine shall also give notice to the Mine and Industrial Accident Emergency Operations Center at the statewide number identified in this subsection within fifteen minutes of completing the telephone call to the local organization for emergency services or the appropriate local emergency telephone system operator, as applicable: Provided further, That nothing in this subsection shall be construed to relieve the operator from any reporting or notification requirement under federal law.

(c) The Director of the Office of Miners’ Health, Safety and Training shall impose, pursuant to rules authorized in this section, a civil administrative penalty of up to $100,000 on the operator if it is determined that the operator or the mine foremen
in charge of the mine failed to give immediate notice as required in this section. The director may later amend the assessment of a penalty under this section if so warranted: Provided, That the director may waive imposition of the civil administrative penalty at any time if he or she finds that the failure to give immediate notice was caused by circumstances wholly outside the control of the operator: Provided, however, That the assessment of the civil administrative penalty set forth in this subsection may be appealed to the Board of Appeals, and the Board of Appeals may, by a vote of two Board of Appeals Members, reduce the amount of the civil administrative penalty upon a finding of mitigating circumstances warranting the imposition of a lesser amount.

(d) If anyone is fatally injured, the inspector shall immediately go to the scene of the accident and make recommendations and render assistance as he or she may deem necessary for the future safety of the men and investigate the cause of the explosion or accident and make a record. He or she shall preserve the record with the other records in his or her office. The cost of the investigation records shall be paid by the Office of Miners’ Health, Safety and Training. A copy shall be furnished to the operator and other interested parties. To enable him or her to make an investigation, he or she has the power to compel the attendance of witnesses and to administer oaths or affirmations. The director has the right to appear and testify and to offer any testimony that may be relevant to the questions and to cross-examine witnesses.

§22A-2-77. Quarterly report by operator of mine; exception as to certain inactive mines.

On or before the end of each quarter, the operator of each mine, regulated under the provisions of this chapter or article three or four, chapter twenty-two of this code, shall file with the director a report with respect thereto covering the next preceding
quarter which shall reflect the number of accidents which have occurred at each such mine, the number of persons employed, the days worked and the actual raw tonnage mined. Quarters are based on a calendar year. Such report shall be made upon forms furnished by the director. Other provisions of this section to the contrary notwithstanding, no such report shall be required with respect to any mine on approved inactive status if no employees were present at such mine at any time during the next preceding calendar month.

ARTICLE 7. BOARD OF MINER TRAINING, EDUCATION AND CERTIFICATION

§22A-7-7. Continuing education requirements for underground mine foreman-fire boss.

(a) An underground mine foreman-fire boss certified pursuant to this article on or after the effective date of this section shall complete the continuing education requirements in this section within two years of their certification and every two years thereafter. The continuing education requirements of this section may not be satisfied by the completion of other training requirements mandated by the provisions of this chapter.

(b) In order to receive continuing education credit pursuant to this section, a mine foreman-fire boss shall satisfactorily complete a mine foreman-fire boss continuing education course approved by the board and taught by a qualified instructor approved by the director. The mine foreman-fire boss shall not suffer a loss in pay while attending a continuing education course. The mine foreman-fire boss shall submit documentation to the office certified by the instructor that indicates the required continuing education has been completed prior to the deadlines set forth in this subsection: Provided, That a mine foreman-fire boss may submit documentation of continuing education
completed in another state for approval and acceptance by the
board.

(c) The mine foreman-fire boss shall complete at least eight
hours of continuing education every two years.

(d) The content of the continuing education course shall
include, but not be limited to:

(1) Selected provisions of this chapter and 30 U. S. C. § 801,
et seq.;

(2) Selected provisions of the West Virginia and federal
underground coal mine health and safety rules and regulations;

(3) The responsibilities of a mine foreman-fire boss;

(4) Selected policies and memoranda of the Office of
Miners’ Health, Safety and Training, the Board of Coal Mine
Health and Safety, the Board of Miner Training, Education and
Certification, and from any safety analysis performed by the
company.

(5) A review of fatality and accident trends in underground
coal mines; and

(6) Other subjects as determined by the Board of Miner
Training, Education and Certification. The board shall solicit
input from mining companies on the substance of the training
and discuss how the training shall be scheduled during the year.

(e) The board may approve alternative training programs
tailored to specific mines.

(f) A mine foreman-fire boss who fails to complete the
requirements of this section shall have his or her certification
suspended pending completion of the continuing education requirements. During the pendency of the suspension, the individual may not perform statutory duties assigned to a mine foreman-fire boss under West Virginia law. The office shall send notice of any suspension to the last address the certified mine foreman-fire boss reported to the director. If the requirements are not met within two years of the suspension date, the director may file a petition with the board of appeals pursuant to the procedures set forth in section thirty-one, article one of this chapter and, upon determining that the requirements have not been met, the board of appeals may revoke the mine foreman-fire boss’ certification, which shall not be renewed except upon successful completion of the examination prescribed by law for mine foremen-fire bosses or upon completion of other training requirements established by the board: Provided, That an individual having his or her mine foreman-fire boss certification suspended pursuant to this section who also holds a valid mine foreman-fire boss certification from another state may have the suspension lifted by completing training requirements established by the board.

(g) The office shall make a program of instruction that meets the requirements for continuing education set forth in this section regularly available in regions of the State, based on demand, for individuals possessing mine foreman-fire boss certifications who are not serving in a mine foreman-fire boss capacity: Provided, That the office may collect a fee from program participants to offset the cost of the program.

(h) The office shall make available to operators and other interested parties a list of individuals whose mine foreman-fire boss certification is in suspension or has been revoked.
AN ACT to amend and reenact §22-5-20 of the Code of West Virginia, 1931, as amended, relating to modifying certain air pollution standards; changing certain mandatory requirements to permissive ones; and changing a meter-based standard to a mass-based standard.

Be it enacted by the Legislature of West Virginia:

That §22-5-20 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 5. AIR POLLUTION CONTROL.

§22-5-20. Development of a state plan relating to carbon dioxide emissions from existing fossil fuel-fired electric generating units.

1 (a) Legislative findings. —

2 (1) The United States Environmental Protection Agency has proposed a federal rule pursuant to Section 111(d) of the Clean Air Act, 42 U. S. C. §7411(d), to regulate carbon dioxide emissions from electric generating units.

6 (2) The rule is expected to go into effect on or about June 30, 2015, and will require each state to submit a state plan pursuant to Section 111(d) that sets forth laws, policies and regulations
that will be enacted by the state to meet the federal guidelines in the rule.

(3) The creation of this state plan necessitates establishment and creation of law affecting the economy and energy policy of this state.

(4) The Environmental Protection Agency has stated that any state plan it ultimately approves shall become enforceable federal law upon that state.

(5) The state disputes the jurisdiction and purported binding nature asserted by the Environmental Protection Agency through this rule, and reserves to itself those rights and responsibilities properly reserved to the State of West Virginia.

(6) Given the economic impact and potentially legally binding nature of the submission of a state plan, there is a compelling state interest to require appropriate legislative review and passage of law prior to submission, if any, of a state plan pursuant to Section 111(d) of the Clean Air Act.

(b) Submission of a state plan. — Absent specific legislative enactment granting such powers or rule-making authority, the Department of Environmental Protection or any other agency or officer of state government is not authorized to submit to the Environmental Protection Agency a state plan under this section, or otherwise pursuant to Section 111(d) of the Clean Air Act: Provided, That the Department of Environmental Protection, in consultation with the Department of Environmental Protection Advisory Council and other necessary and appropriate agencies and entities, may develop a proposed state plan in accordance with this section.

(c) Development of a Proposed State Plan. — (1) The Department of Environmental Protection shall, no later than one
hundred eighty days after a rule is finalized by the Environmental Protection Agency that requires the state to submit a state plan under Section 111(d) of the Clean Air Act, 42 U. S. C. §7411(d), submit to the Legislature a report regarding the feasibility of the state’s compliance with the Section 111(d) rule. The report must include a comprehensive analysis of the effect of the Section 111(d) rule on the state, including, but not limited to, the need for legislative or other changes to state law, and the factors referenced in subsection (g) of this section. The report must make at least two feasibility determinations: (i) Whether the creation of a state plan is feasible based on the comprehensive analysis; and (ii) whether the creation of a state plan is feasible before the deadline to submit a state plan to Environmental Protection Agency under the Section 111(d) rule, assuming no extensions of time are granted by Environmental Protection Agency. If the department determines that a state plan is or is not feasible under clause (i) of this subsection, the report must explain why. If the department determines that a state plan is not feasible under clause (ii) of this subsection, it shall explain how long it requires to create a state plan and then endeavor to submit such a state plan to the Legislature as soon as practicable. Such state plan may be on a unit-specific performance basis and may be based upon either a rate-based model or a mass-based model.

(2) If the department determines that the creation of a state plan is feasible, it shall develop and submit the proposed state plan to the Legislature sitting in regular session, or in an extraordinary session convened for the purpose of consideration of the state plan, in sufficient time to allow for the consideration of the state plan prior to the deadline for submission to the Environmental Protection Agency.

(3) In addition to submitting the proposed state plan to the Legislature, the department shall publish the report and any proposed state plan on its website.
(d) If the department proposes a state plan to the Legislature in accordance with subsection (c) of this section, the department shall propose separate standards of performance for carbon dioxide emissions from existing coal-fired electric generating units in accordance with subsection (e) of this section and from existing natural gas-fired electric generating units in accordance with subsection (f) of this section. The standards of performance developed and proposed under any state plan to comply with Section 111 of the Clean Air Act should allow for greater flexibility and take into consideration the additional factors set forth in subsection (g) of this section as a part of any state plan to achieve targeted reductions in greenhouse gas emissions which are equivalent or comparable to the goals and marks established by federal guidelines.

(e) Standards of performance for existing coal-fired electric generating units. — Except as provided under subsection (g) of this section, the standard of performance proposed for existing coal-fired electric generating units under subsection (c) of this section may be based upon:

(1) The best system of emission reduction which, taking into account the cost of achieving the reduction and any nonair quality health and environmental impact and energy requirements, has been adequately demonstrated for coal-fired electric generating units that are subject to the standard of performance;

(2) Reductions in emissions of carbon dioxide that can reasonably be achieved through measures undertaken at each coal-fired electric generating unit; and

(3) Efficiency and other measures that can be undertaken at each coal-fired electric generating unit to reduce carbon dioxide emissions from the unit without switching from coal to other fuels or limiting the economic utilization of the unit.
(f) Standards of performance for existing natural gas-fired electric generating units. — Except as provided in subsection (g) of this section, the standard of performance proposed for existing gas-fired electric generating units under subsection (c) of this section may be based upon:

(1) The best system of emission reduction which, taking into account the cost of achieving the reduction and any nonair quality health and environmental impact and energy requirements, has been adequately demonstrated for natural gas-fired electric generating units that are subject to the standard of performance;

(2) Reductions in emissions of carbon dioxide that can reasonably be achieved through measures at each natural gas-fired electric generating unit; and

(3) Efficiency and other measures that can be undertaken at the unit to reduce carbon dioxide emissions from the unit without switching from natural gas to other lower-carbon fuels or limiting the economic utilization of the unit.

(g) Flexibility in establishing standards of performance. — In developing a flexible state plan to achieve targeted reductions in greenhouse gas emissions, the department shall endeavor to establish an achievable standard of performance for any existing fossil fuel-fired electric generating unit, and examine whether less stringent performance standards or longer compliance schedules may be implemented or adopted for existing fossil fuel-fired electric generating units in comparison to the performance standards established for new, modified or reconstructed generating units, based on the following:

(1) Consumer impacts, including any disproportionate impacts of energy price increases on lower income populations;

(2) Nonair quality health and environmental impacts;
(3) Projected energy requirements;
(4) Market-based considerations in achieving performance standards;
(5) The costs of achieving emission reductions due to factors such as plant age, location or basic process design;
(6) Physical difficulties with or any apparent inability to feasibly implement certain emission reduction measures;
(7) The absolute cost of applying the performance standard to the unit;
(8) The expected remaining useful life of the unit;
(9) The impacts of closing the unit, including economic consequences such as expected job losses at the unit and throughout the state in fossil fuel production areas including areas of coal production and natural gas production and the associated losses to the economy of those areas and the state, if the unit is unable to comply with the performance standard;
(10) Impacts on the reliability of the system; and
(11) Any other factors specific to the unit that make application of a modified or less stringent standard or a longer compliance schedule more reasonable.

(h) Legislative consideration of proposed state plan under Section 111(d) of the Clean Air Act. — (1) If the department submits a proposed state plan to the Legislature under this section, the Legislature may by act, including presentment to the Governor: (i) Authorize the department to submit the proposed state plan to the Environmental Protection Agency; (ii) authorize the department to submit the state plan with amendment; or (iii) not grant such rulemaking or other authority to the department for submission and implementation of the state plan.
(2) If the Legislature fails to enact or approve all or part of the proposed state plan, the department may propose a new or modified state plan to the Legislature in accordance with the requirements of this section.

(3) If the Environmental Protection Agency does not approve the state plan, in whole or in part, the department shall as soon as practicable propose a modified state plan to the Legislature in accordance with the requirements of this section.

(i) Legal effect. — Any obligation created by this section and any state plan submitted to the Environmental Protection Act pursuant to this section shall have no legal effect if:

(1) The Environmental Protection Agency fails to issue, or withdraws, its federal rules or guidelines for reducing carbon dioxide emissions from existing fossil fuel-fired electrical generating units under 42 U. S. C. §7411(d); or,

(2) A court of competent jurisdiction invalidates the Environmental Protection Agency's federal rules or guidelines issued to regulate emissions of carbon dioxide from existing fossil fuel-fired electrical generating units under 42 U. S. C. §7411(d).

(j) Effective date. — All provisions of this section are effective immediately upon passage.
AN ACT to amend and reenact §22-15A-22 of the Code of West Virginia, 1931, as amended, relating to removing prohibition of disposal of certain electronics in landfills; and permitting county or regional solid waste authorities to prohibit disposal of covered electronics in landfills where they have determined that a cost effective recycling alternative for handling covered electronic devices exists.

Be it enacted by the Legislature of West Virginia:

That §22-15A-22 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 15A. THE A. JAMES MANCHIN REHABILITATION ENVIRONMENTAL ACTION PLAN.

§22-15A-22. Prohibition on the disposal of certain items; plans for the proper handling of said items required.

1 (a) It is unlawful to dispose of lead-acid batteries in a solid waste landfill in West Virginia.

3 (b) It is unlawful to dispose of tires in a solid waste landfill in West Virginia except for waste tires collected as part of the departments waste tire remediation projects or other collection
efforts in accordance with the provisions of this article or the pollution prevention and open dump program or other state-authorized remediation or clean up programs: Provided, that waste tires may be disposed of in solid waste landfills only when the state agency authorizing the remediation or clean up program has determined there is no reasonable alternative available.

(c) It is unlawful to dispose of yard waste in a solid waste facility in West Virginia: Provided, That the prohibitions do not apply to a facility designed specifically to compost yard waste or otherwise recycle or reuse yard waste: Provided, however, That reasonable and necessary exceptions to the prohibitions may be included as part of the rules promulgated pursuant to subsection (f) of this section.

(d) Effective July 1, 2016, covered electronic devices, as defined in section two of this article, may not be disposed of in a solid waste landfill in West Virginia, if a county or regional solid waste authority determines there is a cost effective recycling alternative for handling covered electronic devices.

(e) The Solid Waste Management Board shall design a comprehensive program to provide for the proper handling of yard waste, lead-acid batteries and tires.

(f) The secretary shall promulgate rules, in accordance with chapter twenty-nine-a of this code, to implement and enforce the program for yard waste, lead-acid batteries and tires.

(g) The secretary’s rule shall provide for the disposal of yard waste in a manner consistent with one or any combination of the following:

(1) Disposal in a publicly or privately operated commercial or noncommercial composting facility;
(2) Disposal by composting on the property from which domestic yard waste is generated or on adjoining property or neighborhood property if consent is obtained from the owner of the adjoining or neighborhood property;

(3) Disposal by open burning, where not prohibited; or

(4) Disposal in a publicly or privately operated landfill, only where none of the foregoing options are available. The manner of disposal shall only involve small quantities of domestic yard waste generated only from the property of the participating resident or tenant.

CHAPTER 109

(H. B. 4235 - By Delegate Shott)

[Passed March 5, 2016; in effect ninety days from passage.]
[Approved by the Governor on March 9, 2016.]

AN ACT to amend and reenact §44-3A-4, §44-3A-4a and §44-3A-32 of the Code of West Virginia, 1931, as amended, all relating to notice requirements for claims against an estate; requiring claims against estates to be filed within sixty days of publication of Class II legal advertisement; modifying language of advertisement to reflect sixty-day deadline for exhibiting claims against estate of decedent; authorizing fiduciary supervisor to proceed with supervision of estates following expiration of sixty-day deadline; permitting closure after sixty days following publication by short form settlements of estates; and barring recovery for claims against an estate not presented within specified time period except under certain circumstances.
Be it enacted by the Legislature of West Virginia:

That §44-3A-4, §44-3A-4a and §44-3A-32 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 3A. FIDUCIARY COMMISSIONERS; POWERS AND DUTIES.

§44-3A-4. Notice of claim; settlement in certain cases.

(a) The fiduciary supervisor shall at least once a month as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, cause to be published in a newspaper of general circulation within the county wherein letters of administration have been granted, a notice substantially as follows:

NOTICE OF FILING OF ESTATE ACCOUNTS

To the Creditors and Beneficiaries of the within named deceased persons:

I have before me the estates of the following deceased persons and the accounts of the fiduciaries of their respective estates:

Name of Decedent: ................................................

Name of Fiduciary: ..............................................

Address: ............................................................

Name of Decedent: ................................................

Name of Fiduciary: ..............................................

Address: ............................................................
All persons having claims against the estate(s) of any of the above-named deceased persons whether due or not, are notified to exhibit their claims with vouchers thereof, legally verified, to the fiduciary of such deceased person as shown herein within sixty days of the first publication hereof; or, if not so exhibited to such fiduciary by that date, to exhibit the same at the office of the undersigned fiduciary supervisor at the address shown below within sixty days of the first publication of this notice; otherwise any or all such claims may by law be excluded from all benefits of said estate(s). No claims against the estate shall be accepted by the fiduciary supervisor after the last date shown above. All beneficiaries of said estate(s) may appear either before the above-named fiduciary by the date first shown above, or thereafter before the undersigned fiduciary supervisor by the date last shown above to examine said claims and otherwise protect their respective interests.

Given under my hand this ................................... day of ................................, 20......

...................................................

Fiduciary Supervisor

...........................................County, W.Va.

(b) All such claims are to be filed with the appropriate fiduciary at the address shown in such notice within sixty days of the date of the first publication of such notice or with the fiduciary supervisor within sixty days of such date. No claims
against the estate shall be accepted by the fiduciary supervisor
after the last date shown above.

(c) Subject to the provisions of this section, at the end of the
sixty-day period set forth in such notice, the fiduciary supervisor
may proceed with supervision of all estates referred to him or her
for proof and determination of debts and claims, establishment
of their priority, determination of the amount of the respective
shares of the legatees and distributees and any and all other
matter or matters necessary and proper for the settlement of the
estate, including, but not limited to, his or her recommendations
concerning the approval of the fees of any fiduciary
commissioner to whom the estate may have been referred,
determination that inheritance taxes, if any, occasioned by the
death of the decedent or returnable by reason thereof have been
returned upon such estate and such taxes have been paid or such
payment provided for and whether a release therefor has been
issued by the proper authority, all matters required by section
nineteen of this article and all other matters deemed proper by
him or her.

§44-3A-4a. Short form settlement.

(a) In all estates of decedents administered under the
provisions of this article where more than sixty days has elapsed
since the filing of any notice required by section four, an estate
may be closed by a short form settlement filed in compliance
with this section: Provided, That any lien for payment of estate
taxes under article eleven, chapter eleven of this code is released
and that the release is filed with the clerk.

(b) The fiduciary may file with the fiduciary supervisor a
proposed short form settlement which shall contain an affidavit
made by the fiduciary that the time for filing claims has expired,
that no known and unpaid claims exist against the estate and
showing the allocation to which each distributee and beneficiary
is entitled in the distribution of the estate and contain a
representation that the property to which each distributee or
beneficiary is entitled has been or upon approval of the
settlement will be delivered thereto, or that each distributee and
beneficiary has agreed to a different allocation. The application
shall contain a waiver signed by each distributee and beneficiary:
Provided, That a beneficiary receiving a bequest of tangible
personal property or a bequest of cash may not be required to
sign the waiver.

(c) Such waiver may be signed in the case of a distributee or
beneficiary under a disability by the duly qualified personal
representative of such distributee or beneficiary. A personal
representative signing such waiver shall be responsible to his or
her cestui que trust for any loss resulting from such waiver.

(d) The fiduciary supervisor shall examine the affidavit and
waiver and determine that the allocation to the distributees and
beneficiaries set forth in the affidavit is correct and all proper
parties signed the waiver, both shall be recorded as in the case of
and in lieu of settlement. If the fiduciary supervisor identifies
any error the fiduciary supervisor shall within five days of the
filing of such settlement give the fiduciary notice as in the case
of any other incorrect settlement.

(e) If the short form settlement is proper the fiduciary
supervisor shall proceed as in the case of any other settlement.

§44-3A-32. When claims not presented and proved barred of
recovery from personal representative.

Every person having a claim against a deceased person,
whether due or not, who shall not, when notice to creditors has
been published as prescribed in this article, have presented his or
her claim on or before the sixty-day time period fixed in such
notice, or before that time have instituted an action thereon,
shall, notwithstanding the same be not barred by some other
 statute of limitations that is applicable thereto, be barred from
 recovering such claim of or from the personal representative, or
 from thereafter setting off the same by way of counterclaim or
 otherwise against the personal representative in any action
 whatever; except that if a surplus remain after providing for all
 claims presented in due time, or on which action shall have been
 commenced in due time, and such surplus shall not have been
 distributed by the personal representative to the beneficiaries of
 the estate, and the claimant prove that he or she had no actual
 notice of the publication to creditors nor knowledge of the
 proceedings before the fiduciary supervisor or fiduciary
 commissioner, such creditor may prove his or her claim by
 action or suit and have the same allowed out of such surplus;
 and, in order that such late claims if proved may be provided for,
 the fiduciary supervisor or fiduciary commissioner shall reopen
 his or her report if the same has not been returned to the county
 commission, or if returned shall make and return a supplemental
 report.

CHAPTER 110

(S. B. 702 - By Senators Trump, Ferns, Gaunch, Kirkendoll,
Beach, Ashley, Karnes, Leonhardt, Romano,
Palumbo, Williams, Cline, Snyder, Maynard and Carmichael)

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

AN ACT to amend and reenact §44-8-1 of the Code of West Virginia,
1931, as amended, relating to providing that, in instances where
real estate, or an interest therein, is devised to be sold and the
proceeds thereof distributed, title to said real estate passes to those
individuals entitled to receive the proceeds of sale if the personal representative of the estate does not do so upon the closing of the estate or if the estate is not closed five years after the death of the testator.

Be it enacted by the Legislature of West Virginia:

That §44-8-1 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 8. REAL ESTATE OF DECEDENTS.

§44-8-1. Sale, conveyance and management of decedent’s real estate; powers of executor and administrator with will annexed.

Real estate devised to be sold shall, if no person other than the executor be appointed for the purpose, be sold and conveyed by the executor and the proceeds of sale, or the rents and profits of any real estate which the executor is authorized by the will to receive, shall be received by the executor who qualifies, or by his or her successor. If none qualify, or the one qualifying shall die, resign or be removed before the trust is executed or completed, the administrator with the will annexed shall sell or convey the lands so devised to be sold, and receive the proceeds of sale, or the rents and profits aforesaid, as an executor might have done: Provided, That title to real estate which is devised to be sold shall pass to the individuals entitled to receive the proceeds thereof in such proportions as they are entitled to receive said proceeds absent any contrary testamentary intent upon the closing of the testator’s estate or, if the estate is not closed, five years after the death of the testator.

When any will heretofore or hereafter executed gives to the executor named therein the power to sell the testator’s real estate, which has not been theretofore specifically devised
20 therein, the executor may sell any such real estate unless
21 otherwise provided in said will. If such will directs the sale of
22 testator’s real estate but names no executor, or names an
23 executor and the executor dies, resigns or becomes incapable of
24 acting, and an administrator with the will annexed is appointed,
25 the administrator with the will annexed may sell such real estate
26 as aforesaid.

27 Nothing in this section shall be deemed or construed so as to
28 invalidate any conveyance made prior to the effective date of the
29 amendments thereto adopted by the Legislature at its regular
30 session held in the year 1987.

CHAPTER 111

(Com. Sub. for S. B. 493 - By Senator Trump)

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

AN ACT to amend the Code of West Virginia, 1931, as amended, by
adding thereto three new sections, designated §44D-5-503a,
§44D-5-503b and §44D-5-503c; and to amend and reenact
§44D-5-505 of said code, all relating to allowing the creation of
self-settled spendthrift trusts; permitting a grantor to transfer assets
into a qualified self-settled spendthrift trust and retain an interest
in that trust; excluding applicability of certain provisions of code
to that qualified interest; clarifying applicability of self-settled
spendthrift trust provisions when certain interests are not qualified
interests; prohibiting inference of intent to delay, hinder or defraud
creditors solely based on grantor’s establishment of or transfer to
a self-settled spendthrift trust; permitting transfer to trust to be set
aside under certain circumstances; providing for the payment of
expenses associated with defending the trust to be paid from
transfer; permitting creditors to bring actions against transfer of trust assets within four years after date of grantor’s transfer; limiting creditor rights to grantor’s transfer; prohibiting credit claims or causes of action against certain other persons or entities; providing applicability of provisions governing creditor’s actions to avoid transfers to situations involving multiple transfers; setting statute of limitations for self-settled spendthrift trust moved to this state for four years from date assets moved to the state; defining terms; providing for filling of vacancies in office of qualified trustee or independent qualified trustee; permitting certain terms to be included in self-settled spendthrift trust without deeming trust irrevocable; requiring treatment of beneficiary with right to withdraw entire beneficial interest be treated as grantor once right to withdraw has lapsed, been released or otherwise expired; and exempting self-settled spendthrift trusts from being subject to claims of the grantor’s creditors.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto three new sections, designated §44D-5-503a, §44D-5-503b and §44D-5-503c; and that §44D-5-505 of said code be amended and reenacted, all to read as follows:

ARTICLE 5. CREDITOR’S CLAIMS; SPENDTHRIFT AND DISCRETIONARY TRUSTS.

§44D-5-503a. Self-settled spendthrift trusts.

1 (a) A grantor may transfer assets to a qualified self-settled spendthrift trust and retain in that trust a qualified interest, and, except as otherwise provided in this article, the provisions of section five hundred five of this article do not apply to such qualified interest.

6 (b) The provisions of section five hundred five of this article shall continue to apply with respect to any interest held by a
grantor in a qualified self-settled spendthrift trust, other than a 
qualified interest.

(c) A grantor’s transfer to a qualified self-settled spendthrift 
trust shall not, to the extent of the grantor’s qualified interest, be 
deemed to have been made with intent to delay, hinder or 
defraud creditors, for purposes of article one-a, chapter forty of 
this code, merely because it is made to a trust with respect to 
which the grantor retains a qualified interest and merely because 
it is made without consideration. A grantor’s transfer to a 
qualified self-settled spendthrift trust may, however, be set aside 
under article one-a, chapter forty of this code or if the qualified 
affidavit contains a material misstatement of fact: Provided, That 
any transfer made to a qualified self-settled spendthrift trust 
which may be set aside under article one-a, chapter forty of this 
code shall be chargeable first with the entire costs and expenses, 
including attorney’s fees, properly incurred by the trustee in the 
defense of the action or proceeding to set aside the transfer.

(d) A grantor’s creditor may bring an action under article 
one-a, chapter forty of this code to avoid a transfer to a qualified 
self-settled spendthrift trust or otherwise to enforce a claim that 
existed on the date of the grantor’s transfer to such trust within 
four years after the date of the grantor’s transfer to such trust to 
which such claim relates.

(e) A creditor shall have only such rights with respect to a 
grantor’s transfer to a qualified self-settled spendthrift trust as 
are provided in this section. No creditor and no other person has 
any claim or cause of action against any trustee, trust adviser, 
trust director or any person involved in the counseling, drafting, 
preparation or execution of, or transfers to, a qualified 
self-settled spendthrift trust.

(f) If a grantor makes more than one transfer to the same 
qualified self-settled spendthrift trust, the following rules apply:
(1) The grantor’s making of a subsequent transfer shall be disregarded in determining a creditor’s claim with respect to whether a prior transfer is valid under this section;

(2) With respect to each subsequent transfer by the grantor, the four-year limitations period provided in subsection (d) of this section, with respect to actions brought under article one-a of chapter forty of this code with respect to the subsequent transfer, commences on the date of such subsequent transfer; and

(3) Any distribution to a beneficiary is deemed to have been made from the latest such transfer.

(g) The movement to this state of the administration of an existing trust, which, after such movement to the state, meets for the first time all of the requirements of a qualified self-settled spendthrift trust, shall be treated, for purposes of this section, as a transfer to this trust by the grantor on the date of such movement of all of the assets previously transferred to the trust by the grantor.

§44D-5-503b. Definitions.

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

(a) “Qualified trustee” means any person who is a natural person residing within the state or a legal entity authorized to engage in trust business within the state and who maintains or arranges for custody within the state of some or all of the property that has been transferred to the trust by the grantor, maintains records within the state for the trust on an exclusive or nonexclusive basis, prepares or arranges for the preparation within the state of fiduciary income tax returns for the trust or otherwise materially participates within the state in the administration of the trust. A trustee is not a qualified trustee if
such trustee’s authority to make distributions of income or principal or both are subject to the direction of someone who, were that person a trustee of the trust, would not meet the requirements to be a qualified trustee.

(b) “Independent qualified trustee” means a qualified trustee who is not, and whose actions are not, subject to direction by:

(1) The grantor;

(2) Any natural person who is not a resident of the state;

(3) Any entity that is not authorized to engage in trust business within the state;

(4) The grantor’s spouse;

(5) A parent of the grantor;

(6) Any descendant of the grantor; or

(7) A sibling of the grantor.

(c) “Qualified interest” means a grantor’s interest in a qualified self-settled spendthrift trust, to the extent that such interest entitles the grantor to receive distributions of income, principal or both in the sole discretion of a qualified trustee. A grantor may have a qualified interest in a qualified self-settled spendthrift trust and also have an interest in the same trust that is not a qualified interest, and the rules of section five hundred five of this article shall apply to each interest of the grantor in the same trust other than the grantor’s qualified interest.

(d) “Qualified self-settled spendthrift trust” means a trust if:

(1) The trust is irrevocable;

(2) The trust is created during the grantor’s lifetime;
(3) There is, at all times when distributions could be made to the grantor pursuant to the grantor’s qualified interest, at least one beneficiary other than the grantor: (i) To whom income may be distributed if the grantor’s qualified interest relates to trust income; (ii) to whom principal may be distributed if the grantor’s qualified interest relates to trust principal; or (iii) to whom both income and principal may be distributed if the grantor’s qualified interest relates to both trust income and principal;

(4) The trust has at all times at least one qualified trustee who may be, but need not be, an independent qualified trustee;

(5) The trust instrument expressly incorporates the laws of this state to govern the validity, construction and administration of the trust;

(6) The trust instrument includes a spendthrift provision, as defined in section five hundred two of this article, that restrains both voluntary and involuntary transfer of the grantor’s qualified interest;

(7) The grantor does not have the right to disapprove distributions from the trust; and

(8) The grantor duly executes a qualified affidavit before or substantially contemporaneously with the making of the transfer of the asset or assets into the trust.

(e) “Qualified affidavit” means a duly executed affidavit of the grantor which contains under oath all of the following statements, or statements substantially to the effect:

(1) The property being transferred to the trust was not derived from unlawful activities;

(2) The grantor has full right, title and authority to transfer the property to the trust;
(3) The grantor will not be rendered insolvent immediately after the transfer of the property to the trust;

(4) The grantor does not intend to defraud any creditor by transferring the property to the trust;

(5) There are no pending or threatened court actions against the grantor except for any court action expressly identified in the affidavit or an attachment to the affidavit;

(6) The grantor is not involved in any administrative proceeding except for any proceeding expressly identified in the affidavit or an attachment to the affidavit;

(7) The grantor is not indebted on account of an agreement or order of court for the payment of support or alimony in favor of such transferor’s spouse, former spouse or children, or for a division or distribution of property incident to a judicial proceeding with respect to a divorce or annulment in favor of such transferor’s spouse or former spouse, except for any such indebtedness expressly identified in the affidavit or an attachment to the affidavit; and

(8) The grantor does not contemplate at the time of the transfer the filing for relief under the Bankruptcy Code of the United States.

An affidavit is defective and is not a qualified affidavit if it materially fails to meet the requirements set forth in this subsection. An affidavit is not considered defective and is a qualified affidavit if it contains any nonsubstantive variances from the language set forth in this subsection, it contains statements or representations in addition to those required in this subsection which do not materially contradict the required statements or representations or there are any technical errors in the form, substance or method of preparation or execution of the affidavit if those errors were not the fault of the affiant and the
affiant reasonably relied upon another person to prepare or notarize the affidavit.

§44D-5-503c. Vacancies; revocability of trust; right to withdraw.

(a) A vacancy in the position of qualified trustee that occurs for any reason, whether or not there is then serving another trustee, shall be filled in the following order of priority:

(1) By a person eligible to be a qualified trustee and who is designated pursuant to the terms of the trust instrument to act as successor trustee;

(2) By a person eligible to be a qualified trustee and who is designated by unanimous agreement of the qualified beneficiaries; or

(3) By a person eligible to be a qualified trustee and who is appointed by the court pursuant to any of the provisions of article seven of this chapter.

(b) A vacancy in the position of independent qualified trustee that occurs for any reason, whether or not there is then serving another trustee, shall be filled in the following order of priority:

(1) By a person eligible to be an independent qualified trustee and who is designated pursuant to the terms of the trust instrument to act as successor trustee; or

(2) By a person eligible to be an independent qualified trustee and who is designated by unanimous agreement of the qualified beneficiaries; or

(3) By a person eligible to be an independent qualified trustee and who is appointed by the court pursuant to any of the provisions of article seven of this chapter.
(c) A trust instrument shall not be deemed revocable on account of the inclusion of any one or more of the following rights, powers, and interests:

(1) A power of appointment, exercisable by the grantor by will or other written instrument effective only upon the grantor’s death, other than a power to appoint to the grantor’s estate or the creditors of the grantor’s estate;

(2) The grantor’s qualified interest in the trust;

(3) The grantor’s right to receive income or principal pursuant to an ascertainable standard;

(4) The grantor’s potential or actual receipt of income or principal from a charitable remainder unitrust or charitable remainder annuity trust (each within the meaning of Section 664(d) of the Internal Revenue Code) and the grantor’s right, at any time, and from time to time, to release, in writing delivered to the qualified trustee, all or any part of the grantor’s retained interest in such trust;

(5) The grantor’s receipt each year of a percentage, not to exceed five percent, specified in the trust instrument of the initial value of the trust assets or their value determined from time to time pursuant to the trust instrument;

(6) The grantor’s right to remove a qualified trustee or independent qualified trustee and to appoint a new trustee who meets the same criteria;

(7) The grantor’s potential or actual use of real property held under a personal residence trust (within the meaning of Section 2702(c) of the Internal Revenue Code);

(8) The grantor’s potential or actual receipt or use of a qualified annuity interest (within the meaning of Section 2702 of the Internal Revenue Code);
(9) The ability of a qualified trustee, whether pursuant to discretion or direction, to pay, after the grantor’s death, all or any part of the grantor’s debts outstanding at the time of the grantor’s death, the expenses of administering the grantor’s estate, or any federal or state estate, inheritance, or death tax imposed on or with respect to the grantor’s estate; and

(10) A grantor’s potential or actual receipt of income or principal to pay, in whole or in part, income taxes due on trust income, or the direct payment of such taxes to the applicable tax authorities, pursuant to a provision in the trust instrument that expressly provides for the direct payment of such taxes or the reimbursement of the grantor for such tax payments.

(d) A beneficiary who has the right to withdraw his or her entire beneficial interest in a trust shall be treated as its grantor to the extent of such withdrawal right, when such right to withdraw has lapsed, been released, or otherwise expired, without regard to the limitations otherwise imposed by subsection (b), section five hundred five of this article.

§44D-5-505. Creditor’s claim against grantor.

(a) Whether or not the terms of a trust instrument contain a spendthrift provision, the following rules apply:

(1) During the lifetime of the grantor, the property of a revocable trust is subject to claims of the grantor’s creditors, except to the extent otherwise provided in sections five hundred three-a, five hundred three-b and five hundred three-c of this article.

(2) During the lifetime of the grantor, with respect to an irrevocable trust, a creditor or assignee of the grantor may reach the maximum amount that can be distributed to or for the grantor’s benefit. If a trust has more than one grantor, the
amount the creditor or assignee of a particular grantor may reach
may not exceed the grantor’s interest in the portion of the trust
attributable to that grantor’s contribution.

(3) After the death of a grantor, and subject to the grantor’s
right to direct the source from which liabilities will be paid, the
property of a trust that was revocable at the grantor’s death is
subject to claims of the creditors of the deceased grantor, to the
extent the grantor’s probate estate is inadequate to satisfy them,
and with such claims payable in order of priority of the
following classes:

(A) The costs and expenses of administration of the grantor’s
estate;

(B) Reasonable funeral expenses;

(C) Debts and taxes with preference under federal law;

(D) Unpaid child support which is due and owing at the time
of the decedent’s death;

(E) Debts and taxes with preference under other laws of the
State of West Virginia;

(F) Reasonable and necessary medical and hospital expenses
of the last illness of the decedent, including compensation for
persons attending the decedent during his or her last illness; and

(G) All other claims.

(b) For purposes of this section:

(1) During the period the power may be exercised, the holder
of a power of withdrawal is treated in the same manner as the
grantor of a revocable trust to the extent of the property subject
to the power; and
(2) Upon the lapse, release or waiver of the power, the holder is treated as the grantor of the trust only to the extent the value of the property affected by the lapse, release or waiver exceeds the greater of the amount specified in Section 2041(b)(2), Section 2503(b) or Section 2514(e) of the Internal Revenue Code.

CHAPTER 112

(Com. Sub. for H. B. 4604 - By Delegates Householder, Mr. Speaker (Mr. Armstead), Kessinger, Upson, Shott, Folk and Lane)

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

AN ACT to amend and reenact §6B-2-4 of the Code of West Virginia, 1931, as amended, relating to violations of the Ethics Act; establishing a deadline of eighteen months for the Ethics Commission to investigate and make a probable cause determination on a complaint; allowing extension past one year if consented by both respondent and complainant or unless Ethics Commission finds good cause in writing; changing the burden of proof needed to show a violation of the Ethics Act to a clear and convincing evidence standard; and extending the statute of limitations for filing complaints alleging violations of the Ethics Act from two years to five years.

Be it enacted by the Legislature of West Virginia:

That §6B-2-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:
ARTICLE 2. WEST VIRGINIA ETHICS COMMISSION; POWERS AND DUTIES; DISCLOSURE OF FINANCIAL INTEREST BY PUBLIC OFFICIALS AND EMPLOYEES; APPEARANCES BEFORE PUBLIC AGENCIES; CODE OF CONDUCT FOR ADMINISTRATIVE LAW JUDGES.

§6B-2-4. Processing complaints; dismissals; hearings; disposition; judicial review.

(a) Upon the filing of a complaint, the executive director of the commission or his or her designee shall, within three working days, acknowledge the receipt of the complaint by first-class mail unless the complaint was initiated by the commission or the complainant or his or her representative personally filed the complaint with the commission and was given a receipt or other acknowledgment evidencing the filing of the complaint. No political party or officer, employee or agent of a political party acting in his or her official capacity may file a complaint for a violation of this chapter with the commission. Nothing in this section prohibits a private citizen, acting in that capacity, from filing a verified complaint with the commission under this section. Within fourteen days after the receipt of a complaint, the executive director shall refer the complaint to the review board created pursuant to section two-a of this article.

(b) Upon the referral of a complaint by the executive director pursuant to subsection (a) of this section, the review board shall determine whether the allegations of the complaint, if taken as true, would constitute a violation of law upon which the commission could properly act under the provisions of this chapter. If the complaint is determined by a majority vote of the review board to be insufficient in this regard, the review board shall dismiss the complaint.
(c) Upon a finding by the review board that the complaint is sufficient, the executive director shall give notice of a pending investigation to the complainant, if any, and to the respondent. The notice of investigation shall be mailed to the parties and, in the case of the respondent, shall be mailed as certified mail, return receipt requested, marked “Addressee only, personal and confidential”. The notice shall describe the conduct of the respondent which is alleged to violate the law and a copy of the complaint shall be appended to the notice mailed to the respondent. Each notice of investigation shall inform the respondent that the purpose of the investigation is to determine whether probable cause exists to believe that a violation of law has occurred which may subject the respondent to administrative sanctions by the commission, criminal prosecution by the state, or civil liability. The notice shall further inform the respondent that he or she has a right to appear before the review board and that he or she may respond in writing to the commission within thirty days after the receipt of the notice, but that no fact or allegation shall be taken as admitted by a failure or refusal to timely respond.

(d) Within the forty-five day period following the mailing of a notice of investigation, the review board shall proceed to consider: (1) The allegations raised in the complaint; (2) any timely received written response of the respondent; and (3) any other competent evidence gathered by or submitted to the commission which has a proper bearing on the issue of probable cause. A respondent may appear before the review board and make an oral response to the complaint. The commission shall promulgate rules prescribing the manner in which a respondent may present his or her oral response. The commission may ask a respondent to disclose specific amounts received from a source and request other detailed information not otherwise required to be set forth in a statement or report filed under the provisions of this chapter if the information sought is considered to be
probative as to the issues raised by a complaint or an investigation initiated by the commission. Any information thus received shall be confidential except as provided by subsection (f) of this section. If a person asked to provide information fails or refuses to furnish the information to the commission, the commission may exercise its subpoena power as provided in this chapter and any subpoena issued by the commission shall have the same force and effect as a subpoena issued by a circuit court of this state. Enforcement of any subpoena may be had upon application to a circuit court of the county in which the review board is conducting an investigation through the issuance of a rule or an attachment against the respondent as in cases of contempt.

(e) Unless consented to by both the respondent and complainant, or unless the commission makes a good cause determination in writing the investigation and a determination as to probable cause shall not exceed eighteen months.

(f) All investigations, complaints, reports, records, proceedings and other information received by the commission and related to complaints made to the commission or investigations conducted by the commission pursuant to this section, including the identity of the complainant or respondent, are confidential and may not be knowingly and improperly disclosed by any current or former member or employee of the commission or the review board except as follows:

(A) Once there has been a finding that probable cause exists to believe that a respondent has violated the provisions of this chapter and the respondent has been served by the commission with a copy of the review board’s order and the statement of charges prepared pursuant to the provisions of subsection (h) of this section, the complaint and all reports, records, nonprivileged and nondeliberative material introduced at any probable cause hearing held pursuant to the complaint cease to be confidential.
(B) After a finding of probable cause, any subsequent hearing held in the matter for the purpose of receiving evidence or the arguments of the parties or their representatives shall be open to the public and all reports, records and nondeliberative materials introduced into evidence at the hearing, as well as the commission’s orders, are not confidential.

(C) The commission may release any information relating to an investigation at any time if the release has been agreed to in writing by the respondent.

(D) The complaint and the identity of the complainant shall be disclosed to a person named as respondent immediately upon the respondent’s request.

(E) Where the commission is otherwise required by the provisions of this chapter to disclose information or to proceed in such a manner that disclosure is necessary and required to fulfill those requirements.

(1) If, in a specific case, the commission finds that there is a reasonable likelihood that the dissemination of information or opinion in connection with a pending or imminent proceeding will interfere with a fair hearing or otherwise prejudice the due administration of justice, the commission shall order that all or a portion of the information communicated to the commission to cause an investigation and all allegations of ethical misconduct or criminal acts contained in a complaint shall be confidential and the person providing the information or filing a complaint shall be bound to confidentiality until further order of the commission.

(g) If the members of the review board fail to find probable cause, the proceedings shall be dismissed by the commission in an order signed by the members of the review board. Copies of the order of dismissal shall be sent to the complainant and served
upon the respondent forthwith. If the review board decides by a unanimous vote that there is probable cause to believe that a violation under this chapter has occurred, the members of the review board shall sign an order directing the commission staff to prepare a statement of charges and assign the matter for hearing to the commission or a hearing examiner as the commission may subsequently direct. The commission shall then schedule a hearing, to be held within ninety days after the date of the order, to determine the truth or falsity of the charges. The commission’s review of the evidence presented shall be de novo. For the purpose of this section, service of process upon the respondent is obtained at the time the respondent or the respondent’s agent physically receives the process, regardless of whether the service of process is in person or by certified mail.

(h) At least eighty days prior to the date of the hearing, the commission shall serve the respondent by certified mail, return receipt requested, with the statement of charges and a notice of hearing setting forth the date, time and place for the hearing. The scheduled hearing may be continued only upon a showing of good cause by the respondent or under other circumstances as the commission, by legislative rule, directs.

(i) The commission may sit as a hearing board to adjudicate the case or may permit an assigned hearing examiner employed by the commission to preside at the taking of evidence. The commission shall, by legislative rule, establish the general qualifications for hearing examiners. The legislative rule shall also contain provisions which ensure that the functions of a hearing examiner will be conducted in an impartial manner and describe the circumstances and procedures for disqualification of hearing examiners.

(j) A member of the commission or a hearing examiner presiding at a hearing may:
(1) Administer oaths and affirmations, compel the attendance of witnesses and the production of documents, examine witnesses and parties and otherwise take testimony and establish a record;

(2) Rule on offers of proof and receive relevant evidence;

(3) Take depositions or have depositions taken when the ends of justice will be served;

(4) Regulate the course of the hearing;

(5) Hold conferences for the settlement or simplification of issues by consent of the parties;

(6) Dispose of procedural requests or similar matters;

(7) Accept stipulated agreements;

(8) Take other action authorized by the ethics commission consistent with the provisions of this chapter.

(k) With respect to allegations of a violation under this chapter, the complainant has the burden of proof. The West Virginia Rules of Evidence governing proceedings in the courts of this state shall be given like effect in hearings held before the commission or a hearing examiner. The commission shall, by rule, regulate the conduct of hearings so as to provide full procedural due process to a respondent. Hearings before a hearing examiner shall be recorded electronically. When requested by either of the parties, the presiding officer shall order a transcript, verified by oath or affirmation, of each hearing held and so recorded. In the discretion of the commission, a record of the proceedings may be made by a certified court reporter. Unless otherwise ordered by the commission, the cost of preparing a transcript shall be paid by the party requesting the transcript. Upon a showing of indigency,
the commission may provide a transcript without charge. Within fifteen days following the hearing, either party may submit to the hearing examiner that party’s proposed findings of fact. The hearing examiner shall thereafter prepare his or her own proposed findings of fact and make copies of the findings available to the parties. The hearing examiner shall then submit the entire record to the commission for final decision.

(l) The recording of the hearing or the transcript of testimony, as the case may be, and the exhibits, together with all papers and requests filed in the proceeding, and the proposed findings of fact of the hearing examiner and the parties, constitute the exclusive record for decision by the commission, unless by leave of the commission a party is permitted to submit additional documentary evidence or take and file depositions or otherwise exercise discovery.

(m) The commission shall set a time and place for the hearing of arguments by the complainant and respondent, or their respective representatives, and shall notify the parties thereof. Briefs may be filed by the parties in accordance with procedural rules promulgated by the commission. The commission shall issue a final decision in writing within forty-five days of the receipt of the entire record of a hearing held before a hearing examiner or, in the case of an evidentiary hearing held by the commission acting as a hearing board in lieu of a hearing examiner, within twenty-one days following the close of the evidence.

(n) A decision on the truth or falsity of the charges against the respondent and a decision to impose sanctions must be approved by at least seven members of the commission.

(o) Members of the commission shall recuse themselves from a particular case upon their own motion with the approval of the commission or for good cause shown upon motion of a
party. The remaining members of the commission may, by majority vote, select a temporary member to replace a recused member: Provided, That the temporary member selected to replace a recused member shall be a person of the same status or category, provided by subsection (b), section one of this article, as the recused member.

(p) Except for statements made in the course of official duties to explain commission procedures, no member or employee or former member or employee of the commission may make any public or nonpublic comment about any proceeding previously or currently before the commission. Any member or employee or former member or employee of the commission who violates this subsection is subject to the penalties contained in subsection (e), section ten of this article. In addition, violation of this subsection by a current member or employee of the commission is grounds for immediate removal from office or termination of employment.

(q) A complainant may be assisted by a member of the commission staff assigned by the commission after a determination of probable cause.

(r) No employee of the commission assigned to prosecute a complaint may participate in the commission deliberations or communicate with commission members or the public concerning the merits of a complaint.

(s) (1) If the commission finds by clear and convincing evidence that the facts alleged in the complaint are true and constitute a material violation of this article, it may impose one or more of the following sanctions:

(A) Public reprimand;

(B) Cease and desist orders;
(C) Orders of restitution for money, things of value, or services taken or received in violation of this chapter;

(D) Fines not to exceed $5,000 per violation; or

(E) Reimbursement to the commission for the actual costs of investigating and prosecuting a violation. Any reimbursement ordered by the commission for its costs under this paragraph shall be collected by the commission and deposited into the special revenue account created pursuant to section six, article one of this chapter.

(2) In addition to imposing the above-specified sanctions, the commission may recommend to the appropriate governmental body that a respondent be terminated from employment or removed from office.

(3) The commission may institute civil proceedings in the circuit court of the county in which a violation occurred for the enforcement of sanctions.

(t) At any stage of the proceedings under this section, the commission may enter into a conciliation agreement with a respondent if the agreement is deemed by a majority of the members of the commission to be in the best interest of the state and the respondent. Any conciliation agreement must be disclosed to the public: Provided, That negotiations leading to a conciliation agreement, as well as information obtained by the commission during the negotiations, shall remain confidential except as may be otherwise set forth in the agreement.

(u) Decisions of the commission involving the issuance of sanctions may be appealed to the circuit court of Kanawha County, only by the respondent and only upon the grounds set forth in section four, article five, chapter twenty-nine-a of this code.
(v) (1) Any person who in good faith files a verified complaint or any person, official or agency who gives credible information resulting in a formal complaint filed by commission staff is immune from any civil liability that otherwise might result by reason of such actions.

(2) If the commission determines, by clear and convincing evidence, that a person filed a complaint or provided information which resulted in an investigation knowing that the material statements in the complaint or the investigation request or the information provided were not true; filed an unsubstantiated complaint or request for an investigation in reckless disregard of the truth or falsity of the statements contained therein; or filed one or more unsubstantiated complaints which constituted abuse of process, the commission shall:

(A) Order the complainant or informant to reimburse the respondent for his or her reasonable costs;

(B) Order the complainant or informant to reimburse the respondent for his or her reasonable attorney fees; and

(C) Order the complainant or informant to reimburse the commission for the actual costs of its investigation. In addition, the commission may decline to process any further complaints brought by the complainant, the initiator of the investigation or the informant.

(3) The sanctions authorized in this subsection are not exclusive and do not preclude any other remedies or rights of action the respondent may have against the complainant or informant under the law.

(w) (1) If at any stage in the proceedings under this section it appears to a Review board, a hearing examiner or the commission that there is credible information or evidence that
the respondent may have committed a criminal violation, the
matter shall be referred to the full commission for its
consideration. If, by a vote of two-thirds of the members of the
full commission, it is determined that probable cause exists to
believe a criminal violation has occurred, the commission shall
refer the matter to the appropriate county prosecuting attorney
having jurisdiction for a criminal investigation and possible
prosecution. Deliberations of the commission with regard to
referring a matter for criminal investigation by a prosecuting
attorney shall be private and confidential. Notwithstanding any
other provision of this article, once a referral for criminal
investigation is made under the provisions of this subsection, the
ethics proceedings shall be held in abeyance until action on the
referral matter is concluded. If the referral of the matter to the
prosecuting attorney results in a criminal conviction of the
respondent, the commission may resume its investigation or
prosecution of the ethics violation, but may not impose a fine as
a sanction if a violation is found to have occurred.

(2) If fewer than two-thirds of the full commission determine
that a criminal violation has occurred, the commission shall
remand the matter to the review board, the hearing examiner or
the commission itself as a hearing board, as the case may be, for
further proceedings under this article.

(x) The provisions of this section shall apply to violations of
this chapter occurring after September 30, 1989, and within one
year before the filing of a complaint: Provided, That the
applicable statute of limitations for violations which occur on or
after July 1, 2005, is two years after the date on which the
alleged violation occurred: Provided, however, That the
applicable statute of limitations for violations which occur on or
after July 1, 2016, is five years after the date on which the
alleged violation occurred.
AN ACT to repeal §6B-2-5c of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new article, designated §6B-2B-1, §6B-2B-2, §6B-2B-3, §6B-2B-4, §6B-2B-5 and §6B-2B-6, all relating to limitations on use of a public official’s name or likeness; repealing current provisions; defining terms; prohibiting public officials, their agents and public employees from placing the public official’s name or likeness on trinkets; prohibiting public officials, their agents and public employees from using public funds, public employees, or public resources to distribute, disseminate, publish, or display the public official’s name or likeness for the purpose of advertising to the public; prohibiting public officials, their agents or public employees from placing the public official’s name or likeness on publicly-owned vehicles; prohibiting a public official’s name or likeness from being placed on any educational material that is paid for with public funds; placing restrictions on a public official’s name or likeness on a public agency’s website and social media; providing exceptions; providing for alternative uses for prohibited material after the effective date; and providing an opportunity to obtain an exemption from the Ethics Commission.

Be it enacted by the Legislature of West Virginia:

That §6B-2-5c of the Code of West Virginia, 1931, as amended, be repealed; and that said code be amended by adding thereto a new
ARTICLE 2B. LIMITATIONS ON A PUBLIC OFFICIAL FROM USING HIS OR HER NAME OR LIKENESS.

§6B-2B-1. Definitions.

1 As used in this article:

2 (a) “Advertising” means publishing, distributing, disseminating, communicating or displaying information to the general public through audio, visual or other media tools. It includes, but is not limited to, billboard, radio, television, mail, electronic mail, publications, banners, table skirts, magazines, social media, websites and other forms of publication, dissemination, display or communication.

3 (b) “Agent” means any volunteer or employee, contractual or permanent, serving at the discretion of a public official or public employee.

4 (c) “Educational materials” means publications, guides, calendars, handouts, pamphlets, reports or booklets intended to provide information about the public official or governmental office. It includes information or details about the office, services the office provides to the public, updates on laws and services and other informational items that are intended to educate the public.

5 (d) “Instructional material” means written instructions explaining or detailing steps for completion of a governmental agency document or form.

6 (e) “Likeness” means a photograph, drawing or other depiction of an individual.
(f) “Mass media communication” means communication through audio, visual, or other media tools, including U.S. mail, electronic mail, and social media, intended for general dissemination to the public. Examples include mass mailing by U.S. mail, list-serve emails and streaming clips on websites. It does not include: (i) Regular responses to constituent requests or questions during the normal course of business; or (ii) communications that are authorized or required by law to be publicly disseminated, such as legal notices.

(g) “Public employee” means any full-time or part-time employee of any state, or political subdivision of the state, and their respective boards, agencies, departments and commissions, or in any other regional or local governmental agency.

(h) “Public official” means any person who is elected or appointed to any state, county or municipal office or position, including boards, agencies, departments and commissions, or in any other regional or local governmental agency.

(i) “Public payroll” means payment of public monies as a wage or salary from the state, or political subdivision of the state, or any other regional or local governmental agency, whether accepted or not.

(j) “Social media” means forms of electronic communication through which users create online communities to share information, ideas, personal messages and other content. It includes web and mobile-based technologies which are used to turn communication to interactive dialogue among organizations, communities and individuals. Examples include, but are not limited to, Facebook, MySpace, Twitter and YouTube.

(k) “Trinkets” means items of tangible personal property that are not vital or necessary to the duties of the public official’s or public employee’s office, including, but not limited to, the
following: magnets, mugs, cups, key chains, pill holders, band-aid dispensers, fans, nail files, matches and bags.

§6B-2B-2. Limitations on a public official from using his or her name or likeness.

(a) Trinkets. — Public officials, their agents, or anyone on public payroll may not place the public official’s name or likeness on trinkets paid for with public funds: Provided, That when appropriate and reasonable, public officials may expend a minimal amount of public funds for the purchase of pens, pencils or other markers to be used during ceremonial signings.

(b) Advertising. — (1) Public officials, their agents, or anyone on public payroll may not use public funds, including funds of the office held by the public official, public employees, or public resources to distribute, disseminate, publish or display the public official’s name or likeness for the purpose of advertising to the general public.

(2) Notwithstanding the prohibitions in subdivision (1) of this subsection, the following conduct is not prohibited:

(A) A public official’s name and likeness may be used in a public announcement or mass media communication when necessary, reasonable and appropriate to relay specific public safety, health or emergency information.

(B) A public official’s name and likeness may appear on an agency’s social media and website provided it complies with section three of this article.

(C) Dissemination of office press releases or agency information via email, social media or other public media tools for official purposes is not considered advertising or prohibited under this subsection, if it: (i) Is intended for a legitimate news or informational purpose; (ii) is not intended as a means of
promotion of the public official; and (iii) is not being used as educational material.

(3) Banners and table skirts are considered advertising and may not include the public official’s name or likeness.

(4) Nothing in this article shall be interpreted as prohibiting public officials from using public funds to communicate with constituents in the normal course of their duties as public officials if the communications do not include any reference to voting in favor of the public official in an election.

(c) Vehicles. — Public officials, their agents, or any person on public payroll may not use or place the public official’s name or likeness on any publicly owned vehicles.

(d) Educational Materials. — A public official’s name or likeness may not be placed on any educational material that is paid for with public funds: Provided, That this prohibition does not apply to the submission of a report required to be issued by law.

§6B-2B-3. Limitations on promotion through social media.

(a) A public official’s name and likeness may appear on a public agency’s website and social media subject to the following restrictions:

(1) The public official’s name may appear throughout the website if it is reasonable, incidental, appropriate and has a primary purpose to promote the agency’s mission and services rather than to promote the public official.

(2) The public official’s likeness may only appear on the agency’s website home page and on any pages or sections devoted to biographical information regarding the public official.
(3) The public official’s name and likeness may appear on the agency’s social media if it is reasonable, incidental, appropriate and has a primary purpose to promote the agency’s mission and services rather than to promote the public official.

(b) This section does not apply to personal or non-public agency social media accounts.

(c) A public agency’s website or social media may not provide links or reference to a public official’s or public employee’s personal or campaign social media or website.

§6B-2B-4. Exceptions to use of name or likeness.

(a) A public official may use his or her name or likeness on any official record or report, letterhead, document or certificate or instructional material issued in the course of his or her duties as a public official: Provided, That other official documents used in the normal course of the agency, including, but not limited to, facsimile cover sheets, press release headers, office signage and envelopes may include the public official’s name: Provided, however, That if the official documents are reproduced for distribution or dissemination to the public as educational material, the items are subject to the prohibitions in subsection (d), section two of this article.

(b) When appropriate and reasonable, the West Virginia Division of Tourism may use a public official’s name and likeness on material used for tourism promotion.

(c) The prohibitions contained in this article do not apply to any person who is employed as a member of the faculty, staff, administration, or president of a public institution of higher education and who is engaged in teaching, research, consulting, coaching, recruiting or publication activities: Provided, That the activity is approved as a part of an employment contract with the
governing board of the institution of higher education or has been approved by the employee’s department supervisor or the president of the institution by which the faculty or staff member is employed.

(d) The prohibitions contained in section two of this article do not apply to a public official’s campaign-related expenditures or materials.

(e) The prohibitions contained in section two of this article do not apply to items paid for with the public official’s personal money.

(f) The prohibitions contained in section two of this article do not apply to items or materials required by law to contain the public official’s name or likeness.

§6B-2B-5. Existing items as of the effective date.

(a) If a public official, public employee or public agency possesses items or materials in contravention of this rule or section five-c, article two of this chapter that were purchased prior to the effective date, the public official, public employee or public agency may not continue to distribute, disseminate, communicate or display publicly these items or materials.

(b) Notwithstanding the prohibition in subsection (a) of this section,

(1) Materials may be used publicly if the public official’s name or likeness are permanently removed or covered: Provided, That a public official’s name or likeness may be covered with a sticker, be marked out or obliterated in any other manner;

(2) The public agency may use the items or materials for internal use if they are not publicly distributed, disseminated, communicated or displayed; and
§6B-2B-6. Allowance for exemption.

1 If any of the prohibitions contained in this article create an
2 undue hardship or will cause significant financial impact upon
3 the public agency to bring existing material, vehicles or items
4 into compliance with this article, the public agency may seek a
5 written exemption from the West Virginia Ethics Commission.
6 In any request, the Ethics Commission shall make public the
7 name of public agency seeking the exemption, along with the
8 affected public official, if any.

CHAPTER 114

(Com. Sub. S. B. 474 - By Senators Boso, Ashley,
Facemire, Miller, Snyder, Takubo, Trump and Plymale)

[Passed March 8, 2016; in effect ninety days from passage.]
[Approved by the Governor on March 16, 2016.]

AN ACT to amend and reenact §5A-3-3 of the Code of West Virginia,
1931, as amended, relating to exempting Department of
Environmental Protection’s construction or reclamation contracts
from review and approval requirements of the Division of
Purchasing.

Be it enacted by the Legislature of West Virginia:

That §5A-3-3 of the Code of West Virginia, 1931, as amended, be
amended and reenacted to read as follows:
ARTICLE 3. PURCHASING DIVISION.

§5A-3-3. Powers and duties of Director of Purchasing.

The director, under the direction and supervision of the secretary, is the executive officer of the Purchasing Division and has the power and duty to:

1. Direct the activities and employees of the Purchasing Division;

2. Ensure that the purchase of or contract for commodities and services are based, whenever possible, on competitive bid;

3. Purchase or contract for, in the name of the state, the commodities, services and printing required by the spending units of the state government;

4. Apply and enforce standard specifications established in accordance with section five of this article as hereinafter provided;

5. Transfer to or between spending units or sell commodities that are surplus, obsolete or unused as hereinafter provided;

6. Have charge of central storerooms for the supply of spending units as the director considers advisable;

7. Establish and maintain a laboratory for the testing of commodities and make use of existing facilities in state institutions for that purpose as hereinafter provided as the director considers advisable;

8. Suspend the right and privilege of a vendor to bid on state purchases when the director has evidence that the vendor has violated any of the provisions of the purchasing law or the rules and regulations of the director;
(9) Examine the provisions and terms of every contract entered into for and on behalf of the State of West Virginia that impose any obligation upon the state to pay any sums of money for commodities or services and approve the contract as to such provisions and terms; and the duty of examination and approval herein set forth does not supersede the responsibility and duty of the Attorney General to approve the contracts as to form: Provided, That the provisions of this subdivision do not apply in any respect whatever to construction or repair contracts entered into by the Division of Highways of the Department of Transportation or to construction or reclamation contracts entered into by the Department of Environmental Protection: Provided, however, That the provisions of this subdivision do not apply in any respect whatsoever to contracts entered into by the University of West Virginia Board of Trustees or by the Board of Directors of the State College System, except to the extent that such boards request the facilities and services of the director under the provisions of this subdivision: Provided further, That the provisions of this subdivision do not apply to the West Virginia State Police Forensic Laboratory and the West Virginia Office of Laboratory Services;

(10) Assure that the specifications and descriptions in all solicitations are prepared so as to provide all potential suppliers-vendors who can meet the requirements of the state an opportunity to bid and to assure that the specifications and descriptions do not favor a particular brand or vendor. If the director determines that any such specifications or descriptions as written favor a particular brand or vendor or if it is decided, either before or after the bids are opened, that a commodity or service having different specifications or quality or in different quantity can be bought, the director may rewrite the solicitation and the matter shall be rebid; and

(11) Issue a notice to cease and desist to a spending unit when the director has credible evidence that a spending unit has
AN ACT to amend and reenact §5A-6-2 of the Code of West Virginia, 1931, as amended, relating to information technology projects under Office of Technology; and raising minimum dollar value for information technology project to qualify as major information technology project.

Be it enacted by the Legislature of West Virginia:

That §5A-6-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 6. OFFICE OF TECHNOLOGY.

§5A-6-2. Definitions.

1 As used in this article:

2 (a) “Information systems” means computer-based information equipment and related services designed for the automated transmission, storage, manipulation and retrieval of data by electronic or mechanical means;
“Information technology” means data processing and telecommunications hardware, software, services, supplies, personnel, maintenance, training and includes the programs and routines used to employ and control the capabilities of data processing hardware;

“Information equipment” includes central processing units, front-end processing units, minicomputers, microprocessors and related peripheral equipment, including data storage devices, networking equipment, services, routers, document scanners, data entry equipment, terminal controllers, data terminal equipment and computer-based word processing systems other than memory typewriters;

“Related services” includes feasibility studies, systems design, software development and time-sharing services whether provided by state employees or others;

“Telecommunications” means any transmission, emission or reception of signs, signals, writings, images or sounds of intelligence of any nature by wire, radio or other electromagnetic or optical systems. The term includes all facilities and equipment performing those functions that are owned, leased or used by the executive agencies of state government;

“Chief Technology Officer” means the person holding the position created in section three of this article and vested with authority to oversee state spending units in planning and coordinating information systems that serve the effectiveness and efficiency of the state and individual state spending units and further the overall management goals and purposes of government;

“Technical infrastructure” means all information systems, information technology, information equipment, telecommunications and related services as defined in this section;
(h) “Information technology project” means the process by which telecommunications, automated data processing, databases, the Internet, management information systems and related information, equipment, goods and services are planned, procured and implemented;

(i) “Major information technology project” means any information technology project estimated to cost more than $250,000. Major information technology projects do not include equipment-only or software-only purchases in which labor is not necessary; and

(j) “Steering committee” means an internal agency oversight committee established jointly by the Chief Technology Officer and the agency requesting the project, which shall include representatives from the Office of Technology and at least one representative from the agency requesting the project.
That §5A-4-5 of the Code of West Virginia, 1931, as amended, be repealed; and that said code be amended by adding thereto a new section, designated §5A-10-3a, to read as follows:

ARTICLE 10. REAL ESTATE DIVISION.

§5A-10-3a. Regulation of parking on state-owned or leased property in Charleston; creation of fund.

(a) The Real Estate Division may regulate the parking of motor vehicles in accordance with the provisions of this section with regard to the following state-owned property in the city of Charleston, Kanawha County:

(1) The east side of Greenbrier Street between Kanawha Boulevard and Washington Street, East;

(2) The west side of California Avenue between Kanawha Boulevard and Washington Street, East;

(3) The state-owned or leased grounds upon which state office buildings number one through twenty and the Laidley Field Complex are located; and

(4) Any other property now or hereafter owned or leased by the state or any of its agencies and used for parking purposes in conjunction with the State Capitol or any state office buildings.

(b) The Real Estate Division is authorized to collect fees for parking pursuant to subsection (a) of this section. The fees shall be deposited into a special revenue fund to be known as the Parking Lots Operating Fund within the State Treasury. Expenditures from the fund are authorized from collections. The fund may only be used in a manner consistent with this article and in accordance with the provisions of article three, chapter twelve and article two, chapter eleven-b of this code. Any balance remaining in the Special Revenue Fund at the end of any fiscal year does not revert to the General Revenue Fund, but
remains in the Special Revenue Fund. All costs and expenses incurred pursuant to this section, including administrative, shall be paid from those funds.

(c) The secretary shall propose legislative rules pursuant to article three, chapter twenty-nine-a of this code relating to parking and to allocate parking spaces to public officers and employees of the state upon all of the property set forth in subsection (a) of this section: Provided, That notwithstanding this or any other provision of law to the contrary, during sessions of the Legislature, including regular, extended, extraordinary and interim sessions, and any other times designated by the Speaker of the House of Delegates and the President of the Senate, parking on the east side of Greenbrier Street between Kanawha Boulevard and Washington Street, East, in the Culture Center parking lot, on the north side of Kanawha Boulevard between Greenbrier Street and California Avenue, on the west side of California Avenue between Kanawha Boulevard and Washington Street, East, in the parking lot on the east side of California Avenue across from the loading dock entrance and any other areas designated by a joint policy of the Speaker of the House of Delegates and the President of the Senate shall be managed and controlled by the Legislature. Any person parking any vehicle contrary to this section or the rules promulgated under authority of this subsection is subject to a fine as established by rule of the secretary. In addition, a designee of the secretary or the Legislature, as the case may be, may cause the removal, immobilization or other remedy considered necessary, at owner expense, of any vehicle that is parked in violation of the rules or the joint policy between the Speaker of the House of Delegates and the President of the Senate. Magistrates in Kanawha County have jurisdiction over all the offenses under this section.

(d) The secretary, the Speaker of the House of Delegates and the President of the Senate may employ persons as may be
necessary to enforce the parking rules as provided for under the provisions of this section.

(e) The Parking Garage Fund, created in the former section five, article four of this chapter, is continued in the Department of Administration as a special fund consisting of funds that are appropriated and funds from other sources to be used for the construction and maintenance of a parking garage on the State Capitol Complex.

CHAPTER 117

(Com. Sub. for S. B. 575 - By Senator Blair)

[Passed March 9, 2016; in effect ninety days from passage.]
[Approved by the Governor on March 23, 2016.]

AN ACT to amend and reenact §5A-10-5 of the Code of West Virginia, 1931, as amended, relating to the Real Estate Division; and providing that any contract or lease in the name of the state for office space which requires the landlord or owner of the premises to provide for or contract for cleaning or janitorial services shall not also require the owner or landlord of the premises to use any particular person, firm or company to provide the cleaning or janitorial services.

Be it enacted by the Legislature of West Virginia:

That §5A-10-5 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 10. REAL ESTATE DIVISION.
§5A-10-5. Selection of grounds, etc.; acquisition by contract or lease; long-term leases.

(a) The executive director has sole authority to select and to acquire by contract or lease, in the name of the state, all grounds, buildings, office space or other space, the rental of which is necessarily required by any spending unit, upon a certificate from the chief executive officer or his or her designee of said spending unit that the grounds, buildings, office space or other space requested is necessarily required for the proper function of said spending unit, that the spending unit will be responsible for all rent and other necessary payments in connection with the contract or lease and that satisfactory grounds, buildings, office space or other space is not available on grounds and in buildings now owned or leased by the state: Provided, That any such contract or lease of office space which provides that the landlord or owner of the office space be responsible for providing for, or the contracting for, cleaning or janitorial services shall not also require the owner or landlord of the premises to use any particular person, firm or company to provide the cleaning or janitorial services.

(b) The executive director shall, before executing any rental contract or lease, determine the fair rental value for the rental of the requested grounds, buildings, office space or other space, in the condition in which they exist and shall contract for or lease said premises at a price not to exceed the fair rental value thereof.

(c) The executive director may enter into long-term agreements for buildings, land and space for periods longer than one fiscal year: Provided, That such long-term lease agreements are not for periods in excess of forty years, except that the secretary may, in the case of the Adjutant General’s department, enter into lease agreements for a term of fifty years or a specific term of more than fifty years so as to comply with federal
regulatory requirements and shall contain, in substance, all the following provisions:

(1) That the Department of Administration, as lessee, has the right to cancel the lease without further obligation on the part of the lessee upon giving thirty days’ written notice to the lessor, such notice being given at least thirty days prior to the last day of the succeeding month;

(2) That the lease shall be considered canceled without further obligation on the part of the lessee if the State Legislature or the federal government should fail to appropriate sufficient funds therefor or should otherwise act to impair the lease or cause it to be canceled; and

(3) That the lease shall be considered renewed for each ensuing fiscal year during the term of the lease unless it is canceled by the Department of Administration before the end of the then current fiscal year.

CHAPTER 118

(S. B. 439 - By Senators Hall and Plymale)

[Passed March 8, 2016; in effect ninety days from passage.]
[Approved by the Governor on March 21, 2016.]

AN ACT to amend and reenact §11B-2-27 of the Code of West Virginia, 1931, as amended, relating to approval of requisitions for payment of personal services by budget director; and exceptions.

Be it enacted by the Legislature of West Virginia:

That §11B-2-27 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:
ARTICLE 2. STATE BUDGET OFFICE.

§11B-2-27. Expenditure of appropriations — Payment of personal services.

A requisition for the payment of personal services shall, upon receipt by the director of the budget, be checked against the personnel schedule of the spending unit making the requisition. The director shall approve a requisition for personal services only if the amounts requested are in accordance with the personnel schedule of the spending unit: Provided, That the director of the budget is not required to verify or approve requisitions for the payment of personal services for any spending unit that does not participate in the human resource payroll module of the West Virginia Enterprise Resource Planning System as set forth in section one, article six-d, chapter twelve of this code.

CHAPTER 119

(Com. Sub. for S. B. 594 - By Senators Prezioso, Plymale and Gaunch)

[Passed March 3, 2016; in effect ninety days from passage.] [Approved by the Governor on March 8, 2016.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §12-3-10g, relating to requiring the State Auditor to consider for payment a claim submitted by an electronically generated invoice.

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 §12-3-10g, to read as follows:
ARTICLE 3. APPROPRIATIONS, EXPENDITURES AND DEDUCTIONS.

§12-3-10g. Acceptance by Auditor for payment of a claim submitted by electronically generated invoices.

1. The State Auditor may consider an agency-generated electronic invoice as an original invoice pursuant to section ten of this article and any applicable rules approved thereto if the invoice contains the vendor name, vendor address, invoice number, invoice date, invoice amount, description of the items purchased or services provided, purchase order number and contract number, where applicable, and date of service provided or goods received: Provided, That agency-generated computer invoices may be considered for payment only if the agency has an established financial system which has been subjected to a financial audit by the Legislative Auditor or by an independent certified public accountant, duly licensed and in good standing.

CHAPTER 120

(H. B. 4351 - By Delegates Westfall, Atkinson, Butler, Ihle, Cadle, B. White, Hamrick and McCuskey)

[Passed March 10, 2016; in effect July 1, 2016.]
[Approved by the Governor on March 24, 2016.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §18-2-16b, relating to transferring the Cedar Lakes Camp and Conference Center from the West Virginia Board of Education to the Department of Agriculture.
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 §18-2-16b, to read as follows:

ARTICLE 2. STATE BOARD OF EDUCATION.

§18-2-16b. State camp and conference center; property transferred; powers and duties of Commissioner of Agriculture.

(a) Effective July 1, 2016, the state camp and conference center, known as the Cedar Lakes Camp and Conference Center and its facilities, authorized to be owned and operated by the West Virginia Board of Education under sections sixteen and sixteen-a, article two, chapter eighteen of this code is transferred to the Department of Agriculture. All real and personal property held by the West Virginia Board of Education, including all operating funds for the operations of the camp and conference center, and all employees of the West Virginia Board of Education primarily dedicated to those operations, are transferred to the Department of Agriculture, at their existing hourly rate and with all accrued benefits. All employees shall become will and pleasure employees in accordance with section four, article six, chapter twenty-nine of the code of West Virginia, and are exempt from coverage by classified service. The Commissioner of the Department of Agriculture is given all those powers, duties and responsibilities relating to the state camp and conference center previously vested in the West Virginia Board of Education and its Division of Vocational Education.

(b) All active full-time, permanent employees transferred to the Department of Agriculture pursuant to subsection (a) shall participate in the Public Employees Retirement System beginning July 1, 2016. Notwithstanding the provisions of article ten, chapter five of this code, employees transferred pursuant to
this section shall be considered a member of the Public
Employees Retirement System as of their original date of hire
with the Cedar Lake Camp and Conference Center.

(c) The Consolidated Public Retirement Board shall transfer
assets and service credit from the Teachers Retirement System
Trust Fund into the Public Employees Retirement System Trust
Fund for those employees who were members in the Teachers
Retirement System no later than December 30, 2016. The
amount of service credit recognized by the Teachers Retirement
System as of June 30, 2016 for the transferring employees shall
be the service credit transferred and recognized by the Public
Employees Retirement System.

The amount of assets to be transferred for each employee
who is a member of the Teachers Retirement System shall be
computed as of July 1, 2016, using the July 1, 2015, actuarial
valuation of the Teachers Retirement System, and updated with
seven and one-half percent annual interest to the date of the
actual asset transfer. The market value of the assets of the
transferring employees in the Teachers Retirement System shall
be determined as of the end of the month preceding the actual
transfer. To determine the computation of the asset share to be
transferred, the Consolidated Public Retirement Board shall:

(1) Compute the market value of the Teachers Retirement
System assets as of the July 1, 2015, actuarial valuation date
under the actuarial valuation approved by the Consolidated
Public Retirement Board;

(2) Compute the actuarial accrued liabilities for all Teachers
Retirement System retirees, beneficiaries, disabled retirees and
terminated inactive members as of the July 1, 2015, actuarial
valuation date;

(3) Compute the market value of active member assets in the
Teachers Retirement System as of July 1, 2015, by reducing the
assets value under subdivision (1) of this subsection by the inactive liabilities under subdivision (2) of this subsection;

(4) Compute the actuarial accrued liability for all active Teachers Retirement System members as of the July 1, 2015, actuarial valuation date approved by the Consolidated Public Retirement Board;

(5) Compute the funded percentage of the active members’ actuarial accrued liabilities under the Teachers Retirement System as of July 1, 2015, by dividing the active members’ market value of assets under subdivision (3) of this subsection by the active members’ actuarial accrued liabilities under subdivision (4) of this subsection;

(6) Compute the actuarial accrued liabilities under the Teachers Retirement System as of July 1, 2015, for active employees transferring to the Public Employees Retirement System; and

(7) Determine the assets to be transferred from the Teachers Retirement System to the Public Employees Retirement System by multiplying the active members’ funded percentage determined under subdivision (5) of this subsection by the transferring active members’ actuarial accrued liabilities under the Teachers Retirement System under subdivision (6) of this subsection and adjusting the asset transfer amount by interest at seven and five-tenths percent for the period from the calculation date of July 1, 2015, through the first day of the month in which the asset transfer is to be completed.

(d) Once an employee transfers from the Teachers Retirement System to the Public Employees Retirement System, the Teachers Retirement System shall bar any further liability and the transfer is an agreement whereby the transferring employee forever indemnifies and holds harmless the Teachers
Retirement System from providing him or her any form of retirement benefit whatsoever until that employee obtains other employment which would make him or her eligible to reenter the Teachers Retirement System with no credit whatsoever for the amounts transferred to the Public Employees Retirement System.

(e) Assets for employees who are members in the Teachers Defined Contribution System pursuant to article seven-b, chapter eighteen, shall remain invested in his or her Teachers Defined Contribution retirement account until termination of employment with the Department of Agriculture.

CHAPTER 121

(Com. Sub. for H. B. 2852 - (By Delegates Hamrick, Trecost, Zatezalo, Waxman and E. Nelson)

[Passed March 8, 2016; in effect from passage.]
[Approved by the Governor on April 1, 2016.]

AN ACT to repeal §29-3-23, §29-3-24, §29-3-25 and §29-3-26 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new article, designated §29-3E-1, §29-3E-2, §29-3E-3, §29-3E-4, §29-3E-5, §29-3E-6, §29-3E-7, §29-3E-8, §29-3E-9, §29-3E-10, §29-3E-11, §29-3E-12, §29-3E-13 and §29-3E-14; and to amend and reenact §61-3E-1 and §61-3E-11 of said code, all relating to the regulation of fireworks generally; relocating certain existing provisions relating to sparkling devices, novelties and toy guns, including penalties for certain violations; raising funds for veterans’ assistance and volunteer fire departments; authorizing sale of consumer fireworks on and after June 1, 2016; defining “consumer fireworks”; establishing regulatory framework for sale of fireworks; defining terms;
Be it enacted by the Legislature of West Virginia:

That §29-3-23, §29-3-24, §29-3-25 and §29-3-26 of the Code of West Virginia, 1931, as amended, be repealed; that said code be amended by adding a new article, designated §29-3E-1, §29-3E-2, §29-3E-3, §29-3E-4, §29-3E-5, §29-3E-6, §29-3E-7, §29-3E-8, §29-3E-9, §29-3E-10, §29-3E-11, §29-3E-12, §29-3E-13 and §29-3E-14; and that §61-3E-1 and §61-3E-11 of said code be amended and reenacted, all to read as follows:

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

ARTICLE 3E. FIREWORKS SAFETY.

§29-3E-1. Unlawful acts.

It is unlawful for a person to manufacture, wholesale, distribute, import, sell or store for the purpose of resale, consumer fireworks, sparkling devices, novelties or toy caps without a license, registration, certificate or permit from the State Fire Marshal.

§29-3E-2. Definitions.

As used in this article:

(1) “Agricultural and wildlife fireworks” means fireworks devices distributed to farmers, ranchers and growers through a wildlife management program administered by the United States Department of the Interior or the Division of Natural Resources of this state;
(2) “Amusement park” means any person or organization which holds a permit for the operation of an amusement ride or amusement attraction under article ten, chapter twenty-one of this code;

(3) “APA Standard 87-1” means the APA Standard 87-1 published by the American Pyrotechnics Association, as amended, and incorporated by reference into Title 49 of the Code of Federal Regulations;

(4) “Articles pyrotechnic” means pyrotechnic devices for professional use that are similar to consumer fireworks in chemical composition and construction but not intended for consumer use, that meet the weight limits for consumer fireworks but are not labeled as such, and that are classified as UN0431 or UN0432 under 49 C.F.R. §172.101 (2014);

(5) “Consumer fireworks” means small fireworks devices that are designed to produce visible effects by combustion that are required to comply with the construction, chemical composition and labeling regulations promulgated by the United States Consumer Product Safety Commission under 16 C.F.R. Parts 1500 and 1507 (2014), and that are listed in APA Standard 87-1. Consumer fireworks do not include sparkling devices, novelties, toy caps or model rockets;

(6) “Consumer fireworks certificate” means a certificate issued under section five of this article;

(7) “Display fireworks” means large fireworks to be used solely by professional pyro-technicians licensed by the State Fire Marshal and designed primarily to produce visible or audible effects by combustion, deflagration or detonation and includes, but is not limited to, salutes containing more than two grains (one hundred thirty milligrams) of explosive materials, aerial shells containing more than forty grams of pyrotechnic
compositions and other display pieces that exceed the limits of explosive materials for classification as consumer fireworks and are classified as fireworks UN0333, UN0334, or UN0335 under 49 C.F.R. §172.101 (2014);

(8) “Distributor” means a person who sells fireworks to wholesalers and retailers for resale;

(9) “Division 1.3 explosive” means that term as defined in 49 C.F.R. §173.50 (2014);

(10) “Division 1.4 explosive” means that term as defined in 49 C.F.R. §173.50 (2014);

(11) “Explosive composition” means a chemical or mixture of chemicals that produces an audible effect by deflagration or detonation when ignited;

(12) “Fire Marshal” means the State Fire Marshal;

(13) “Firework” or “fireworks” means any composition or device designed for the purpose of producing a visible or audible effect by combustion, deflagration or detonation. Fireworks include consumer fireworks, display fireworks and special effects. Fireworks does not include sparkling devices, novelties, toy caps or model rockets;

(14) “Interstate wholesaler” means a person who is engaged in interstate commerce selling fireworks;

(15) “Model rocket” means that term as defined in National Fire Protection Association Standard 1122, “Code for Model Rocketry”;  

(16) “New explosive” means that term as defined in 49 C.F.R. §173.56 (2014);


(20) “Novelties” means that term as defined under APA standard 87-1, section 3.2; but shall not include toy pistols, toy caps, toy canes, toy guns or other similar devices;

(21) “Permanent” means that term as defined in NFPA 1124;

(22) “Person” means an individual or the responsible person for an association, an organization, a partnership, a limited partnership, a limited liability company, a corporation or any other group or combination acting as a unit;

(23) “Public display of fireworks” means a public entertainment feature that is advertised to the general public or is on public property that includes the display or discharge of fireworks;

(24) “Pyrotechnic composition” means a mixture of chemicals that produces a visible or audible effect by combustion rather than deflagration or detonation. A pyrotechnic composition will not explode upon ignition unless severely confined;

(25) “Retailer” means a person who purchases consumer fireworks for resale to consumers;

(26) “Sparkling devices” means “ground or handheld sparkling devices” as that phrase is defined under APA 87-1, sections 3.1.1 and 3.5;
(27) “Special effects” means a combination of chemical elements or chemical compounds capable of burning independently of the oxygen of the atmosphere and designed and intended to produce an audible, visual, mechanical or thermal effect as an integral part of a motion picture, radio, television, theatrical or opera production or live entertainment;

(28) “Temporary” means that term as defined in NFPA 1124;

(29) “Toy caps” means that term as defined under APA 87-1, section 3.3; and

(30) “Wholesaler” means any person who sells consumer fireworks to a retailer or any other person for resale and any person who sells articles of pyrotechnics, display fireworks, and special effects to a person licensed to possess and use those devices.

§29-3E-3. Production or transportation of fireworks.

A person may produce or transport a firework that is a new explosive and that is either a division 1.3 explosive or division 1.4 explosive if the person first meets the requirements of 49 C.F.R. §173.56(2)(j) (2014).

§29-3E-4. Sparkling devices and novelties registration required.

(a) A person may not sell sparkling devices or novelties without being registered with the State Fire Marshal.

(b) To be registered with the State Fire Marshal, the person shall:

1. Submit an application to the State Fire Marshal;

2. Provide a copy of his or her current business registration certificate or his or her certificate to sell sparklers and novelties issued by the State Tax Commissioner;
(3) Pay the required fee; and

(4) Provide other information as the State Fire Marshal may require by legislative rule.

(c) A registration is valid for the calendar year or any fraction thereof and expires on December 31 of each year.

(d) A registration is not transferable.

(e) A person shall post the registration in a conspicuous place at the location of the business.

(f) A separate registration is required for each location.

(g) The fee required in subdivision (3), subsection (b) of this section shall be $15.00 per retail location.

(h) The fee assessed by this section shall be retained by the State Fire Marshal and expended to offset costs incurred in performing the duties imposed by the provisions of this code.

§29-3E-5. Consumer fireworks certificate required.

(a) A retailler may not sell consumer fireworks unless the retailer is certified under this article.

(b) To be certified to sell consumer fireworks a retailer shall:

(1) Submit an application to the State Fire Marshal;

(2) Submit with the application a copy of his or her current business registration certificate;

(3) Pay a fee of $500.00 for each temporary retail sales location and $1000.00 for each permanent retail sales location to the State Fire Marshal;
(4) Provide the State Fire Marshal proof that the retailer maintains at all times public liability and product liability insurance with minimum coverage limits of $1 million dollars to cover losses, damages or injuries that might result from selling consumer fireworks; and

(5) Provide other information as the State Fire Marshal may require by legislative rule.

(c) A consumer fireworks certificate is valid from April 1 through March 31 of the next calendar year.

(d) A consumer fireworks certificate is not transferable.

(e) A retailer shall post the certificate in a conspicuous place at the location of the business.

(f) A separate certificate is required for each location of the business.

(g) A certificate holder may also sell sparkling devices and novelties at the same location without additionally obtaining a sparkling devices and novelties registration.

(h) A retailer who sells consumer fireworks shall comply with the regulations provided in NFPA 1124.

(i) A retailer who sells consumer fireworks shall comply with all regulations provided in NFPA 1124. The State Fire Marshal may by legislative rule, promulgate rules to supplement those rules established in NFPA 1124.

(j) A retailer shall sell the consumer fireworks only from a permanent building or structure that meets the specifications in NFPA 1124 or a temporary facility or structure that meets the specifications of NFPA 1124.7.3.5.

(k) Any fees collected pursuant to this section shall be deposited in the State Fire Marshal Fees Fund established by the
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provisions of section twelve-b, article three, chapter twenty-nine of this code.

(l) Notwithstanding any provision of this article to the contrary, no retailer may offer consumer fireworks for sale before June 1, 2016.

§29-3E-6. Required permit for public fireworks display.

(a) Any municipality, county, fair association, amusement park or other organization shall have a permit to present a public display of fireworks from the State Fire Marshal.

(b) To receive a permit, a municipality, fair association, amusement park, or other organization shall:

(1) Submit an application to the State Fire Marshal;

(2) Pay the required fee not to exceed $50.00;

(3) Furnish proof of financial responsibility to satisfy claims for damages to property or personal injuries arising out of any act or omission on the part of the person or an employee thereof, in the amount, character and form as the State Fire Marshal determines to be necessary for the protection of the public; and

(4) Provide any other information as the State Fire Marshal may require by legislative rule.

(c) The State Fire Marshal shall require the municipality, county, fair association, amusement park and other organizations to give written notice to the local police and fire authorities at least five days prior to the display for which the permit is sought.

(d) A permit is not transferable.

(e) The display shall be operated by a competent operator licensed or certified as to competency by the State Fire Marshal and shall be of such composition, character, and so located,
discharged or fired so as to be safe in the opinion of the chief of
the fire department serving the community or area where such
display is being held.

(f) The permittee shall require a bond from the licensee in a
sum not less than $1,000 conditioned on compliance with the
provisions of this article and the rules of the State Fire Marshal
except where the licensee is an insured government entity.

(g) Any fees collected pursuant to this section shall be
deposited in the State Fire Marshal Fees Fund established by the
provisions of section twelve-b, article three, chapter twenty-nine
of this code.

§29-3E-7. Fireworks safety fee; administration; tax crimes;
collections; remittances; deposits; distributions;
rules.

(a) In addition to the sales tax, a fireworks safety fee of
twelve percent of all sales is levied on retail sales of consumer
fireworks in this state. The fee shall be distributed pursuant to
the provisions of this subsection. The fee computation under this
subsection shall be carried to the third decimal place, and the fee
rounded up to the next whole cent whenever the third decimal
place is greater than four, and rounded down to the lower whole
cent whenever the third decimal place is four or less.

The State Tax Commissioner shall disburse all proceeds of
the fireworks safety fee into the state treasury each month in the
following manner:

(1) Seventy-five percent shall be deposited into a special
account in the State Treasury, designated the Veterans’ Facility
Support Fund established by the provisions of section eleven,
article one, chapter nine-a for expenditure on veterans’
programs.
(2) Twenty-five percent shall be deposited into a special account in the State Treasury, designated the Fire Protection Fund established in section thirty-three, article three, chapter thirty-three of this code and distributed in accordance with that section to each volunteer fire company or department on an equal share basis by the State Treasurer.

(b) A person who purchases consumer fireworks in a retail transaction shall pay to the retailer the amount of the fee levied by this section, which fee is added to and constitutes a part of the sale price, and is collectible by the retailer who shall account to the state for all fees paid by a purchaser. If the retailer fails to collect the fee, or fails to account to the state for the fees paid by a purchaser, then the retailer is liable for the payment of the fee to the state.

(c) A retailer shall remit to the State Tax Commissioner no later than thirty days after the end of each preceding month all moneys collected for such preceding month, pursuant to the requirements of this section, and shall report such collections on forms and in the manner prescribed by the State Tax Commissioner.

(d) All moneys so remitted, net of refunds and adjustments, shall be paid by the State Tax Commissioner into the funds specified in this section.

(e) Each and every provision of the West Virginia Tax Crimes and Penalties Act set forth in article nine, chapter eleven of this code applies to the fees imposed pursuant to this article, with like effect as if that act were applicable only to the fees imposed by this article and were set forth in extenso in this article.

(f) The State Tax Commissioner shall propose legislative rules and may promulgate such emergency rules as are necessary to implement the provisions of this article.

(a) The State Fire Marshal may promulgate emergency rules and shall propose legislative rules for promulgation, in accordance with the provisions of article three, chapter twenty-nine-a of this code, to implement the provisions of this article, including:

(1) Adopting by reference the most recent edition of APA Standard 87-1;

(2) Adopting by reference the most recent edition of NFPA 1123, Code for Fireworks Display;

(3) Adopting by reference NFPA 1124, code for the manufacture, transportation, storage and retail sales of fireworks and pyrotechnic articles;

(4) Adopting by reference the most recent edition of NFPA 1126, standard for the use of pyrotechnics before a proximate audience;

(5) Procedures for the issuance and renewal of a registration, certificate and permit;

(6) A fee schedule;

(7) Establishing insurance or bond requirements;

(8) Establishing additional criteria for the granting of a registration, certificate, or permit under this article; and

(9) Registration of manufacturers, wholesalers and distributors.


This article does not prohibit any of the following:
(1) The use of fireworks by railroads or other transportation agencies for signaling purposes or illumination;

(2) The use of agricultural and wildlife fireworks;

(3) The sale or use of blank cartridges for a theatrical performance, use by military organizations or signal or ceremonial purposes in athletics or sports; or

(4) The possession, sale or disposal of fireworks incidental to the public display of fireworks by wholesalers or other persons who have a permit to possess, store and sell explosives from the Bureau of Alcohol, Tobacco, Firearms, and Explosives of the United States Department of Justice and the State Fire Marshal.

§29-3E-10. Local municipalities’ regulation of consumer fireworks.

This article does not affect the authority of the governing body of a municipality to prohibit or regulate the use of consumer fireworks within its boundaries.

§29-3E-11. Violations of this article; penalties.

(a) A person may not intentionally ignite, discharge or use consumer fireworks on public or private property without the express permission of the owner to do so.

(b) A person may not intentionally ignite or discharge any consumer fireworks or sparkling devices within or throw the same from a motor vehicle or building.

(c) A person may not intentionally ignite or discharge any consumer fireworks or sparkling devices into or at a motor vehicle or building, or at any person or group of people.

(d) A person may not intentionally ignite or discharge any consumer fireworks or sparkling device while the person:
(1) Is under the influence of alcohol;

(2) Is under the influence of any controlled substance;

(3) Is under the influence of any other drug; or

(4) Is under the combined influence of alcohol and any controlled substance or any other drug.

(e) A person who is less than eighteen years of age may not purchase, nor offer for sale, consumer fireworks.

(f) The provisions of this section shall be effective June 1, 2016.

§29-3E-12. Miscellaneous offenses; penalties.

Any person who violates a provision of this article for which a penalty is not expressly set forth is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $100.00 nor more than $500.00. The provisions of this section shall be effective June 1, 2016.

§29-3E-13. Seizures by the State Fire Marshal; enforcement of law.

(a) The State Fire Marshal shall seize, take, remove and dispose of at public auction or destroy, or cause to be seized, taken or removed and disposed of at public auction, or destroyed at the expense of the owner, all stocks of fireworks or combustibles offered for sale, stored or held in violation of this article or an emergency or legislative rule promulgated hereunder.

(b) The West Virginia State Police, deputy sheriffs, municipal police officers and other law-enforcement officers shall assist in the enforcement of this article.
§29-3E-14. Reporting requirements; duration of reporting requirements.

Annually, on or before January 15, 2017, 2018 and 2019:

(1) The State Treasurer shall submit to the President of the Senate and the Speaker of the House of Delegates a report detailing the amount of revenue received and deposited from the Fireworks Safety Fee into the Fire Safety Fund authorized by section seven of this article and the distribution of said funds;

(2) The Secretary of Veterans’ Assistance shall supply the President of the Senate and Speaker of the House of Delegates with a report detailing the revenue received from the Fireworks Safety Fee and deposited in the Veterans’ Facility Support Fund and the purposes for which the money was expended;

(3) The State Tax Commissioner shall provide to the President of the Senate and Speaker of the House of Delegates a report detailing the revenue received from the sales tax received from the sale of fireworks authorized by the provisions of the article and revenue received from the Fireworks Safety Fee authorized by section seven of this article; and

(4) The State Fire Marshal shall submit to the President of the Senate and Speaker of the House of Delegates a report detailing the amounts of revenue received from the registration fees imposed pursuant to the provisions of section five of this article, the purposes for which the fees were expended and the adequacy of the fees received in relation to the duties required of the office.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 3E. OFFENSES INVOLVING EXPLOSIVES.

§61-3E-1. Definitions.

As used in this article, unless the context otherwise requires:
(a) “Destructive device” means any bomb, grenade, mine, rocket, missile, pipebomb or similar device containing an explosive, incendiary, explosive gas or expanding gas which is designed or so constructed as to explode by such filler and is capable of causing bodily harm or property damage; any combination of parts, either designed or intended for use in converting any device into a destructive device and from which a destructive device may be readily assembled.

“Destructive device” does not include a firearm as such is defined in section two, article seven of this chapter, or sparkling devices, novelties, toy caps, model rockets and their components or fireworks as these terms are defined in section two, article three-e, chapter twenty-nine of this code, or high power rockets and their components, as defined in this section.

(b) “Explosive material” means any chemical compound, mechanical mixture or device that is commonly used or can be used for the purpose of producing an explosion and which contains any oxidizing and combustive units or other ingredients in such proportions, quantities or packaging that an ignition by fire, by friction, by concussion, by percussion, by detonator or by any part of the compound or mixture may cause a sudden generation of highly heated gases. These materials include, but are not limited to, powders for blasting, high or low explosives, blasting materials, blasting agents, blasting emulsions, blasting fuses other than electric circuit breakers, detonators, blasting caps and other detonating agents and black or smokeless powders not manufactured or used for lawful sporting purposes. Also included are all explosive materials listed annually by the office of the State Fire Marshal and published in the State Register, said publication being hereby mandated.

(c) “High power rocket” means the term as defined in National Fire Protection Association Standard 1127, “Code for High Power Rocketry.”
(d) “Hoax bomb” means any device or object that by its design, construction, content or characteristics appears to be, or is represented to be or to contain a destructive device, explosive material or incendiary device as defined in this section, but is, in fact, an inoperative facsimile or imitation of such a destructive device, explosive material or incendiary device.

(e) “Incendiary device” means a container containing gasoline, kerosene, fuel oil, or derivative thereof, or other flammable or combustible material, having a wick or other substance or device which, if set or ignited, is capable of igniting such gasoline, kerosene, fuel oil, or derivative thereof, or other flammable or combustible material: Provided, That no similar device commercially manufactured and used solely for the purpose of illumination shall be deemed to be an incendiary device.

(f) “Legal authority” means that right as expressly stated by statute or law.

(g) “Model rocket” means the term as defined in National Fire Protection Association Standard 1122, “Code for Model Rocketry.”

(h) “Person” means an individual, corporation, company, association, firm, partnership, society or joint stock company.

(i) “Storage magazine” is defined to mean any building or structure, other than an explosives manufacturing building, approved by the legal authority for the storage of explosive materials.


(a) Unless specifically prohibited by any provision of this code or the laws of the United States, nothing in this article
prohibits the authorized manufacture, sale, transportation, distribution, use or possession of any explosive material by any person holding a permit for such issued by the office of the State Fire Marshal. Any person performing a lawful activity pursuant to or regulated by the terms of a permit issued by the Division of Environmental Protection, or any office thereof, is exempt from the provisions of this article.

(b) Unless specifically prohibited by any other provision of this code or the laws of the United States, nothing in this section prohibits the authorized manufacture, transportation, distribution, use or possession of any explosive, destructive device or incendiary device by a member of the armed forces or law-enforcement officers whenever such persons are acting lawfully and in the line of duty; nor shall it prohibit the manufacture, transportation, distribution, use or possession of any explosive material, destructive device or incendiary device to be used solely for lawful scientific research or lawful educational purposes. Any person engaged in otherwise lawful blasting activities failing to obtain a permit or in possession of an expired permit issued by the office of the State Fire Marshal is not in violation of the article.

(c) Nothing contained in this article applies to sparkling devices or novelties or to the sale, purchase, possession, use, transportation or storage of fireworks as regulated in article three-e, chapter twenty-nine of this code.
AN ACT to amend and reenact §29B-1-2 and §29B-1-4 of the Code of West Virginia, 1931, as amended, all relating to law-enforcement officers’ personal information; defining terms; and adding personal information of law-enforcement officers and certain family members of law-enforcement officers maintained by the public body in the ordinary course of the employer-employee relationship to the list of exemptions from public records requests.

Be it enacted by the Legislature of West Virginia:

That §29B-1-2 and §29B-1-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 1. PUBLIC RECORDS.

§29B-1-2. Definitions.

1 As used in this article:

2 (1) “Custodian” means the elected or appointed official charged with administering a public body.

3 (2) “Law-enforcement officer” shall have the same definition as this term is defined in W.Va. Code §30-29-1: Provided, That for purposes of this article, “law-enforcement officer” shall additionally include those individuals defined as “chief executive” in W.Va. Code §30-29-1.
(3) “Person” includes any natural person, corporation, partnership, firm or association.

(4) “Public body” means every state officer, agency, department, including the executive, legislative and judicial departments, division, bureau, board and commission; every county and city governing body, school district, special district, municipal corporation, and any board, department, commission council or agency thereof; and any other body which is created by state or local authority or which is primarily funded by the state or local authority.

(5) “Public record” includes any writing containing information prepared or received by a public body, the content or context of which, judged either by content or context, relates to the conduct of the public’s business.

(6) “Writing” includes any books, papers, maps, photographs, cards, tapes, recordings or other documentary materials regardless of physical form or characteristics.

§29B-1-4. Exemptions.

(a) There is a presumption of public accessibility to all public records, subject only to the following categories of information which are specifically exempt from disclosure under the provisions of this article:

(1) Trade secrets, as used in this section, which may include, but are not limited to, any formula, plan pattern, process, tool, mechanism, compound, procedure, production data or compilation of information which is not patented which is known only to certain individuals within a commercial concern who are using it to fabricate, produce or compound an article or trade or a service or to locate minerals or other substances, having commercial value, and which gives its users an opportunity to obtain business advantage over competitors;
(2) Information of a personal nature such as that kept in a personal, medical or similar file, if the public disclosure of the information would constitute an unreasonable invasion of privacy, unless the public interest by clear and convincing evidence requires disclosure in this particular instance: Provided, That this article does not preclude an individual from inspecting or copying his or her own personal, medical or similar file;

(3) Test questions, scoring keys and other examination data used to administer a licensing examination, examination for employment or academic examination;

(4) Records of law-enforcement agencies that deal with the detection and investigation of crime and the internal records and notations of such law-enforcement agencies which are maintained for internal use in matters relating to law enforcement;

(5) Information specifically exempted from disclosure by statute;

(6) Records, archives, documents or manuscripts describing the location of undeveloped historic, prehistoric, archaeological, paleontological and battlefield sites or constituting gifts to any public body upon which the donor has attached restrictions on usage or the handling of which could irreparably damage the record, archive, document or manuscript;

(7) Information contained in or related to examination, operating or condition reports prepared by, or on behalf of, or for the use of any agency responsible for the regulation or supervision of financial institutions, except those reports which are by law required to be published in newspapers;

(8) Internal memoranda or letters received or prepared by any public body;
(9) Records assembled, prepared or maintained to prevent, mitigate or respond to terrorist acts or the threat of terrorist acts, the public disclosure of which threaten the public safety or the public health;

(10) Those portions of records containing specific or unique vulnerability assessments or specific or unique response plans, data, databases and inventories of goods or materials collected or assembled to respond to terrorist acts; and communication codes or deployment plans of law-enforcement or emergency response personnel;

(11) Specific intelligence information and specific investigative records dealing with terrorist acts or the threat of a terrorist act shared by and between federal and international law-enforcement agencies, state and local law-enforcement and other agencies within the Department of Military Affairs and Public Safety;

(12) National security records classified under federal executive order and not subject to public disclosure under federal law that are shared by federal agencies and other records related to national security briefings to assist state and local government with domestic preparedness for acts of terrorism;

(13) Computing, telecommunications and network security records, passwords, security codes or programs used to respond to or plan against acts of terrorism which may be the subject of a terrorist act;

(14) Security or disaster recovery plans, risk assessments, tests or the results of those tests;

(15) Architectural or infrastructure designs, maps or other records that show the location or layout of the facilities where computing, telecommunications or network infrastructure used
to plan against or respond to terrorism are located or planned to
be located;

(16) Codes for facility security systems; or codes for secure
applications for facilities referred to in subdivision (15) of this
subsection;

(17) Specific engineering plans and descriptions of existing
public utility plants and equipment;

(18) Customer proprietary network information of other
telecommunications carriers, equipment manufacturers and
individual customers, consistent with 47 U.S.C. §222;

(19) Records of the Division of Corrections, Regional Jail
and Correctional Facility Authority and the Division of Juvenile
Services relating to design of corrections, jail and detention
facilities owned or operated by the agency, and the policy
directives and operational procedures of personnel relating to the
safe and secure management of inmates or residents, that if
released, could be used by an inmate or resident to escape a
facility, or to cause injury to another inmate, resident or to
facility personnel;

(20) Information related to applications under section four,
article seven, chapter sixty-one of this code, including
applications, supporting documents, permits, renewals, or any
other information that would identify an applicant for or holder
of a concealed weapon permit: Provided, That information in the
aggregate that does not identify any permit holder other than by
county or municipality is not exempted: Provided, however, That
information or other records exempted under this subdivision
may be disclosed to a law enforcement agency or officer: (i) to
determine the validity of a permit, (ii) to assist in a criminal
investigation or prosecution, or (iii) for other lawful
law-enforcement purposes; and
(21) Personal information of law-enforcement officers maintained by the public body in the ordinary course of the employer-employee relationship. As used in this paragraph, “personal information” means a law-enforcement officer’s social security number, health information, home address, personal address, personal telephone numbers and personal email addresses and those of his or her spouse, parents and children as well as the names of the law-enforcement officer’s spouse, parents and children.

(b) As used in subdivisions (9) through (16), inclusive, subsection (a) of this section, the term “terrorist act” means an act that is likely to result in serious bodily injury or damage to property or the environment and is intended to:

(1) Intimidate or coerce the civilian population;

(2) Influence the policy of a branch or level of government by intimidation or coercion;

(3) Affect the conduct of a branch or level of government by intimidation or coercion; or

(4) Retaliate against a branch or level of government for a policy or conduct of the government.

(c) The provisions of subdivisions (9) through (16), inclusive, subsection (a) of this section do not make subject to the provisions of this chapter any evidence of an immediate threat to public health or safety unrelated to a terrorist act or the threat of a terrorist act which comes to the attention of a public entity in the course of conducting a vulnerability assessment response or similar activity.
CHAPTER 123


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

AN ACT to repeal §18B-1E-1, §18B-1E-2, §18B-1E-3 and §18B-1E-4 of the Code of West Virginia, 1931, as amended; and to amend and reenact §18B-1C-1 and §18B-1C-2 of said code, all relating to the West Virginia University Institute of Technology; finding that there is a need to maintain the valuable educational services provided by the West Virginia University Institute of Technology; finding that there are continued enrollment and facilities issues facing the West Virginia University Institute of Technology in Montgomery, West Virginia; finding that the West Virginia University Institute of Technology, West Virginia University, Marshall University, Concord University, Bluefield State College, and other public and private partners should collaborate; requiring collaboration and encouraging agreements with local governments near Montgomery; clarifying provisions relating to the West Virginia University Institute of Technology Board of Visitors; eliminating the requirement that the headquarters of the West Virginia Institute of Technology remain in Montgomery, West Virginia; providing for a program review and approval process; requiring meetings between West Virginia University, West Virginia Institute of Technology, Concord University, and Bluefield State College; eliminating outdated provisions; and repealing provisions relating to the West Virginia University Institute of Technology Revitalization Project.
Be it enacted by the Legislature of West Virginia:

That §18B-1E-1, §18B-1E-2, §18B-1E-3 and §18B-1E-4 of the Code of West Virginia, 1931, as amended, be repealed; and that §18B-1C-1 and §18B-1C-2 of said code be amended and reenacted, to read as follows:

ARTICLE 1C. WEST VIRGINIA UNIVERSITY INSTITUTE OF TECHNOLOGY.

§18B-1C-1. Legislative findings and intent.

(a) The Legislature recognizes that:

(1) West Virginia University Institute of Technology is a vital part of higher education in West Virginia and has a rich and distinguished history of more than one hundred and twenty years of providing important educational opportunities that needs to continue;

(2) The engineering program at West Virginia University Institute of Technology plays a significant role in the continued success of the students at the institution and of the state as a whole;

(3) Facilities at West Virginia University Institute of Technology in Montgomery are in greater disrepair and in greater need of overall capital investment than are facilities at West Virginia University;

(4) In 2009, the Legislative Auditor completed a report stating that the facilities in Montgomery included a number of aging buildings with significant structural, heating, and cooling problems, and that the location of the West Virginia University Institute of Technology offered few enhancements to the quality of student life;
(5) In 2011, the Legislature commissioned a study and report seeking to revitalize the West Virginia University Institute of Technology, and the report concluded that the West Virginia Institute of Technology needed to increase its enrollment from 1,100 to 1,800 and concluded that unless the State of West Virginia, West Virginia University, or other sources could commit to “a $5 million to $7 million investment for each of the next five years, the revitalization legislation of 2011 will be seen merely as an exercise in futility”;

(6) West Virginia University has for many years deployed revenues generated from its campus in Morgantown to subsidize the operations and capital improvements needed for its campus in Montgomery;

(7) Although the state, the Higher Education Policy Commission, and West Virginia University have made investments in the operations and facilities of the West Virginia University Institute of Technology in Montgomery, the facilities in Montgomery need significant additional capital investment to be suitable to attract a sufficient number of students seeking a world-class, four-year higher education;

(8) The state lacks sufficient resources to address the issues facing the facilities and enrollment issues in Montgomery, and in recent years has reduced appropriations for all institutions of higher education;

(9) In 2014, Mountain State University decided to sell its assets, including its campus in Beckley, West Virginia and West Virginia University was offered the opportunity to negotiate for and ultimately purchased the campus in Beckley, West Virginia in the summer of 2015;

(10) To help ensure the continued viability and vitality of West Virginia University Institute of Technology, West Virginia
University has proposed relocating the institution to the newly-acquired campus in Beckley, West Virginia;

(11) The Higher Education Policy Commission has approved a proposal by West Virginia University and the West Virginia University Institute of Technology to offer courses on the Beckley Campus;

(12) West Virginia University, the West Virginia University Institute of Technology, Bluefield State College, and Concord University have entered into an agreement to collaborate as equal partners to maximize course offerings, reduce program duplication, and better serve the students of southeastern West Virginia.

(13) West Virginia University has offered economic, community development, and related assistance to the City of Montgomery, City of Smithers, the County Commission of Kanawha County, and the County Commission of Fayette County.

(14) Collaboration between the engineering and engineering technology programs of West Virginia University Institute of Technology, West Virginia University, Marshall University, Bluefield State College and other private partners as appropriate would:

(A) Lead to a greater understanding and knowledge of engineering research;

(B) Lead to greater opportunities for students to engage in research; and

(C) Result in greater opportunities for participating students to find gainful employment in future research or to continue graduate level research and study.
(b) It is the intent of the Legislature that collaboration: (1) occur among West Virginia University Institute of Technology, West Virginia University, Marshall University, Concord University, Bluefield State College, and appropriate public and private entities to provide significant education opportunities to students in a manner that optimizes courses and program offerings, reduces and minimizes program duplication, and creates efficiencies in program delivery and expenses while at the same time respecting the value and independence and accreditation requirements separately of Concord University, Bluefield State College, West Virginia Institute of Technology, and West Virginia University; and (2) among West Virginia University Institute of Technology, West Virginia University, the County Commission of Kanawha County, the County Commission of Fayette County, the City of Smithers, and the City of Montgomery, should it elect to do so.

(c) It is specifically the intent of the Legislature that:

(1) The baccalaureate engineering program offered at the West Virginia University Institute of Technology be and remain a permanent component of its curriculum;

(2) Collaboration in engineering and other appropriate programs shall occur among West Virginia University Institute of Technology, West Virginia University, Marshall University, Concord University, Bluefield State College and the West Virginia School of Osteopathic Medicine and appropriate private entities; and

(3) The West Virginia University Board of Governors continue to monitor and take appropriate steps necessary to address faculty salary levels. In considering the issue of faculty salary levels, the board may consider the unique mission of the division and the performance expectations for faculty in meeting the goals of the institution.
§18B-1C-2. West Virginia University Institute of Technology; division of West Virginia University.

(a) West Virginia University Institute of Technology is a fully integrated division of West Virginia University. All administrative and academic units are consolidated with primary responsibility for direction and support assigned to West Virginia University. The campus president of the West Virginia University Institute of Technology shall appoint a board of visitors and the board of visitors shall provide guidance to the division in fulfilling its mission. The chairperson of the board of visitors serves as an ex-officio, voting member of the West Virginia University Board of Governors.

(b) The fully integrated division is named West Virginia University Institute of Technology.

(c) The provisions of this section do not affect the independent accreditation or continued operation of The BridgeValley Community and Technical College. The BridgeValley Community and Technical College is an independent community and technical college administered by its own governing board under the jurisdiction and authority of the council and is subject to all applicable provisions of this chapter and chapter eighteen-c of this code.

(d) Auxiliary enterprises shall be incorporated into the West Virginia University auxiliary enterprise system. The West Virginia University Board of Governors shall determine if operations at West Virginia University Institute of Technology can be operated on a self-sufficient basis when establishing rates for auxiliary services and products.

(e) West Virginia University Institute of Technology has a strong reputation in engineering and other scientific disciplines. These programs shall be maintained, cultivated and emphasized further as its sustaining mission over the next decade.
(f) By November 1, 2006, and annually thereafter for a period of four years, the West Virginia University Board of Governors shall prepare and submit a report to the commission and Legislative Oversight Commission on Education Accountability on progress being made to implement the provisions of this article.

(g) West Virginia University Institute of Technology shall develop or maintain baccalaureate degree programs as a permanent component of its curriculum.

(h) Until such time as West Virginia University no longer owns assets, other than assets of de minimis value, in Montgomery and the Upper Kanawha Valley, the university shall continue to collaborate with the County Commission of Kanawha County, the County Commission of Fayette County, the City of Smithers and the City of Montgomery, should it elect to do so, and each entity is authorized and encouraged to enter into agreements designed to foster economic and community redevelopment for Montgomery and the Upper Kanawha Valley.

(i) Notwithstanding the provisions of paragraph a, subdivision four, subsection b, section four, article one-b of this chapter, West Virginia University and West Virginia University Institute of Technology, as it relates to providing academic programming at the Beckley campus, shall be subject to academic program review and approval of the commission pursuant to subdivision four, subsection b, section four, article one-b of this chapter, including complying with series eleven of title one hundred thirty-three of the rules of the Higher Education Policy Commission, relating to academic program review and approval, including, but not limited to, the provisions relating to offering new programming in Beckley or offering existing programming in Beckley that is already offered by West Virginia University at a location other than Beckley: Provided, That the provisions of this subsection do not apply to the
programs that the Higher Education Policy Commission approved on or before December 31, 2015, for offerings by West Virginia University at the West Virginia University Institute of Technology at the Beckley campus.

(j) Prior to seeking approval with the Chancellor or Commission as required by the provisions of subsection (i) of this section, West Virginia University or the West Virginia University Institute of Technology, as appropriate, shall offer to meet with representatives of Bluefield State College and Concord University to determine whether collaborative opportunities exist relating to the proposed offering requiring approval.

(k) The presidents of Concord University, Bluefield State College, and West Virginia Institute of Technology shall meet at least quarterly to discuss the collaborative efforts contemplated by this article and the collaborative agreement, including assessing and reviewing the progress made on collaborative efforts, or at such other times as agreed to by all of the presidents of the referenced institutions.

CHAPTER 124

(Com. Sub. for H. B. 4322 - By Mr. Speaker (Mr. Armstead), and Delegate Miley)

[By Request of the Executive]

[Passed March 8, 2016; in effect ninety days from passage.]

[Approved by the Governor on March 16, 2016.]

AN ACT to amend and reenact §18B-3D-1 and §18B-3D-4 of the Code of West Virginia, 1931, as amended, all relating to the Workforce
Development Initiative Program; revising the purposes for which certain funding is provided under program; removing condition upon which certain equipment may be sold, disposed of or used; and eliminating exception to dollar-for-dollar grant funding match from private sector partners.

Be it enacted by the Legislature of West Virginia:

That §18B-3D-1 and §18B-3D-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 3D. WORKFORCE DEVELOPMENT INITIATIVE.

§18B-3D-1. Legislative findings and intent.

(a) The Legislature finds that a recent statewide study of the workforce training needs of employers throughout the state provided a clear message from the business community:

(1) The needs of employers are rapidly changing and training providers must be more responsive or the state economy will suffer;

(2) Information specific to West Virginia, once again emphasizes the critical link between education and economic development that empowering youth and adults with the knowledge and skills they need to succeed in the competitive work world also results in a workforce which enables businesses and communities to prosper;

(3) Although employers are generally satisfied with the quality of the West Virginia workforce and the study provides additional support that the measures adopted in the Jobs Through Education Act will bring continued improvement, workforce needs are not static, critical skill shortages currently exist, and the establishment of a workforce development system that responds more quickly to the evolving skill requirements of employers is needed.
(b) The Legislature further finds that a study of community and technical education in West Virginia performed by the national center for higher education management systems called attention to problems in providing needed workforce education and found that there is a need to:

(1) Jump-start development of community and technical college and post-secondary workforce development initiatives;

(2) Provide incentives for existing public post-secondary providers to respond jointly to both short and long-term needs of employers and other clients;

(3) Provide funding for explicit incentives for partnerships between employers and public post-secondary institutions to develop comprehensive community and technical college and workforce development services; and

(4) Allocate funds competitively on the basis of proposals submitted by providers.

(c) It is further the intent of the Legislature that the granting of funds under this article will promote the development of comprehensive community and technical colleges as set forth in article three-c of this chapter.

(d) It is the intent of the Legislature through the grant of funds under this article to provide limited seed money to address some of the specific areas where improvement is needed, including, but not limited to:

(1) Improving employer awareness and access to services available through the state’s education institutions;

(2) Providing designated professionals and resources to support workforce education through the state’s education institutions;
50 (3) Increasing the capacity of the state’s education
51 institutions to respond rapidly to employer needs for workforce
52 education and training on an on-going basis through the
53 development of a client-focused, visible point of contact for
54 program development and delivery, service referral and needs
55 assessment, such as a workforce development center; and
56
57 (4) Maximizing the use of available resources for workforce
58 education and training through partnerships with public
59 vocational, technical and adult education centers and private
60 training providers.
61
62 (e) It is further the intent of the Legislature that
63 consideration and partnering opportunities be given to small
64 businesses on an equal basis with larger businesses for the
65 purposes of this article and that the seed money will assist
66 providers in becoming self-sustaining through partnerships with
67 business and industry which will include cost-sharing initiatives
68 and fees charged for the use of services.
69
70 (f) The Legislature intends that grants of funds made under
71 the provisions of this article will be competitive among
72 applicants who meet all of the criteria established in this article
73 and such other criteria as may be specified by the Development
74 Office. Subject to the availability of funds, more than one
75 competition may be held during the same fiscal year and the
76 dollar range of awards granted in successive competitions shall
77 be prorated based on the number of months remaining in the
78 fiscal year. Subject to annual review and justification, it is the
79 intent of the Legislature to renew grant awards made under this
80 article each year for not more than five years following the
81 initial grant award.

§18B-3D-4. Grant application procedures.

(a) In order to participate in the workforce development
initiative grant program, a community and technical college shall
meet the following conditions:
(1) Participate in a community and technical college consortia planning district as required by article three-c of this chapter. Consortia representatives participate in the development of and approve applications for funding grants under the provisions of this article and approve the workforce development initiative budget;

(2) Develop, as a component of its institutional compact, a plan to achieve measurable improvements in the quality of the workforce within its service area over the period covered by the compact. The plan is developed in partnership with employers, local vocational schools and other workforce education providers; and

(3) Establish a special revolving fund under the jurisdiction of the community and technical college dedicated solely to workforce development initiatives for the purposes provided in this article. Any fees or revenues generated from workforce development initiatives funded by a competitive grant are deposited into this fund.

(b) To be eligible to receive a workforce development initiative grant, a community and technical college shall provide at least the following information in its application:

(1) Identification of the specific business or business sector training needs that will be met if a workforce development initiative grant is received;

(2) A commitment from the private or public sector partner or partners to provide a match of $1, cash and in-kind, for each dollar of state grant money received: Provided, That the commitment required by this subdivision may be provided by a public sector partner using state or federal dollars to provide the required match if funding for this initiative in the fiscal year exceeds $650,000 in which case, one-half the amount exceeding $650,000 may be granted using a public sector match;
(3) An agreement to share with other community and technical colleges any curricula developed using funds from a workforce development initiative grant;

(4) A specific plan showing how the community and technical college will collaborate with local post-secondary vocational institutions to maximize the use of existing facilities, personnel and equipment; and

(5) An acknowledgment that acceptance of a grant under the provisions of this article commits the community and technical college and its consortia committee to such terms, conditions and deliverables as specified by the council in the request for applications, including, but not limited to, the measures by which the performance of the workforce development initiative will be evaluated.

(c) Applications submitted by community and technical colleges may be awarded funds for programs which meet the requirements of this article that are operated on a collaborative basis at facilities under the jurisdiction of the public schools and utilized by both secondary and post-secondary students..

CHAPTER 125

(Com. Sub. for S. B. 6 - By Senators Ferns, Carmichael, Gaunch, Takubo, Trump, Prezioso, Stollings, Plymale, Blair, Karnes and Sypolt)

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

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §9-3-6, relating to drug
screening for applicants of benefits from the Temporary Assistance for Needy Families Program; requiring drug testing of applicants for whom there is reasonable suspicion of substance abuse; creating pilot program; setting forth an effective date; defining terms; providing basis for reasonable suspicion of drug use; requiring participation in substance abuse treatment, counseling and job skills program with adverse drug test; precluding assistance for refusal to take drug test; establishing administrative review of decisions to deny benefits; providing mechanism for dependent children to receive benefits if parent is deemed ineligible; setting forth prohibition from benefits for adverse drug test; requiring investigation by Child Protective Services upon adverse drug test; setting forth procedure for reapplication for benefits; authorizing rulemaking by Department of Health and Human Resources; requiring results of drug screen or drug test remain confidential; providing for criminal penalties; requiring annual report to the Legislature; setting out elements of annual report; requiring federal approval of program; requiring secretary to modify program to meet any federal objections; and allowing for exceptions.

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 §9-3-6, to read as follows:

ARTICLE 3. APPLICATION FOR AND GRANTING OF ASSISTANCE.

§9-3-6. Pilot program for drug screening of applicants for cash assistance.

1 (a) As used in this section:

2 (1) “Applicant” means a person who is applying for benefits from the Temporary Assistance for Needy Families Program.
(2) “Board of Review” means the board established in subdivision (2), section six, article two, chapter nine of this code.

(3) “Caseworker” means a person employed by the department with responsibility for making a reasonable suspicion determination during the application process for Temporary Assistance for Needy Families.

(4) “Child Protective Services” means the agency within the department responsible for investigating reports of child abuse and neglect as required in section eight hundred two, article two, chapter forty-nine of this code.

(5) “Department” means the Department of Health and Human Resources.

(6) “Drug screen” or “drug screening” means any analysis regarding substance abuse conducted by the Department of Health and Human Resources on applicants for assistance from the Temporary Assistance for Needy Families program.

(7) “Drug test” or “drug testing” means a drug test which tests urine for Amphetamines (amphetamine and methamphetamine) Cocaine, Marijuana, Opiates (codeine and morphine), Phencyclidine, Barbiturates, Benzodiazepines, Methadone, Propoxyphene and Expanded Opiates (oxycodone, hydromorphone, hydrocodone, oxymorphone).

(8) “Secretary” means the secretary of the department or his or her designee.

(9) “Temporary Assistance for Needy Families Program” means assistance provided through ongoing cash benefits pursuant to 42 U. S. C. §601, et seq., operated in West Virginia as the West Virginia Works Program pursuant to article nine of this chapter.
(b) Subject to federal approval, the secretary shall implement and administer a three year pilot program to drug screen any adult applying for assistance from the Temporary Assistance for Needy Families Program. The secretary shall seek the necessary federal approval immediately following the enactment of this section and the program shall begin within sixty days of receiving federal approval.

(c) Reasonable suspicion exists if:

(1) A case worker determines, based upon the result of the drug screen, that the applicant demonstrates qualities indicative of substance abuse based upon the indicators of the drug screen; or

(2) An applicant has been convicted of a drug-related offense within the three years immediately prior to an application for Temporary Assistance for Needy Families Program and whose conviction becomes known as a result of a drug screen as set forth in this section.

(d) Presentation of a valid prescription for a detected substance that is prescribed by a health care provider authorized to prescribe a controlled substance is an absolute defense for failure of any drug test administered under the provisions of this section.

(e) Upon a determination by the case worker of reasonable suspicion as set forth in this section an applicant shall be required to complete a drug test. The cost of administering the drug test and initial substance abuse testing program is the responsibility of the Department of Health and Human Resources. Any applicant whose drug test results are positive may request that the drug test specimen be sent to an alternative drug-testing facility for additional drug testing. Any applicant who requests an additional drug test at an alternative drug-testing
facility shall be required to pay the cost of the alternative drug
test.

(f) Any applicant who has a positive drug test shall complete
a substance abuse treatment and counseling program and a job
skills program approved by the secretary. An applicant may
continue to receive benefits from the Temporary Assistance for
Needy Families program while participating in the substance
abuse treatment and counseling program or job skills program.
Upon completion of both a substance abuse treatment and
counseling program and a job skills program, the applicant is
subject to periodic drug screening and testing as determined by
the secretary in rule. Subject to applicable federal laws, any
applicant for Temporary Assistance for Needy Families program
who fails to complete, or refuses to participate in, the substance
abuse treatment and counseling program or job skills program as
required under this subsection is ineligible to receive Temporary
Assistance for Needy Families until he or she is successfully
enrolled in substance abuse treatment and counseling and job
skills programs. Upon a second positive drug test, an applicant
shall be ordered to complete a second substance abuse treatment
and counseling program and job skills program. He or she shall
be suspended from the Temporary Assistance for Needy
Families program for a period of twelve months, or until he or
she completes both a substance abuse treatment and counseling
program and a job skills program. Upon a third positive drug
test an applicant shall be permanently terminated from the
Temporary Assistance for Needy Families Program subject to
applicable federal law.

(g) Any applicant who refuses a drug screen or a drug test is
ineligible for assistance.

(h) The secretary shall order an investigation and home visit
from Child Protective Services on any applicant whose benefits
are suspended and who has not designated a protective payee or
whose benefits are terminated due to failure to pass a drug test. This investigation and home visit may include a face-to-face interview with the child, if appropriate; the development of a protection plan; and, if necessary for the health and well-being of the child, may also involve law enforcement. This investigation and home visit shall be followed by a report detailing recommended action which Child Protective Services shall undertake. Child Protective Services is responsible for providing, directing or coordinating the appropriate and timely delivery of services to any child who is the subject of any investigation and home visit conducted pursuant to this section. In cases where Child Protective Services determines that the best interests of the child requires court action, they shall initiate the appropriate legal proceeding.

(i) Any other adult members of a household that includes a person declared ineligible for the Temporary Assistance for Needy Families program pursuant to this section shall, if otherwise eligible, continue to receive Temporary Assistance for Needy Families benefits.

(j)(1) No dependent child’s eligibility for benefits under the Temporary Assistance for Needy Families program may be affected by a parent’s failure to pass a drug test.

(2) If pursuant to this section a parent is deemed ineligible for the Temporary Assistance for Needy Families program, the dependent child’s eligibility is not affected and an appropriate protective payee shall be designated to receive benefits on behalf of the child.

(3) The parent may choose to designate another person as a protective payee to receive benefits for the minor child. The designated person shall be an immediate family member, or if an immediate family member is not available or declines the option, another person may be designated.
(4) The secretary shall screen and approve the designated person.

(k)(1) An applicant who is determined by the secretary to be ineligible to receive benefits pursuant to subsection (f) of this section due to a failure to participate in a substance abuse treatment and counseling program or a job skills program who can later document successful completion of a drug treatment program approved by the secretary may reapply for benefits six months after the completion of the substance abuse treatment and counseling program or job skills program. An applicant who has met the requirements of this subdivision and reapplies is also required to submit to a drug test and is subject to the provisions of subsection (f) of this section.

(2) An applicant may reapply only once pursuant to the exceptions contained in this subsection.

(3) The cost of any drug screen or test and drug treatment provided under subsection (k) is the responsibility of the individual being screened and receiving treatment.

(l) An applicant who is denied assistance under this section may request a review of the denial by the Board of Review. The results of a drug screen or test are admissible without further authentication or qualification in the review of denial by the Board of Review and in any appeal. The Board of Review shall provide a fair, impartial and expeditious grievance and appeal process to applicants who have been denied Temporary Assistance for Needy Families pursuant to the provisions of this section. The Board of Review shall make findings regarding the denial of benefits and issue a decision which either verifies the denial or reverses the decision to deny benefits. Any applicant adversely affected or aggrieved by a final decision or order of the Board of Review may seek judicial review of that decision.
(m) The secretary shall ensure the confidentiality of all drug screen and drug test results administered as part of this program. Drug screen and test results shall be used only for the purpose of determining eligibility for the Temporary Assistance for Needy Families program. At no time may drug screen or test results be released to any public or private person or entity or any law-enforcement agency, except as otherwise authorized by this section.

(n) The secretary shall promulgate emergency rules pursuant to the provisions of article three, chapter twenty-nine-a to prescribe the design, operation and standards for the implementation of this section.

(o) A person who intentionally misrepresents any material fact in an application filed under the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than $100 nor more than $1,000 or by confinement in jail not to exceed six months, or by both fine and confinement.

(p) The secretary shall report to the Joint Committee on Government and Finance by December 31, 2016, and annually after that until the conclusion of the pilot program on the status of the federal approval and pilot program described in this section. The report shall include, but is not limited to:

(1) The total number of applicants who were deemed ineligible to receive benefits under the program due to a positive drug test for controlled substances;

(2) The number of applicants for whom there was a reasonable suspicion due to a conviction of a drug-related offense within the five years prior to an application for assistance;
(3) The number of those applicants that receive benefits after successful completion of a drug treatment program as specified in this section; and

(4) The total cost to operate the program.

(q) Should federal approval not be given for any portion of the program as set forth in this section, the secretary shall implement the program to meet the federal objections and continue to operate a three year pilot program consistent with the purpose of this section.

(r) For the purposes of the pilot program contained in this section, pursuant to the authority and option granted by 21 U. S. C. §862a(d)(1)(A) to the states, West Virginia hereby exempts all persons domiciled within the state from the application of 21 U. S. C. §862a(a).

CHAPTER 126

(S. B. 384 - By Senators Takubo and Stollings)

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

AN ACT to amend and reenact §9-5-12 of the Code of West Virginia, 1931, as amended, relating to requiring West Virginia Bureau for Medical Services seek federal waiver to provide for exemption from the thirty-day waiting period for a tubal ligation; and making stylistic changes.

Be it enacted by the Legislature of West Virginia:

That §9-5-12 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:
ARTICLE 5. MISCELLANEOUS PROVISIONS.

§9-5-12. Medicaid program; maternity and infant care.

(a) The Legislature finds that high rates of infant mortality and morbidity are costly to the state in terms of human suffering and of expenditures for long-term institutionalization, special education and medical care. It is well documented that appropriate care during pregnancy and delivery can prevent many of the expensive, disabling problems our children experience. There exists a crisis in this state relating to the availability of obstetrical services, particularly to patients in rural areas, and to the cost patients must pay for obstetrical services. The availability of obstetrical service for Medicaid patients enables these patients to receive quality medical care and to give birth to healthier babies and, consequently, improve the health status of the next generation.

The Legislature further recognizes that public and private insurance mechanisms remain inadequate, and poor women and children are among the most likely to be without insurance. Generally, low-income, uninsured children receive half as much health care as their insured counterparts. The state is now investing millions to care for sick infants whose deaths and disabilities could have been avoided.

It is the intent of the Legislature that the Department of Health and Human Resources participate in the Medicaid program for indigent children and pregnant women established by Congress under the Consolidated Omnibus Budget Reconciliation Act (COBRA), Public Law 99-272, the Sixth Omnibus Budget Reconciliation Act (SOBRA), Public Law 99-504, and the Omnibus Budget Reconciliation Act (OBRA), Public Law 100-203.

(b) The department shall:
(1) Extend Medicaid coverage to pregnant women and their newborn infants to one hundred fifty percent of the federal poverty level, effective July 1, 1988.

(2) As provided under COBRA, SOBRA and OBRA, effective July 1, 1988, infants shall be included under Medicaid coverage with all children eligible for Medicaid coverage born on or after October 1, 1983, whose family incomes are at or below one hundred percent of the federal poverty level and continuing until such children reach the age of eight years.

(3) Elect the federal options provided under COBRA, SOBRA and OBRA impacting pregnant women and children below the poverty level: Provided, That no provision in this article shall restrict the department in exercising new options provided by or to be in compliance with new federal legislation that further expands eligibility for children and pregnant women.

(4) The department shall be responsible for the implementation and program design for a maternal and infant health care system to reduce infant mortality in West Virginia. The health system design shall include quality assurance measures, case management and patient outreach activities. The department shall assume responsibility for claims processing in accordance with established fee schedules, and financial aspects of the program necessary to receive available federal dollars and to meet federal rules and regulations.

(5) Beginning July 1, 1988, the department shall increase to no less than $600 the reimbursement rates under the Medicaid program for prenatal care, delivery and post-partum care.

(c) In order to be in compliance with the provisions of OBRA, through rules and regulations the department shall ensure that pregnant women and children whose incomes are above the Aid to Families and Dependent Children (AFDC)
payment level are not required to apply for entitlements under the AFDC program as a condition of eligibility for Medicaid coverage. Further, the department shall develop a short, simplified pregnancy/pediatric application of no more than three pages, paralleling the simplified OBRA standards.

(d) Any woman who establishes eligibility under this section shall continue to be treated as an eligible individual without regard to any change in income of the family of which she is a member until the end of the sixty-day period beginning on the last day of her pregnancy.

(e) No later than July 1, 2016, the department shall seek a waiver of the requirements that all women seek thirty-day approval from the federal Center for Medicare and Medicaid Services prior to receiving a tubal ligation.

CHAPTER 127

(H. B. 4347 - By Delegates Ellington, Summers, Faircloth, Rohrbach, Sobonya, Stansbury, Storch, Upson, B. White and Frich)

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §9-5-24, relating to providing pregnant women priority to substance abuse treatment.

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, §9-5-24, to read as follows:
ARTICLE 5. MISCELLANEOUS PROVISIONS.

§9-5-24. Requiring substance abuse treatment providers to give pregnant woman priority access to services.

Substance abuse treatment or recovery service providers that accept Medicaid shall give pregnant women priority in accessing services and shall not refuse access to services solely due to pregnancy as long as the provider’s services are appropriate for pregnant women.

CHAPTER 128

(S. B. 462 - By Senators Cole (Mr. President), and Kessler)
[By Request of the Executive]

[Passed February 25, 2016; in effect from passage.]
[Approved by the Governor on March 2, 2016.]

AN ACT to amend and reenact §29-22-18d of the Code of West Virginia, 1931, as amended, relating to the West Virginia Infrastructure Fund; reducing the distributions to the West Virginia Infrastructure Fund to $30 million for fiscal year 2017 and increasing the percentage of funds available for grants therefrom.

Be it enacted by the Legislature of West Virginia:

That §29-22-18d of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 22. STATE LOTTERY ACT.

§29-22-18d. Increase in allocation to West Virginia Infrastructure Fund from State Excess Lottery Revenue Fund.
Notwithstanding any provision of subsection (d), section eighteen-a of this article to the contrary, the deposit of $40 million into the West Virginia Infrastructure Fund set forth above is for the fiscal year beginning July 1, 2010, only. For the fiscal year beginning July 1, 2011, and each fiscal year thereafter, in lieu of the deposits required under subdivision (5), subsection (d), section eighteen-a of this article, the commission shall, first, deposit $6 million into the West Virginia Infrastructure Lottery Revenue Debt Service Fund created in subsection (h), section nine, article fifteen-a, chapter thirty-one of this code, to be spent in accordance with the provisions of that subsection, and, second, deposit $40 million into the West Virginia Infrastructure Fund created in subsection (a), section nine, article fifteen-a, chapter thirty-one of this code, to be spent in accordance with the provisions of that article: Provided, That for the fiscal year beginning July 1, 2014, the deposit to the West Virginia Infrastructure Fund shall be $20 million: Provided, however, That notwithstanding the provisions of subsection (a), section ten, article fifteen-a, chapter thirty-one of this code, for the fiscal year beginning July 1, 2014, any moneys disbursed from the West Virginia Infrastructure Fund in the form of grants may not exceed fifty percent of the total funds available for the funding of projects: Provided further, That for the fiscal year beginning July 1, 2015, the deposit to the West Virginia Infrastructure Fund shall be $30 million: And provided further, That notwithstanding the provisions of subsection (a), section ten, article fifteen-a, chapter thirty-one of this code, for the fiscal year beginning July 1, 2015, any moneys disbursed from the West Virginia Infrastructure Fund in the form of grants may not exceed fifty percent of the total funds available for the funding of projects: And provided further, That for the fiscal year beginning July 1, 2016, the deposit to the West Virginia Infrastructure Fund shall be $30 million: And provided further, That notwithstanding the provisions of subsection (a), section ten, article fifteen-a, chapter thirty-one of this code, for the fiscal
36 year beginning July 1, 2016, any moneys disbursed from the West Virginia Infrastructure Fund in the form of grants may not exceed fifty percent of the total funds available for the funding of projects.

CHAPTER 129

(S. B. 351 - By Senators Cole (Mr. President), and Kessler)
[By Request of the Executive]

[Passed February 24, 2016; in effect ninety days from passage.]
[Approved by the Governor on March 2, 2016.]

AN ACT to amend and reenact §31-15A-16 of the Code of West Virginia, 1931, as amended, relating to dedication of severance tax proceeds to the West Virginia Infrastructure General Obligation Debt Service Fund; and specifying reduction of the amount of severance tax proceeds dedicated to the West Virginia Infrastructure General Obligation Debt Service Fund.

Be it enacted by the Legislature of West Virginia:

That §31-15A-16 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.


1 (a) There shall be dedicated an annual amount from the collections of the tax collected pursuant to article thirteen-a, chapter eleven of this code for the construction, expansion, rehabilitation, repair and improvement of water
supply and sewage treatment systems and for the acquisition,
preparation, construction and improvement of sites for economic
development in this state as provided in this article.

(b) Notwithstanding any other provision of this code to the
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: Provided further, That
subject to the conditions, limitations, exclusions and constraints
prescribed by subsection (c) of this section, beginning on July 1,
2015, 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 $22.5 million of the tax annually
collected pursuant to article thirteen-a, chapter eleven of this
code: And provided further, That subject to the conditions,
limitations, exclusions and constraints prescribed by subsection
(c) of this section, beginning on July 1, 2016, 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
an amount of the tax first collected in the fiscal year pursuant to
article thirteen-a, chapter eleven of this code, equal to the annual
debt service necessary to pay principal, and interest and to
ultimately retire bonds over their scheduled amortization life, in
accordance with the provisions of article fifteen-b of this
chapter. Such annual debt service amount shall be determined in
accordance with a debt amortization table to be published by the
Treasurer, not later than April 1, 2016, and subject to
amendment, from time to time, as the Treasurer considers
necessary. In no case may the amount so deposited in any fiscal
year exceed $22.25 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 shall remain
dedicated for the purposes set forth in said section.

(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.
AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §5-16-8a, relating to collection of air-ambulance fees for emergency treatment or air transportation rendered to persons covered by Public Employee Insurance Agency plans; allowing providers of air ambulance services not under contract with the Public Employees Insurance Agency to collect an amount up to the equivalent paid for federal reimbursement for services rendered to covered employees or dependents; and requiring providers of air ambulance services that enter into a subscription service agreement with employees or dependents covered by Public Employee Insurance Agency plans to accept the subscription fee as payment in full for services rendered.

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 §5-16-8a, to read as follows:

ARTICLE 16. WEST VIRGINIA PUBLIC EMPLOYEES INSURANCE ACT.

§5-16-8a. Air-ambulance fees.

(a) Notwithstanding any provision of this code to the contrary, any air-ambulance provider which does not have a
contract with the plan, that provides air transportation or related
emergency or treatment services to an employee or dependent of
an employee covered by the plan, may not collect from the plan
and the covered employee or dependent of the employee, a
combined amount for those services which exceeds the
reimbursement amount then in effect for the federal Medicare
program, including any applicable Geographic Practice Cost
Index.

(b) If an air-ambulance provider has entered into a
subscription service agreement with an employee or dependent
of an employee covered by the plan, and the employee or
dependent is in good standing with the agreement, the
air-ambulance provider shall accept the fee or cost of the
subscription service agreement as payment in full for any
air-ambulance transport and related emergency treatment or
services which the air-ambulance provider may provide to that
employee or dependent of an employee.

CHAPTER 131

(Com. Sub. for S. B. 330 - By Senators Gaunch and Boso)

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

AN ACT to amend and reenact §33-6A-1 of the Code of West
Virginia, 1931, as amended, relating to cancellation or nonrenewal
of automobile liability policies; providing restrictions on
cancellation of automobile liability insurance policy that has been
in effect for sixty days; excepting cancellations in the case of
renewals; specifying when an insurer may cancel an automobile
liability policy that has been in effect for sixty days; providing for
notice to insureds for certain cancellations or voiding of automobile insurance policies; specifying allowable methods of sending notices and content thereof; providing for thirty days’ notice to cancel automobile liability policy for certain reasons; providing exception to requirement of thirty days’ notice for nonpayment of premiums or installments of premiums; requiring fourteen days’ notice for cancellations due to nonpayment of premiums or installments of premiums; specifying when notice period begins to run and when payment deemed accomplished for purposes of making payment during fourteen day notice period for cancellation due to nonpayment of premiums or installments of premiums; providing for voidability of automobile liability insurance policy if initial payments of premiums or initial installments of premiums not made; and providing for ten-day notice that policy will be voided absent payment of amounts due under terms of policy when initial payment of premiums or initial installments of premiums not made.

Be it enacted by the Legislature of West Virginia:

That §33-6A-1 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 6A. CANCELLATION OR NONRENEWAL OF AUTOMOBILE LIABILITY POLICIES.

§33-6A-1. Cancellation prohibited except for specified reasons; notice.

1 (a) No insurer once having issued or delivered a policy providing automobile liability insurance for a private passenger automobile may, after the policy has been in effect for sixty days, or in case of renewal effective immediately, issue or cause to issue a notice of cancellation during the term of the policy except for one or more of the reasons specified in this section:

7 (1) The named insured fails to make payments of premium for the policy or any installment of the premium when due;
(2) The policy is obtained through material misrepresentation;

(3) The insured violates any of the material terms and conditions of the policy;

(4) The named insured or any other operator, either residing in the same household or who customarily operates an automobile insured under the policy:

(A) Has had his or her operator’s license suspended or revoked during the policy period including suspension or revocation for failure to comply with the provisions of article five-a, chapter seventeen-c of this code regarding consent for a chemical test for intoxication: Provided, That when a license is suspended for sixty days by the Commissioner of the Division of Motor Vehicles because a person drove a motor vehicle while under the age of twenty-one years with an alcohol concentration in his or her blood of two hundredths of one percent or more, by weight, but less than eight hundredths of one percent, by weight, pursuant to subsection (l), section two of said article, the suspension may not be grounds for cancellation; or

(B) Is or becomes subject to epilepsy or heart attacks and the individual cannot produce a certificate from a physician testifying to his or her ability to operate a motor vehicle; or

(5) The named insured or any other operator, either residing in the same household or who customarily operates an automobile insured under such policy, is convicted of or forfeits bail during the policy period for any of the following reasons:

(A) Any felony or assault involving the use of a motor vehicle;

(B) Negligent homicide arising out of the operation of a motor vehicle;
(C) Operating a motor vehicle while under the influence of alcohol or of any controlled substance or while having an alcohol concentration in his or her blood of eight hundredths of one percent or more, by weight;

(D) Leaving the scene of a motor vehicle accident in which the insured is involved without reporting it as required by law;

(E) Theft of a motor vehicle or the unlawful taking of a motor vehicle;

(F) Making false statements in an application for a motor vehicle operator’s license; or

(G) Three or more moving traffic violations committed within a period of twelve months, each of which results in three or more points being assessed on the driver’s record by the Division of Motor Vehicles, whether or not the insurer renewed the policy without knowledge of all such violations. Notice of any cancellation made pursuant to this subsection shall be mailed to the named insured either during the current policy period or during the first full policy period following the date that the third moving traffic violation is recorded by the Division of Motor Vehicles.

(b) Except as provided in subsections (c) and (d), no insurer may cancel a policy of automobile liability insurance without first giving the insured thirty days’ notice of its intention to cancel. Notice of cancellation shall either be sent by first class mail to the named insured at the address supplied on the application for insurance, or by email or other electronic means if at the request of the policyholder in accordance with the Uniform Electronic Transactions Act as codified in chapter thirty-nine-a of this code, and shall state the effective date of the cancellation and provide a written explanation of the specific reason for the cancellation.
(c) If, pursuant to subsection (a) of this section, an insurer cancels a policy of automobile liability insurance for the failure of the named insured to make payments of premium for the policy or any installment of the premium when due, then the insurer shall first give the insured at least fourteen days’ notice of its intention to cancel. Notice of cancellation shall be sent by first class mail to the named insured at the address supplied on the application for insurance, or by email or other electronic means if at the request of the policyholder in accordance with the Uniform Electronic Transactions Act as codified in chapter thirty-nine-a of this code, and shall state the effective date of the cancellation and provide a written explanation of the specific reason for the cancellation. The notice period provided herein shall begin to run on the date mailed and payment shall be deemed accomplished by depositing in first class mail valid payment on or before the expiration date of the fourteen day notice period.

(d) If a named insured fails to make the initial payment of premium or any initial installment of the premium after the initial issuance of an automobile liability insurance policy, the insurance policy is voidable from the effective date and time the policy was issued: Provided, That the insurer shall send the insured written notice that the policy will be voided absent payment within ten days of any amounts due under the terms of the policy. Such notice shall either be sent by first class mail to the named insured at the address supplied on the application for insurance, or by email or other electronic means if at the request of the policyholder in accordance with the Uniform Electronic Transactions Act as codified in chapter thirty-nine-a of this code, and shall explain the specific reason for the voidance.
CHAPTER 132

(H. B. 4739 - By Delegates Shott, Ireland, Kessinger, Sobonya, Foster, Zatezalo, Lane, Rowe, Westfall, B. White and Frich)

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

AN ACT to amend the Code of West Virginia, 1931, as amended by adding thereto a new article, designated §33-13D-1 and §33-13D-2, relating to the creation of the Unclaimed Life Insurance Benefits Act; defining terms; regulating insurer conduct generally; requiring insurers to perform an annual comparison of its insureds’ Policies, Retained Asset Accounts and Account Owners against a Death Master File; requiring insurers to conduct a comparison against a Death Master File on policies issued as of 1986 and all policies issued thereafter; establishing a two year deadline from the effective date of this article to conduct the full Death Master File comparison; requiring the Insurance Commissioner promulgate rules related to Death Master File comparisons for policies issued prior to 1986 if the commissioner determines that reliable technology and data exist to make such comparison accurate and cost-effective; providing that insurers shall first conduct comparisons to the extent records are available electronically then using the most easily accessible insurer data for records not available electronically; providing that the annual comparison of insureds’ Policies, Retained Asset Accounts and Account Owners against a Death Master File shall not apply to those accounts for which the insurer is receiving premiums from outside the policy value, by check, bank draft, payroll deduction or any other similar method of payment within eighteen months immediately preceding the Death Master File comparison;
clarifying that insurers are permitted to request a valid death certificate as part of any claims validation process; providing that, for potential matches identified as a result of a Death Master File match, insurer must within ninety days complete a good faith effort which shall be documented by the insurer to confirm the death against other available records, review insurer records to determine if the deceased person has any other products with the insured and determine if benefits may be due; requiring insurers to implement procedures to account for incomplete identifying information such as nicknames, maiden names or other identifying information; requiring reasonable steps to be taken to locate and contact beneficiaries or other authorized representatives regarding the insurer’s claims process if no communication with beneficiaries or other authorized representatives occurs within ninety days after a Death Master File match; requiring the insurer to document its efforts to locate and contact the beneficiary as well as sending information regarding the claims process and any need to provide an official death certificate; clarifying that benefits shall first be paid to beneficiaries and, if beneficiaries cannot be found, paid to the state as unclaimed property; permitting insurers to release such identifying information as may be necessary to help identify or locate beneficiaries; prohibiting insurers or service providers from charging beneficiaries or other authorized representatives for any fees or costs associated with a Death Master File search or verification of a Death Master File match; clarifying that the Insurance Commissioner has exclusive authority to promulgate rules as may be required or reasonably necessary to implement this section; authorizing the Insurance Commissioner to issue orders related to requirements imposed on insurers and imposing a hardship burden on insurers seeking orders adjusting their obligations; and authorizing the Insurance Commissioner to promulgate rules that may be reasonably necessary to implement the Unclaimed Life Insurance Benefits Act.
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 §33-13D-1 and §33-13D-2, all to read as follows:

ARTICLE 13D. UNCLAIMED LIFE INSURANCE BENEFITS ACT.

§33-13D-1. Definitions.

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

(1) “Account owner” means the owner of a retained asset account who is a resident of this state.

(2) “Annuity contract” means an annuity contract issued in this state. The term “annuity contract” shall not include an annuity used to fund an employment-based retirement plan or program where: (1) The insurer does not perform the record-keeping services; or (2) the insurer is not committed by terms of the annuity contract to pay death benefits to the beneficiaries of specific plan participants.

(3) “Death Master File” means the United States Social Security Administration’s Death Master File or any other database or service that is at least as comprehensive as the United States Social Security Administration’s Death Master File for determining whether a person has died.

(4) “Death Master File match” means a search of the Death Master File that results in a match of the person’s first and last name and Social Security number or the first and last name and date of birth of an insured, annuity owner or retained asset account holder.

(5) “Knowledge of death” shall, for the purposes of this section, mean: (a) Receipt of an original or valid copy of a
certified death certificate; or (b) a Death Master File match validated by the insurer in accordance with section two of this article.

(6) “Person” means the policy insured, annuity contract owner, annuitant or account owner, as applicable under the policy, annuity contract or retained asset account at issue in this act.

(7) “Policy” means any policy or certificate of life insurance issued in this state that provides a death benefit. The term “policy” shall not include: (i) Any policy or certificate of life insurance that provides a death benefit under an employee benefit plan: (a) subject to the Employee Retirement Income Security Act of 1974, as periodically amended; or (b) under any federal employee benefit program: or (ii) any policy or certificate of life insurance that is used to fund a preneed funeral contract or prearrangement; or (iii) any policy or certificate of credit life or accidental death insurance; or (iv) any policy issued to a group master policyholder for which the insurer does not provide record-keeping services.

(8) “Record-keeping services” means those circumstances under which the insurer has agreed with a group policy or contract customer to be responsible for obtaining, maintaining and administering in its own or its agents’ systems information about each individual insured under an Insured’s group insurance contract (or a line of coverage thereunder), at least the following information: (1) Social Security number or name and date of birth; and (2) beneficiary designation information; (3) coverage eligibility; (4) benefit amount; and (5) premium payment status.

(9) “Retained asset account” means any mechanism whereby the settlement of proceeds payable under a policy or annuity contract is accomplished by the insurer or an entity acting on
behalf of the insurer depositing the proceeds into an account with check- or draft-writing privileges, where those proceeds are retained by the insurer or its agent, pursuant to a supplementary contract not involving annuity contract benefits other than death benefits.

§33-13D-2. Insurer conduct.

(a) An insurer shall perform a comparison of its insureds’ in-force policies, annuity contracts and account owners against a Death Master File to identify potential death master file matches of its insureds, annuitants and account owners, on at least an annual basis, by using the full Death Master File once and thereafter using the Death Master File update files for future comparisons to identify potential Death Master File matches. The comparison using the full Death Master File should be completed within two years of the effective date of this article and must be completed on policies in force as of 1986, and all policies issued thereafter: Provided, That the Insurance Commissioner shall promulgate legislative rules requiring that the comparison against a Death Master File be completed on policies issued at earlier times if the commissioner determines that reliable technology and data exist to make such comparison accurate and cost-effective to match to the established Master Death Database.

(b) The insurer comparison of policies, annuity contracts and account owners shall be conducted first to the extent that such records are available electronically and then using the most easily accessible insurer data for records that are not available electronically.

(c) This section shall not apply to policies or annuity contracts for which the insurer is receiving premiums from outside the policy value, by check, bank draft, payroll deduction or any other similar method of active premium payment within
the eighteen months immediately preceding the Death Master File comparison.

(d) Nothing in this section shall limit the insurer from requesting a valid death certificate as part of any claims validation process.

(e) For those potential matches identified as a result of a Death Master File match, or if an insurer learns of the possible death of a person otherwise, then the insurer shall, within ninety days of a Death Master File match:

(1) Complete a good faith effort, which shall be documented by the insurer, to confirm the death of the person against other available records and information;

(2) Review its records to determine whether the deceased person has any other products with the insurer;

(3) Determine whether benefits may be due in accordance with any applicable policy, annuity contract or retained asset account.

(f) Every insurer shall implement procedures to account for:

(1) Common nicknames, initials used in lieu of a first or middle name, use of a middle name, compound first and middle names, and interchanged first and middle names;

(2) Compound last names, maiden or married names, and hyphens, blank spaces or apostrophes in last names;

(3) Transposition of the “month” and “date” portions of the date of birth; and

(4) Incomplete Social Security number.
(g) If the beneficiary or other authorized representative has not communicated with the insurer within the ninety-day period, the insurer shall take reasonable steps and use good faith efforts, which shall be documented by the insurer, to locate and contact the beneficiary or beneficiaries or other authorized representative on any such policy, annuity contract or retained asset account, including, but not limited to, sending the beneficiary information regarding the insurer’s claims process, including the need to provide an official death certificate if applicable under the policy, annuity contract or retained asset account.

(h) To the extent permitted by law, the insurer may disclose minimum necessary personal information about a person or beneficiary to a person who the insurer reasonably believes may be able to assist the insurer in locating the beneficiary or a person otherwise entitled to payment of the claims proceeds.

(i) An insurer or its service provider shall not charge any beneficiary or other authorized representative for any fees or costs associated with a Death Master File search or verification of Death Master File match conducted pursuant to this section.

(j) The benefits from a policy, annuity contract or a retained asset account, plus any applicable accrued contractual interest shall first be payable to the designated beneficiaries or owners, and in the event said beneficiaries or owners cannot be found, shall be paid to the state as unclaimed property pursuant to article eight, chapter thirty-six of this code.

(k) The West Virginia Office of the Insurance Commissioner has exclusive authority to promulgate such rules and regulations as may be required or reasonably necessary to implement the provisions of this section.

(l) The commissioner may, in his or her reasonable discretion, make an order to:
1 Limit an insurer’s Death Master File comparisons required under subsection (a) of this section to the insurer’s electronic searchable files or approve a plan and timeline for conversion of the insurer’s files to searchable electronic files upon a demonstration of hardship by the insurer;

2 Exempt an insurer from the Death Master File comparisons required under subsection (a) of this section or permitting an insurer to perform such comparisons less frequently than annually upon a demonstration of hardship by the insurer; or

3 Phase-in compliance with this section according to a plan and timeline approved by the commissioner.

CHAPTER 133

(Com. Sub. for H. B. 4038 - By Ellington, Summers, Bates, Faircloth, Householder, Rohrbach and Stansbury)

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

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §33-15-4m; to amend said code by adding thereto a new section, designated §33-16-3y; to amend said code by adding thereto a new section, designated §33-24-7n; to amend said code by adding thereto a new section, designated §33-25-8k; and to amend said code by adding thereto a new section, designated §33-25A-8m, all relating to insurance requirements for the refilling of topical eye medication; requiring a refill take place at a certain time; and establishing when a refill is permitted.
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 §33-15-4m; that said code be amended by adding thereto a new section, designated §33-16-3y; that said code be amended by adding thereto a new section, designated §33-24-7n; that said code be amended by adding thereto a new section, designated §33-25-8k; that said code be amended by adding thereto a new section, designated §33-25A-8m, all to read as follows:

ARTICLE 15. ACCIDENT AND SICKNESS INSURANCE.

§33-15-4m. Eye drop prescription refills.

1 An insurance policy issued by an insurer pursuant to this article for prescription topical eye medication may not deny coverage for the refilling of a prescription for topical eye medication when:

5 (1) The medication is to treat a chronic condition of the eye;

6 (2) The refill is requested by the insured prior to the last day of the prescribed dosage period and after at least 70% of the predicted days of use; and

9 (3) A person licensed under chapter thirty and authorized to prescribe topical eye medication indicates on the original prescription that refills are permitted and that the early refills requested by the insured do not exceed the total number of refills prescribed.

ARTICLE 16. GROUP ACCIDENT AND SICKNESS INSURANCE.

§33-16-3y. Eye drop prescription refills.

1 An insurance policy issued by an insurer pursuant to this article for prescription topical eye medication may not deny
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coverage for the refilling of a prescription for topical eye medication when:

(1) The medication is to treat a chronic condition of the eye;

(2) The refill is requested by the insured prior to the last day of the prescribed dosage period and after at least 70% of the predicted days of use; and

(3) A person licensed under chapter thirty and authorized to prescribe topical eye medication indicates on the original prescription that refills are permitted and that the early refills requested by the insured do not exceed the total number of refills prescribed.

ARTICLE 24. HOSPITAL SERVICE CORPORATIONS, MEDICAL SERVICE CORPORATIONS, DENTAL SERVICE CORPORATIONS AND HEALTH SERVICE CORPORATIONS.

§33-24-7n. Eye drop prescription refills. A contract, plan or agreement issued by an insurer pursuant to this article for prescription topical eye medication may not deny coverage for the refilling of a prescription for topical eye medication when:

(1) The medication is to treat a chronic condition of the eye;

(2) The refill is requested by the insured prior to the last day of the prescribed dosage period and after at least 70% of the predicted days of use; and

(3) A person licensed under chapter thirty and authorized to prescribe topical eye medication indicates on the original prescription that refills are permitted and that the early refills
ARTICLE 25. HEALTH CARE CORPORATIONS.

§33-25-8k. Eye drop prescription refills.

A contract, plan or agreement issued by an insurer pursuant to this article for prescription topical eye medication may not deny coverage for the refilling of a prescription for topical eye medication when:

1. The medication is to treat a chronic condition of the eye;
2. The refill is requested by the insured prior to the last day of the prescribed dosage period and after at least 70% of the predicted days of use; and
3. A person licensed under chapter thirty and authorized to prescribe topical eye medication indicates on the original prescription that refills are permitted and that the early refills requested by the insured do not exceed the total number of refills prescribed.

ARTICLE 25A. HEALTH MAINTENANCE ORGANIZATION ACT.

§33-25A-8m. Eye drop prescription refills.

A contract, plan or agreement issued by an insurer pursuant to this article for prescription topical eye medication may not deny coverage for the refilling of a prescription for topical eye medication when:

1. The medication is to treat a chronic condition of the eye;
2. The refill is requested by the insured prior to the last day of the prescribed dosage period and after at least 70% of the predicted days of use; and
(3) A person licensed under chapter thirty and authorized to prescribe topical eye medication indicates on the original prescription that refills are permitted and that the early refills requested by the insured do not exceed the total number of refills prescribed.

CHAPTER 134


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

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §33-15-4n; to amend said code by adding thereto a new section, designated §33-16-3z; to amend said code by adding thereto a new section, designated §33-24-7o; 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-8n, all relating to abuse-deterrent opioid analgesic drugs; providing insurance cover abuse-deterrent opioid analgesic drugs; providing direct health care services cover abuse-deterrent opioid analgesic drugs; providing certain contracts cover abuse-deterrent opioid analgesic drugs; defining terms; providing an effective date; providing for cost sharing; providing for cost tier location; and allowing cost containment measures.

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 §33-15-4n; that said code be
amended by adding thereto a new section, designated §33-16-3z; that said code be amended by adding thereto a new section, designated §33-24-7o; that said code be amended by adding thereto a new section, designated §33-25-8l; and that said code be amended by adding thereto a new section, designated §33-25A-8n, all to read as follows:

CHAPTER 33. INSURANCE.

ARTICLE 15. ACCIDENT AND SICKNESS INSURANCE.

§33-15-4n. Deductibles, copayments and coinsurance for abuse-deterrent opioid analgesic drugs.

(a) As used in this section:

(1) “Abuse-deterrent opioid analgesic drug product” means a brand name or generic opioid analgesic drug product approved by the United States Food and Drug Administration with abuse-deterrent labeling that indicates its abuse-deterrent properties are expected to deter or reduce its abuse;

(2) “Cost-sharing” means any coverage limit, copayment, coinsurance, deductible or other out-of-pocket expense requirements;

(3) “Opioid analgesic drug product” means a drug product that contains an opioid agonist and is indicated by the United States Food and Drug Administration for the treatment of pain, regardless of whether the drug product:

(A) Is in immediate release or extended release form; or

(B) Contains other drug substances.

(b) Notwithstanding any provision of any accident and sickness insurance policy issued by an insurer, on or after January 1, 2017:
(1) Coverage shall be provided for at least one abuse-deterrent opioid analgesic drug product for each active opioid analgesic ingredient;

(2) Cost-sharing for brand name abuse-deterrent opioid analgesic drug products shall not exceed the lowest tier for brand name prescription drugs on the entity’s formulary for prescription drug coverage;

(3) Cost-sharing for generic abuse-deterrent opioid analgesic drug products covered pursuant to this section shall not exceed the lowest cost-sharing level applied to generic prescription drugs covered under the applicable health plan or policy; and

(4) An entity subject to this section may not require an insured or enrollee to first use an opioid analgesic drug product without abuse-deterrent labeling before providing coverage for an abuse-deterrent opioid analgesic drug product covered on the entity’s formulary for prescription drug coverage.

(c) Notwithstanding subdivision (3), subsection (b) of this section, an entity subject to this section may undertake utilization review, including preauthorization, for an abuse-deterrent opioid analgesic drug product covered by the entity, if the same utilization review requirements are applied to nonabuse-deterrent opioid analgesic drug products and with the same type of drug release, immediate or extended.

(d) For purposes of subsection (b) of this section, the lowest tier and the lowest cost-sharing level shall not mean the cost-sharing tier applicable to preventive care services which are required to be provided at no cost-sharing under the Patient Protection and Affordable Care Act.

ARTICLE 16. GROUP ACCIDENT AND SICKNESS INSURANCE.
§33-16-3z. Deductibles, copayments and coinsurance for abuse-deterrent opioid analgesic drugs.

(a) As used in this section:

(1) “Abuse-deterrent opioid analgesic drug product” means a brand name or generic opioid analgesic drug product approved by the United States Food and Drug Administration with abuse-deterrent labeling that indicates its abuse-deterrent properties are expected to deter or reduce its abuse;

(2) “Cost-sharing” means any coverage limit, copayment, coinsurance, deductible or other out-of-pocket expense requirements;

(3) “Opioid analgesic drug product” means a drug product that contains an opioid agonist and is indicated by the United States Food and Drug Administration for the treatment of pain, regardless of whether the drug product:

(A) Is in immediate release or extended release form; or

(B) Contains other drug substances.

(b) Notwithstanding any provision of any group accident and sickness insurance policy issued by an insurer pursuant to this article, on or after January 1, 2017:

(1) Coverage shall be provided for at least one abuse-deterrent opioid analgesic drug product for each active opioid analgesic ingredient;

(2) Cost-sharing for brand name abuse-deterrent opioid analgesic drug products shall not exceed the lowest tier for brand name prescription drugs on the entity’s formulary for prescription drug coverage;

(3) Cost-sharing for generic abuse-deterrent opioid analgesic drug products covered pursuant to this section shall not exceed
the lowest cost-sharing level applied to generic prescription
drugs covered under the applicable health plan or policy; and

(4) An entity subject to this section may not require an
insured or enrollee to first use an opioid analgesic drug product
without abuse-deterrent labeling before providing coverage for
an abuse-deterrent opioid analgesic drug product covered on the
entity’s formulary for prescription drug coverage.

(c) Notwithstanding subdivision (3), subsection (b) of this
section, an entity subject to this section may undertake
utilization review, including preauthorization, for an
abuse-deterrent opioid analgesic drug product covered by the
entity, if the same utilization review requirements are applied to
nonabuse-deterrent opioid analgesic drug products and with the
same type of drug release, immediate or extended.

(d) For purposes of subsection (b) of this section, the lowest
tier and the lowest cost-sharing level shall not mean the
cost-sharing tier applicable to preventive care services which are
required to be provided at no cost-sharing under the Patient
Protection and Affordable Care Act.

ARTICLE 24. HOSPITAL SERVICE CORPORATIONS,
MEDICAL SERVICE CORPORATIONS,
DENTAL SERVICE CORPORATIONS
AND HEALTH SERVICE CORPORATIONS.

§33-24-7o. Deductibles, copayments and coinsurance for
abuse-deterrent opioid analgesic drugs.

(a) As used in this section:

(1) “Abuse-deterrent opioid analgesic drug product” means
a brand name or generic opioid analgesic drug product approved
by the United States Food and Drug Administration with
(2) “Cost-sharing” means any coverage limit, copayment, coinsurance, deductible or other out-of-pocket expense requirements;

(3) “Opioid analgesic drug product” means a drug product that contains an opioid agonist and is indicated by the United States Food and Drug Administration for the treatment of pain, regardless of whether the drug product:

(A) Is in immediate release or extended release form; or
(B) Contains other drug substances.

(b) Notwithstanding any provision of any policy, provision, contract, plan or agreement to which this article applies, on or after January 1, 2017:

(1) Coverage shall be provided for at least one abuse-deterrent opioid analgesic drug product for each active opioid analgesic ingredient;

(2) Cost-sharing for brand name abuse-deterrent opioid analgesic drug products shall not exceed the lowest tier for brand name prescription drugs on the entity’s formulary for prescription drug coverage;

(3) Cost-sharing for generic abuse-deterrent opioid analgesic drug products covered pursuant to this section shall not exceed the lowest cost-sharing level applied to generic prescription drugs covered under the applicable health plan or policy; and

(4) An entity subject to this section may not require an insured or enrollee to first use an opioid analgesic drug product without abuse-deterrent labeling before providing coverage for
an abuse-deterrent opioid analgesic drug product covered on the entity’s formulary for prescription drug coverage.

(c) Notwithstanding subdivision (3), subsection (b) of this section, an entity subject to this section may undertake utilization review, including preauthorization, for an abuse-deterrent opioid analgesic drug product covered by the entity, if the same utilization review requirements are applied to nonabuse-deterrent opioid analgesic drug products and with the same type of drug release, immediate or extended.

(d) For purposes of subsection (b) of this section, the lowest tier and the lowest cost-sharing level shall not mean the cost-sharing tier applicable to preventive care services which are required to be provided at no cost-sharing under the Patient Protection and Affordable Care Act.

ARTICLE 25. HEALTH CARE CORPORATIONS.

§33-25-8l. Deductibles, copayments and coinsurance for abuse-deterrent opioid analgesic drugs.

(a) As used in this section:

(1) “Abuse-deterrent opioid analgesic drug product” means a brand name or generic opioid analgesic drug product approved by the United States Food and Drug Administration with abuse-deterrent labeling that indicates its abuse-deterrent properties are expected to deter or reduce its abuse;

(2) “Cost-sharing” means any coverage limit, copayment, coinsurance, deductible or other out-of-pocket expense requirements;

(3) “Opioid analgesic drug product” means a drug product that contains an opioid agonist and is indicated by the United States Food and Drug Administration for the treatment of pain, regardless of whether the drug product:
(A) Is in immediate release or extended release form; or

(B) Contains other drug substances.

(b) Notwithstanding any provision of any policy, provision, contract, plan or agreement to which this article applies, on or after January 1, 2017:

(1) Coverage shall be provided for at least one abuse-deterrent opioid analgesic drug product for each active opioid analgesic ingredient;

(2) Cost-sharing for brand name abuse-deterrent opioid analgesic drug products shall not exceed the lowest tier for brand name prescription drugs on the entity’s formulary for prescription drug coverage;

(3) Cost-sharing for generic abuse-deterrent opioid analgesic drug products covered pursuant to this section shall not exceed the lowest cost-sharing level applied to generic prescription drugs covered under the applicable health plan or policy; and

(4) An entity subject to this section may not require an insured or enrollee to first use an opioid analgesic drug product without abuse-deterrent labeling before providing coverage for an abuse-deterrent opioid analgesic drug product covered on the entity’s formulary for prescription drug coverage.

(c) Notwithstanding subdivision (3), subsection (b) of this section, an entity subject to this section may undertake utilization review, including preauthorization, for an abuse-deterrent opioid analgesic drug product covered by the entity, if the same utilization review requirements are applied to nonabuse-deterrent opioid analgesic drug products and with the same type of drug release, immediate or extended.

(d) For purposes of subsection (b) of this section, the lowest tier and the lowest cost-sharing level shall not mean the
cost-sharing tier applicable to preventive care services which are required to be provided at no cost-sharing under the Patient Protection and Affordable Care Act.

ARTICLE 25A. HEALTH MAINTENANCE ORGANIZATION ACT.

§33-25A-8n. Deductibles, copayments and coinsurance for abuse-deterrent opioid analgesic drugs.

(a) As used in this section:

(1) “Abuse-deterrent opioid analgesic drug product” means a brand name or generic opioid analgesic drug product approved by the United States Food and Drug Administration with abuse-deterrent labeling that indicates its abuse-deterrent properties are expected to deter or reduce its abuse;

(2) “Cost-sharing” means any coverage limit, copayment, coinsurance, deductible or other out-of-pocket expense requirements;

(3) “Opioid analgesic drug product” means a drug product that contains an opioid agonist and is indicated by the United States Food and Drug Administration for the treatment of pain, regardless of whether the drug product:

(A) Is in immediate release or extended release form; or

(B) Contains other drug substances.

(b) Notwithstanding any provision of any policy, provision, contract, plan or agreement to which this article applies, on or after January 1, 2017:

(1) Coverage shall be provided for at least one abuse-deterrent opioid analgesic drug product for each active opioid analgesic ingredient;
(2) Cost-sharing for brand name abuse-deterrent opioid analgesic drug products shall not exceed the lowest tier for brand name prescription drugs on the entity’s formulary for prescription drug coverage;

(3) Cost-sharing for generic abuse-deterrent opioid analgesic drug products covered pursuant to this section shall not exceed the lowest cost-sharing level applied to generic prescription drugs covered under the applicable health plan or policy; and

(4) An entity subject to this section may not require an insured or enrollee to first use an opioid analgesic drug product without abuse-deterrent labeling before providing coverage for an abuse-deterrent opioid analgesic drug product covered on the entity’s formulary for prescription drug coverage.

(c) Notwithstanding subdivision (3), subsection (b) of this section, an entity subject to this section may undertake utilization review, including preauthorization, for an abuse-deterrent opioid analgesic drug product covered by the entity, if the same utilization review requirements are applied to nonabuse-deterrent opioid analgesic drug products and with the same type of drug release, immediate or extended.

(d) For purposes of subsection (b) of this section, the lowest tier and the lowest cost-sharing level shall not mean the cost-sharing tier applicable to preventive care services which are required to be provided at no cost-sharing under the Patient Protection and Affordable Care Act.
CHAPTER 135


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

* NOTE: It has been determined that Com. Sub. for H. B. 4040, originally styled as Chapter 135 was enrolled and signed by the Governor in an incorrect form. Therefore, the Governor not having received and signed a true and correct copy of the bill as passed by both houses, Com. Sub. for H. B. 4040 did not become law.

CHAPTER 136

(Com. Sub. for S. B. 278 - By Senators Ferns, Takubo, Walters, Stollings and Palumbo)

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

AN ACT to amend and reenact §33-20F-2 and §33-20F-4 of the Code of West Virginia, 1931, as amended, all relating to clarifying that a physicians’ mutual insurance company is not a state actor or a quasi-state actor, allowing it to operate as any other commercial insurance company licensed in West Virginia; and clarifying and revising findings and purpose.
Be it enacted by the Legislature of West Virginia:

That §33-20F-2 and §33-20F-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 20F. PHYSICIANS’ MUTUAL INSURANCE COMPANY.

§33-20F-2. Findings and purpose.

1 (a) The Legislature finds that:

2 (1) There is a nationwide crisis in the field of medical liability insurance;

3 (2) Similar crises have occurred at least three times during the past three decades;

4 (3) Such crises are part of a naturally recurring cycle of a hard market period, when medical professional liability coverage is difficult to obtain, and a soft market period, when coverage is more readily available;

5 (4) Such crises are particularly acute in this state due to the small size of the insurance market;

6 (5) During a hard market period, insurers tend to flee this state, creating a crisis for physicians who are left without professional liability coverage;

7 (6) During the current crisis, physicians in West Virginia find it increasingly difficult, if not impossible, to obtain medical liability insurance either because coverage is unavailable or unaffordable;

8 (7) The difficulty or impossibility of obtaining medical liability insurance may result in many qualified physicians leaving the state;

9 (8) Access to quality health care is of utmost importance to the citizens of West Virginia;
(9) A mechanism is needed to provide an enduring solution to this recurring medical liability crisis;

(10) A physicians’ mutual insurance company or a similar entity has proven to be a successful mechanism in other states for helping physicians secure insurance and for stabilizing the insurance market;

(11) The state has attempted to temporarily alleviate the current medical crisis by the creation of programs to provide medical liability coverage through the Board of Risk and Insurance Management;

(12) The state-run program is a substantial actual and potential liability to the state;

(13) There is substantial public benefit in transferring the actual and potential liability of the state to the private sector;

(14) A stable, financially viable insurer in the private sector will provide a continuing source of insurance funds to compensate victims of medical malpractice; and

(15) Because the public will greatly benefit from the formation of a physicians’ mutual insurance company, state efforts to encourage and support the formation of such an entity, including providing a low-interest loan for a portion of the entity’s initial capital, is in the clear public interest.

(b) The purpose of this article is to create a mechanism for the formation of a physicians’ mutual insurance company that will provide:

(1) A means for physicians to obtain medical liability insurance that is available and affordable; and

(2) Compensation to persons who suffer injuries as a result of medical professional liability as defined in subsection (d), section two, article seven-b, chapter fifty-five of this code.
§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 corporation. 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 or any other entity not owned by its policyholders.

(b) For the duration of its existence, the company is not and may not be considered a department, unit, agency, instrumentality of the state, state actor, quasi-state actor or quasi-public entity for any purpose. Any debts, claims, obligations and liabilities of the company, whenever incurred, are the debts, claims, obligations and liabilities of the company only and not of the state or of any department, unit, agency, instrumentality, officer or employee of the state.

(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 the 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 §33-24-4 of the Code of West Virginia, 1931, as amended; to amend and reenact §33-25-6 of said code; to amend and reenact §33-25A-24 of said code; to amend and reenact §33-25D-26 of said code; to amend and reenact §33-40-1, §33-40-2, §33-40-3, §33-40-6 and §33-40-7 of said code; and to amend said code by adding thereto a new article, designated §33-40A-1, §33-40A-2, §33-40A-3, §33-40A-4, §33-40A-5, §33-40A-6, §33-40A-7, §33-40A-8, §33-40A-9, §33-40A-10, §33-40A-11 and §33-40A-12, all relating to risk-based capital; making health organizations subject to statutory provisions concerning risk-based capital reporting; defining terms associated with risk-based capital reporting for health organizations; requiring health organizations to file risk-based capital reports with Insurance Commissioner; requiring health organizations to perform certain actions if risk-based capital report indicates a negative financial trend or hazardous financial condition; requiring Insurance Commissioner to conduct certain actions if risk-based capital report of a health organization indicates negative financial trend or hazardous financial condition; providing health organization right to a confidential hearing with respect to certain notifications; specifying confidential and privileged nature of risk-based capital reports and plans and related matters; prohibiting use of risk-based capital reports in ratemaking of a health organization; granting Insurance Commissioner authority to propose rules for legislative approval; providing immunity to
Insurance Commissioner and his employees and agents for actions taken with respect to monitoring the financial stability of a health organization; and changing the definition of “company action level event” for a life and health insurer.

Be it enacted by the Legislature of West Virginia:

That §33-24-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §33-25-6 of said code be amended and reenacted; that §33-25A-24 of said code be amended and reenacted; that §33-25D-26 of said code be amended and reenacted; that §33-40-1, §33-40-2, §33-40-3, §33-40-6 and §33-40-7 of said code be amended and reenacted; and that said code be amended by adding thereto a new article, designated §33-40A-1, §33-40A-2, §33-40A-3, §33-40A-4, §33-40A-5, §33-40A-6, §33-40A-7, §33-40A-8, §33-40A-9, §33-40A-10, §33-40A-11 and §33-40A-12, all to read as follows:

ARTICLE 24.  HOSPITAL MEDICAL AND DENTAL CORPORATIONS.

§33-24-4.  Exemptions; applicability of insurance laws.

Every corporation defined in section two of this article is hereby declared to be a scientific, nonprofit institution and exempt from the payment of all property and other taxes. Every corporation, to the same extent the provisions are applicable to insurers transacting similar kinds of insurance and not inconsistent with the provisions of this article, shall be governed by and be subject to the provisions as herein below indicated, of the following articles of this chapter: Article two (Insurance Commissioner); article four (general provisions), except that section sixteen of said article may not be applicable thereto; section twenty, article five (borrowing by insurers); section thirty-four, article six (fee for form, rate and rule filing); article six-c (guaranteed loss ratios as applied to individual sickness and accident insurance policies); article seven (assets and liabilities);
article eight-a (use of clearing corporations and Federal Reserve book-entry system); article eleven (unfair trade practices); article twelve (insurance producers and solicitors), except that the agent’s license fee shall be $25; section two-a, article fifteen (definitions); section two-b, article fifteen (guaranteed issue; limitation of coverage; election; denial of coverage; network plans); section two-d, article fifteen (exceptions to guaranteed renewability); section two-e, article fifteen (discontinuation of particular type of coverage; uniform termination of all coverage; uniform modification of coverage); section two-f, article fifteen (certification of creditable coverage); section two-g, article fifteen (applicability); section four-e, article fifteen (benefits for mothers and newborns); section fourteen, article fifteen (policies discriminating among health care providers); section sixteen, article fifteen (policies not to exclude insured’s children from coverage; required services; coordination with other insurance); section eighteen, article fifteen (equal treatment of state agency); section nineteen, article fifteen (coordination of benefits with Medicaid); article fifteen-a (West Virginia Long-Term Care Insurance Act); article fifteen-c (diabetes insurance); section three, article sixteen (required policy provisions); section three-a, article sixteen (same - mental health); section three-d, article sixteen (Medicare supplement insurance); section three-f, article sixteen (required policy provisions - treatment of temporomandibular joint disorder and craniomandibular disorder); section three-j, article sixteen (hospital benefits for mothers and newborns); section three-k, article sixteen (limitations on preexisting condition exclusions for health benefit plans); section three-l, article sixteen (renewability and modification of health benefit plans); section three-m, article sixteen (creditable coverage); section three-n, article sixteen (eligibility for enrollment); section eleven, article sixteen (group policies not to exclude insured’s children from coverage; required services; coordination with other insurance); section thirteen, article sixteen (equal treatment of state agency); section fourteen, article sixteen (coordination of benefits with
Corporations organized under this article are subject to supervision and regulation of the Insurance Commissioner. The corporations organized under this article, to the same extent these provisions are applicable to insurers transacting similar kinds of insurance and not inconsistent with the provisions of this article, shall be governed by and be subject to the provisions as herein below indicated of the following articles of this.
chapter: Article four (general provisions), except that section sixteen of said article shall not be applicable thereto; article six-c (guaranteed loss ratio); article seven (assets and liabilities); article eight (investments); article ten (rehabilitation and liquidation); section two-a, article fifteen (definitions); section two-b, article fifteen (guaranteed issue); section two-d, article fifteen (exception to guaranteed renewability); section two-e, article fifteen (discontinuation of coverage); section two-f, article fifteen (certification of creditable coverage); section two-g, article fifteen (applicability); section four-e, article fifteen (benefits for mothers and newborns); section fourteen, article fifteen (individual accident and sickness insurance); section sixteen, article fifteen (coverage of children); section eighteen, article fifteen (equal treatment of state agency); section nineteen, article fifteen (coordination of benefits with Medicaid); article fifteen-c (diabetes insurance); section three, article sixteen (required policy provisions); section three-a, article sixteen (mental health); section three-j, article sixteen (benefits for mothers and newborns); section three-k, article sixteen (preexisting condition exclusions); section three-l, article sixteen (guaranteed renewability); section three-m, article sixteen (creditable coverage); section three-n, article sixteen (eligibility for enrollment); section eleven, article sixteen (coverage of children); section thirteen, article sixteen (equal treatment of state agency); section fourteen, article sixteen (coordination of benefits with Medicaid); section sixteen, article sixteen (diabetes insurance); article sixteen-a (group health insurance conversion); article sixteen-c (small employer group policies); article sixteen-d (marketing and rate practices for small employers); article twenty-five-f (coverage for patient cost of clinical trials); article twenty-six-a (West Virginia Life and Health Insurance Guaranty Association Act); article twenty-seven (insurance holding company systems); article thirty-three (annual audited financial report); article thirty-four-a (standards and commissioner’s authority for companies considered to be in hazardous financial condition); article thirty-five (criminal
sanctions for failure to report impairment); article thirty-seven (managing general agents); article forty-a (risk-based capital for health organizations); and article forty-one (privileges and immunity); and no other provision of this chapter may apply to these corporations unless specifically made applicable by the provisions of this article.

ARTICLE 25A. HEALTH MAINTENANCE ORGANIZATION ACT.


(a) Except as otherwise provided in this article, provisions of the insurance laws and provisions of hospital or medical service corporation laws are not applicable to any health maintenance organization granted a certificate of authority under this article. The provisions of this article shall not apply to an insurer or hospital or medical service corporation licensed and regulated pursuant to the insurance laws or the hospital or medical service corporation laws of this state except with respect to its health maintenance corporation activities authorized and regulated pursuant to this article. The provisions of this article may not apply to an entity properly licensed by a reciprocal state to provide health care services to employer groups, where residents of West Virginia are members of an employer group, and the employer group contract is entered into in the reciprocal state. For purposes of this subsection, a “reciprocal state” means a state which physically borders West Virginia and which has subscriber or enrollee hold harmless requirements substantially similar to those set out in section seven-a of this article.

(b) Factually accurate advertising or solicitation regarding the range of services provided, the premiums and copayments charged, the sites of services and hours of operation and any other quantifiable, nonprofessional aspects of its operation by a health maintenance organization granted a certificate of authority or its representative may not be construed to violate
any provision of law relating to solicitation or advertising by
health professions: \textit{Provided}, That nothing contained in this
subsection shall be construed as authorizing any solicitation or
advertising which identifies or refers to any individual provider
or makes any qualitative judgment concerning any provider.

\textit{(c)} Any health maintenance organization authorized under
this article may not be considered to be practicing medicine and
is exempt from the provisions of chapter thirty of this code
relating to the practice of medicine.

\textit{(d)} The following provisions of this chapter are applicable
to any health maintenance organization granted a certificate of
authority under this article or which is otherwise subject to the
provisions of this article: The provisions of sections four, five,
six, seven, eight, nine and nine-a, article two (Insurance
Commissioner); sections fifteen and twenty, article four (general
provisions); section twenty, article five (borrowing by insurers);
section seventeen, article six (validity of noncomplying forms);
article six-c (guaranteed loss ratios as applied to individual
sickness and accident insurance policies); article seven (assets
and liabilities); article eight (investments); article eight-a (use of
clearing corporations and federal reserve book-entry system);
article nine (administration of deposits); article ten
(rehabilitation and liquidation); article twelve (insurance
producers and solicitors); section fourteen, article fifteen
(policies discriminating among health care providers); section
sixteen, article fifteen (policies not to exclude insured’s children
from coverage; required services; coordination with other
insurance); section eighteen, article fifteen (equal treatment of
state agency); section nineteen, article fifteen (coordination of
benefits with Medicaid); article fifteen-b (Uniform Health Care
Administration Act); section three, article sixteen (required
policy provisions); section three-f, article sixteen (required
policy provisions - treatment of temporomandibular joint
disorder and craniomandibular disorder); section eleven, article
sixteen (group policies not to exclude insured’s children from
insurance; required services; coordination with other insurance); section thirteen, article sixteen (equal treatment of state agency); section fourteen, article sixteen (coordination of benefits with Medicaid); article sixteen-a (group health insurance conversion); article sixteen-d (marketing and rate practices for small employer accident and sickness insurance policies); article twenty-five-c (Health Maintenance Organization Patient Bill of Rights); article twenty-five-f (coverage for patient cost of clinical trials); article twenty-seven (insurance holding company systems); article thirty-three (annual audited financial report); article thirty-four (administrative supervision); article thirty-four-a (standards and commissioner’s authority for companies considered to be in hazardous financial condition); article thirty-five (criminal sanctions for failure to report impairment); article thirty-seven (managing general agents); article thirty-nine (disclosure of material transactions); article forty-a (risk-based capital for health organizations); article forty-one (Insurance Fraud Prevention Act); and article forty-two (Women’s Access to Health Care Act). In circumstances where the code provisions made applicable to health maintenance organizations by this subsection refer to the insurer, the corporation or words of similar import, the language shall be construed to include health maintenance organizations.

(e) Any long-term care insurance policy delivered or issued for delivery in this state by a health maintenance organization shall comply with the provisions of article fifteen-a of this chapter.

ARTICLE 25D. PREPAID LIMITED HEALTH SERVICE ORGANIZATION ACT.

§33-25D-26. Scope of provisions; applicability of other laws.

(a) Except as otherwise provided in this article, provisions of the insurance laws, provisions of hospital, medical, dental or health service corporation laws and provisions of health
maintenance organization laws are not applicable to any prepaid limited health service organization granted a certificate of authority under this article. The provisions of this article do not apply to an insurer, hospital, medical, dental or health service corporation, or health maintenance organization licensed and regulated pursuant to the insurance laws, hospital, medical, dental or health service corporation laws or health maintenance organization laws of this state except with respect to its prepaid limited health service corporation activities authorized and regulated pursuant to this article. The provisions of this article do not apply to an entity properly licensed by a reciprocal state to provide a limited health care service to employer groups, where residents of West Virginia are members of an employer group, and the employer group contract is entered into in the reciprocal state. For purposes of this subsection, a “reciprocal state” means a state which physically borders West Virginia and which has subscriber or enrollee hold harmless requirements substantially similar to those set out in section ten of this article.

(b) Factually accurate advertising or solicitation regarding the range of services provided, the premiums and copayments charged, the sites of services and hours of operation and any other quantifiable, nonprofessional aspects of its operation by a prepaid limited health service organization granted a certificate of authority, or its representative do not violate any provision of law relating to solicitation or advertising by health professions: Provided, That nothing contained in this subsection authorizes any solicitation or advertising which identifies or refers to any individual provider or makes any qualitative judgment concerning any provider.

(c) Any prepaid limited health service organization authorized under this article is not considered to be practicing medicine and is exempt from the provision of chapter thirty of this code relating to the practice of medicine.
(d) The provisions of section nine, article two, examinations; section nine-a, article two, one-time assessment; section thirteen, article two, hearings; sections fifteen and twenty, article four, general provisions; section twenty, article five, borrowing by insurers; section seventeen, article six, noncomplying forms; article six-c, guaranteed loss ratio; article seven, assets and liabilities; article eight, investments; article eight-a, use of clearing corporations and Federal Reserve book-entry system; article nine, administration of deposits; article ten, rehabilitation and liquidation; article twelve, agents, brokers, solicitors and excess line; section fourteen, article fifteen, individual accident and sickness insurance; section sixteen, article fifteen, coverage of children; section eighteen, article fifteen, equal treatment of state agency; section nineteen, article fifteen, coordination of benefits with Medicaid; article fifteen-b, Uniform Health Care Administration Act; section three, article sixteen, required policy provisions; section eleven, article sixteen, coverage of children; section thirteen, article sixteen, equal treatment of state agency; section fourteen, article sixteen, coordination of benefits with Medicaid; article sixteen-a, group health insurance conversion; article sixteen-d, marketing and rate practices for small employers; article twenty-seven, insurance holding company systems; article thirty-three, annual audited financial report; article thirty-four, administrative supervision; article thirty-four-a, standards and commissioner’s authority for companies considered to be in hazardous financial condition; article thirty-five, criminal sanctions for failure to report impairment; article thirty-seven, managing general agents; article thirty-nine, disclosure of material transactions; article forty-a, risk-based capital for health organizations; and article forty-one, privileges and immunity, all of this chapter are applicable to any prepaid limited health service organization granted a certificate of authority under this article. In circumstances where the code provisions made applicable to prepaid limited health service organizations by this section refer
72 to the insurer, the corporation or words of similar import, the
73 language includes prepaid limited health service organizations.
74
75 (e) Any long-term care insurance policy delivered or issued
76 for delivery in this state by a prepaid limited health service
77 organization shall comply with the provisions of article fifteen-a
78 of this chapter.
79
80 (f) A prepaid limited health service organization granted a
81 certificate of authority under this article is exempt from paying
82 municipal business and occupation taxes on gross income it
83 receives from its enrollees, or from their employers or others on
84 their behalf, for health care items or services provided directly
85 or indirectly by the prepaid limited health service organization.

ARTICLE 40. RISK-BASED CAPITAL FOR INSURERS.

§33-40-1. Definitions.

1 As used in this article, these terms have the following
2 meanings:

3 (a) “Adjusted RBC report” means an RBC report which has
4 been adjusted by the commissioner in accordance with
5 subsection (e), section two of this article.

6 (b) “Corrective order” means an order issued by the
7 commissioner specifying corrective actions which the
8 commissioner has determined are required.

9 (c) “Domestic insurer” means any insurance company,
10 farmers’ mutual fire insurance company or HMO domiciled in
11 this state.

12 (d) “Foreign insurer” means any insurance company which
13 is licensed to do business in this state under article three of this
14 chapter but is not domiciled in this state.
(e) “NAIC” means the National Association of Insurance Commissioners.

(f) “Life and/or health insurer” means any insurance company licensed under article three of this chapter or a licensed property and casualty insurer writing only accident and health insurance.

(g) “Property and casualty insurer” means any insurance company licensed under article three of this chapter or any farmers’ mutual fire insurance company licensed under article twenty-two of this chapter, but may not include monoline mortgage guaranty insurers, financial guaranty insurers and title insurers.

(h) “Negative trend” means, with respect to a life and/or health insurer, negative trend over a period of time, as determined in accordance with the trend test calculation included in the RBC instructions.

(i) “RBC instructions” means the RBC report, including risk-based capital instructions adopted by the NAIC, as the RBC instructions may be amended by the NAIC, from time to time, in accordance with the procedures adopted by the NAIC.

(j) “RBC level” means an insurer’s company action level RBC, regulatory action level RBC, authorized control level RBC, or mandatory control level RBC where:

(1) “Company action level RBC” means, with respect to any insurer, the product of two and its authorized control level RBC;

(2) “Regulatory action level RBC” means the product of one and one-half and its authorized control level RBC;

(3) “Authorized control level RBC” means the number determined under the risk-based capital formula in accordance with the RBC instructions;
“Mandatory control level RBC” means the product of seven-tenths and the authorized control level RBC.

(RBC plan” means a comprehensive financial plan containing the elements specified in subsection (b), section three of this article. If the commissioner rejects the RBC plan and it is revised by the insurer, with or without the commissioner’s recommendation, the plan shall be called the revised RBC plan.

“RBC report” means the report required in section two of this article.

“Total adjusted capital” means the sum of:

(1) An insurer’s statutory capital and surplus as determined in accordance with the statutory accounting applicable to the financial statements required to be filed under section fourteen, article four of this chapter; and

(2) Any other items required by the RBC instructions.

§33-40-2. RBC reports.

(a) Every domestic insurer, on or prior to each March 1 (the filing date), shall prepare and submit to the commissioner a report of its RBC levels as of the end of the calendar year just ended, in a form and containing the information required by the RBC instructions. In addition, every domestic insurer shall file its RBC report:

(1) With the NAIC in accordance with the RBC instructions; and

(2) With the Insurance Commissioner in any state in which the insurer is authorized to do business, if the Insurance Commissioner has notified the insurer of its request in writing, in which case the insurer shall file its RBC report not later than the later of:
(A) Fifteen days from the receipt of notice to file its RBC report with that state; or

(B) The filing date.

(b) A life and health insurer’s RBC shall be determined in accordance with the formula set forth in the RBC instructions. The formula shall take into account (and may adjust for the covariance between):

(1) The risk with respect to the insurer’s assets;

(2) The risk of adverse insurance experience with respect to the insurer’s liabilities and obligations;

(3) The interest rate risk with respect to the insurer’s business; and

(4) All other business risks and any other relevant risks set forth in the RBC instructions determined in each case by applying the factors in the manner set forth in the RBC instructions.

(c) A property and casualty insurer’s RBC shall be determined in accordance with the applicable formula set forth in the RBC instructions. The formula shall take into account (and may adjust for the covariance between), determined in each case by applying the factors in the manner set forth in the RBC instructions:

(1) Asset risk;

(2) Credit risk;

(3) Underwriting risk; and

(4) All other business risks and any other relevant risks as are set forth in the RBC instructions.
(d) An excess of capital over the amount produced by the risk-based capital requirements contained in this article and the formulas, schedules and instructions referenced in this article is desirable in the business of insurance. Accordingly, insurers and HMOs should seek to maintain capital above the RBC levels required by this article. Additional capital is used and useful in the insurance business and helps to secure insurers against various risks inherent in, or affecting, the business of insurance and not accounted for or only partially measured by the risk-based capital requirements contained in this article.

(e) If a domestic insurer files an RBC report which, in the judgment of the commissioner is inaccurate, then the commissioner shall adjust the RBC report to correct the inaccuracy and shall notify the insurer of the adjustment. The notice shall contain a statement of the reason for the adjustment. An RBC report that is adjusted is referred to as an Adjusted RBC Report.

§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 three 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
(2) The notification by the commissioner to the insurer of an adjusted RBC report that indicates an event in subdivision (1) 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) If there is 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, 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
fourty-five days after a notification to the insurer that the commissioner has, after a hearing, rejected the insurer’s challenge.

(e) If there is 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.

§33-40-6. Mandatory control level event.

(a) “Mandatory control level event” means any of the following events:

(1) The filing of an RBC report which indicates that the insurer’s adjusted capital is less than its mandatory control level RBC;
Notification by the commissioner to the insurer of an adjusted RBC report that indicates the event in subdivision (1) 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, the insurer challenges an adjusted RBC report that indicates the event in subdivision (1) of this subsection, notification by the commissioner to the insurer or HMO that the commissioner has, after a hearing, rejected the insurer’s or HMO’s challenge.

(b) If there is a mandatory control level event:

(1) With respect to a life insurer, the commissioner shall take any actions that are necessary to place the insurer under regulatory control under article ten of this chapter. In that event, the mandatory control level event shall be considered sufficient grounds for the commissioner to take action under said article, and the commissioner has the rights, powers and duties with respect to the insurer that are set forth in said article. If the commissioner takes actions pursuant to an adjusted RBC report, the insurer is entitled to the protections of said article pertaining to summary proceedings. Notwithstanding any of the provisions of this subdivision, the commissioner may forego action for up to ninety days after the mandatory control level event if the commissioner finds there is a reasonable expectation that the mandatory control level event may be eliminated within the ninety-day period.

(2) With respect to a property and casualty insurer, the commissioner shall take any actions that are necessary to place the insurer under regulatory control under article ten of this chapter or, in the case of an insurer which is writing no business and which is running-off its existing business, may allow the insurer to continue its run-off under the supervision of the commissioner. In either event, the mandatory control level event
shall be considered sufficient grounds for the commissioner to take action under said article and the commissioner has the rights, powers and duties with respect to the insurer that are set forth in said article. If the commissioner takes actions pursuant to an adjusted RBC report, the insurer is entitled to the protections of said article pertaining to summary proceedings. Notwithstanding any of the provisions of this subdivision, the commissioner may forego action for up to ninety days after the mandatory control level event if the commissioner finds there is a reasonable expectation that the mandatory control level event may be eliminated within the ninety-day period.


Insurers have the right to a confidential departmental hearing, on the record, at which the insurer may challenge any determination or action by the commissioner made pursuant to the provisions of this article. The insurer shall notify the commissioner of its request for a hearing within ten days after receiving notification from the commissioner.

(a) Notification to an insurer by the commissioner of an adjusted RBC report; or

(b) Notification to an insurer by the commissioner that:

(1) The insurer’s RBC plan or revised RBC plan is unsatisfactory; and

(2) The notification constitutes a regulatory action level event with respect to the insurer; or

(c) Notification to any insurer by the commissioner that the insurer has failed to adhere to its RBC plan or revised RBC plan and that the failure has a substantial adverse effect on the ability of the insurer to eliminate the company action level event with

As used in this article, these terms have the following meanings:

(a) “Adjusted RBC report” means an RBC report which has been adjusted by the commissioner in accordance with subsection (d), section two of this article.

(b) “Corrective order” means an order issued by the commissioner specifying corrective actions which the commissioner has determined are required.

(c) “Domestic health organization” means a health organization domiciled in this state.

(d) “Foreign health organization” means a health organization that is licensed to do business in this state under article twenty-five-a of this chapter but is not domiciled in this state.

(e) “Health organization” means a health maintenance organization licensed under article twenty-five-a of this chapter,
limited health service organization licensed under article twenty-five-d of this chapter, provider-sponsored network licensed under article twenty-five-g of this chapter, hospital, medical and dental indemnity or service corporation licensed under article twenty-four of this chapter or other managed care organization licensed under article twenty-five of this chapter. This definition does not include an organization that is licensed under article three of this chapter as either a life or health insurer or a property and casualty insurer and that is otherwise subject to either the life and health or property and casualty RBC requirements.

(f) “NAIC” means the National Association of Insurance Commissioners.

(g) “Negative trend” means a negative trend over a period of time, as determined in accordance with the trend test calculation included in the RBC instructions.

(h) “RBC instructions” means the RBC report including risk-based capital instructions adopted by the NAIC, as these RBC instructions may be amended by the NAIC from time to time in accordance with the procedures adopted by the NAIC.

(i) “RBC level” means a health organization’s company action level RBC, regulatory action level RBC, authorized control level RBC, or mandatory control level RBC where:

(1) “Company action level RBC” means, with respect to any health organization, the product of 2.0 and its authorized control level RBC;

(2) “Regulatory action level RBC” means the product of 1.5 and its authorized control level RBC;

(3) “Authorized control level RBC” means the number determined under the risk-based capital formula in accordance with the RBC instructions;
(4) “Mandatory control level RBC” means the product of .70 and the authorized control level RBC.

(j) “RBC plan” means a comprehensive financial plan containing the elements specified in subsection (b), section three of this article. If the commissioner rejects the RBC plan, and it is revised by the health organization, with or without the commissioner’s recommendation, the plan shall be called the “revised RBC plan”.

(k) “RBC report” means the report required in section two of this article.

(l) “Total adjusted capital” means the sum of:

(1) A health organization’s statutory capital and surplus (i.e. net worth) as determined in accordance with the statutory accounting application to the annual financial statements required to be filed under:

(A) Section four, article twenty-four of this chapter;

(B) Section nine, article twenty-five of this chapter;

(C) Section nine, article twenty-five-a of this chapter; or

(D) Section twelve, article twenty-five-d of this chapter; and

(2) Such other items, if any, as the RBC instructions may provide.

§33-40A-2. RBC reports.

(a) A domestic health organization, on or prior to each March 1 (the filing date), shall prepare and submit to the commissioner a report of its RBC levels as of the end of the calendar year just ended, in a form and containing such
information as is required by the RBC instructions. In addition, a domestic health organization shall file its RBC report:

(1) With the NAIC in accordance with the RBC instructions; and

(2) With the Insurance Commissioner in any state in which the health organization is authorized to do business, if the Insurance Commissioner has notified the health organization of its request in writing, in which case the health organization shall file its RBC report not later than the later of:

(A) Fifteen days from the receipt of notice to file its RBC report with that state; or

(B) The filing date.

(b) A health organization’s RBC shall be determined in accordance with the formula set forth in the RBC instructions. The formula shall take the following into account (and may adjust for the covariance between) determined in each case by applying the factors in the manner set forth in the RBC instructions.

(1) Asset risk;

(2) Credit risk;

(3) Underwriting risk; and

(4) All other business risks and such other relevant risks as are set forth in the RBC instructions.

(c) An excess of capital (i.e. net worth) over the amount produced by the risk-based capital requirements contained in this article and the formulas, schedules and instructions referenced in this article is desirable in the business of health insurance.
Accordingly, health organizations should seek to maintain capital above the RBC levels required by this article. Additional capital is used and useful in the insurance business and helps to secure a health organization against various risks inherent in, or affecting, the business of insurance and not accounted for or only partially measured by the risk-based capital requirements contained in this article.

(d) If a domestic health organization files an RBC report that in the judgment of the commissioner is inaccurate, then the commissioner shall adjust the RBC report to correct the inaccuracy and shall notify the health organization of the adjustment. The notice shall contain a statement of the reason for the adjustment. An RBC report as so adjusted is referred to as an adjusted RBC report.


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

(1) The filing of an RBC report by a health organization that indicates that the health organization’s total adjusted capital is greater than or equal to its regulatory action level RBC but less than its company action level RBC;

(2) If a health organization 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 3.0 and triggers the trend test determined in accordance with the trend test calculation included in the health RBC instructions:

(3) Notification by the commissioner to the health organization of an adjusted RBC report that indicates an event in subdivision (1) of this subsection, provided the health organization does not challenge the adjusted RBC report under section seven of this article; or
(4) If, pursuant to section seven of this article, a health organization challenges an adjusted RBC report that indicates the event in subdivision (1) of this subsection, the notification by the commissioner to the health organization that the commissioner has, after a hearing, rejected the health organization’s challenge.

(b) If there is a company action level event, the health organization shall prepare and submit to the commissioner an RBC plan that shall:

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

(2) Contain proposals of corrective actions that the health organization intends to take and that would be expected to result in the elimination of the company action level event;

(3) Provide projections of the health organization’s financial results in the current year and at least two succeeding years, both in the absence of proposed corrective actions and giving effect to the proposed corrective actions, including projections of statutory balance sheets, operating income, net income, capital and surplus, and RBC levels. The projections for both new and renewal business might 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 health organization’s projections and the sensitivity of the projections to the assumptions; and

(5) Identify the quality of, and problems associated with, the health organization’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 health organization challenges an adjusted RBC report pursuant to section seven of this article, within forty-five days after notification to the health organization that the commissioner has, after a hearing, rejected the health organization’s challenge.

(d) Within sixty days after the submission by a health organization of an RBC plan to the commissioner, the commissioner shall notify the health organization whether the RBC plan shall be implemented or is, in the judgment of the commissioner, unsatisfactory. If the commissioner determines the RBC plan is unsatisfactory, the notification to the health organization 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 health organization 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 health organization challenges the notification from the commissioner under section seven of this article, within forty-five days after a notification to the health organization that the commissioner has, after a hearing, rejected the health organization’s challenge.

(e) If there is a notification by the commissioner to a health organization that the health organization’s RBC plan or revised
RBC plan is unsatisfactory, the commissioner may, subject to the health organization’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 health organization 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 health organization 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 health organization of its request for the filing in writing, in which case the health organization 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.

§33-40A-4. Regulatory action level event.

(a) “Regulatory action level event” means, with respect to a health organization, any of the following events:

(1) Filing of an RBC report by the health organization that indicates that the health organization’s total adjusted capital is greater than or equal to its authorized control level RBC but less than its regulatory action level RBC;

(2) Notification by the commissioner to a health organization of an adjusted RBC report that indicates the event in subdivision
(1) of this subsection, provided the health organization does not challenge the adjusted RBC report under section seven of this article;

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

(4) The failure of the health organization to file an RBC report by the filing date, unless the health organization has provided an explanation for the failure that is satisfactory to the commissioner and has cured the failure within ten days after the filing date;

(5) The failure of the health organization to submit an RBC plan to the commissioner within the time period set forth in subsection (c), section three of this article;

(6) Notification by the commissioner to the health organization that:

(A) The RBC plan or revised RBC plan submitted by the health organization is, in the judgment of the commissioner, unsatisfactory; and

(B) Notification constitutes a regulatory action level event with respect to the health organization, provided the health organization has not challenged the determination under section seven of this article;

(7) If, pursuant to section seven of this article, the health organization challenges a determination by the commissioner under subdivision (6) of this subsection, the notification by the
(8) Notification by the commissioner to the health organization that the health organization has failed to adhere to its RBC plan or revised RBC plan, but only if the failure has a substantial adverse effect on the ability of the health organization to eliminate the company action level event in accordance with its RBC plan or revised RBC plan and the commissioner has so stated in the notification, provided the health organization has not challenged the determination under section seven of this article; or

(9) If, pursuant to section seven of this article, the health organization challenges a determination by the commissioner under subdivision (8) of this subsection, the notification by the commissioner to the health organization that the commissioner has, after a hearing, rejected the challenge.

(b) If there is a regulatory action level event, the commissioner shall:

(1) Require the health organization to prepare and submit an RBC plan or, if applicable, a revised RBC plan;

(2) Perform such examination or analysis as the commissioner considers necessary of the assets, liabilities and operations of the health organization including a review of its RBC plan or revised RBC plan; and

(3) Subsequent to the examination or analysis, issue an order specifying such corrective actions as the commissioner determines are required (a corrective order).

(c) In determining corrective actions, the commissioner may take into account factors the commissioner deems relevant with respect to the health organization based upon the commissioner’s...
examination or analysis of the assets, liabilities and operations
of the health organization, including, but not limited to, the
results of any sensitivity tests undertaken pursuant to the RBC
instructions. The RBC plan or revised RBC plan shall be
submitted:

(1) Within forty-five days after the occurrence of the
regulatory action level event;

(2) If the health organization challenges an adjusted RBC
report pursuant to section seven of this article and the challenge
is not frivolous in the judgment of the commissioner, within
forty-five days after the notification to the health organization
that the commissioner has, after a hearing, rejected the health
organization’s challenge; or

(3) If the health organization challenges a revised RBC plan
pursuant to section seven of this article and the challenge is not
frivolous in the judgment of the commissioner, within forty-five
days after the notification to the health organization that the
commissioner has, after a hearing, rejected the health
organization’s challenge.

(d) The commissioner may retain actuaries and investment
experts and other consultants as may be necessary in the
judgment of the commissioner to review the health
organization’s RBC plan or revised RBC plan, examine or
analyze the assets, liabilities and operations (including
contractual relationships) of the health organization and
formulate the corrective order with respect to the health
organization. The fees, costs and expenses relating to consultants
shall be borne by the affected health organization or such other
party as directed by the commissioner.

§33-40A-5. Authorized control level event.

(a) “Authorized control level event” means any of the
following events:
(1) The filing of an RBC report by the health organization that indicates that the health organization’s total adjusted capital is greater than or equal to its mandatory control level RBC but less than its authorized control level RBC;

(2) The notification by the commissioner to the health organization of an adjusted RBC report that indicates the event in subdivision (1) of this subsection, if the health organization does not challenge the adjusted RBC report under section seven of this article;

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

(4) The failure of the health organization to respond, in a manner satisfactory to the commissioner, to a corrective order, if the health organization has not challenged the corrective order under section seven of this article; or

(5) If the health organization has challenged a corrective order under section seven of this article and the commissioner has, after a hearing, rejected the challenge or modified the corrective order, the failure of the health organization to respond, in a manner satisfactory to the commissioner, to the corrective order subsequent to rejection or modification by the commissioner.

(b) If there is an authorized control level event with respect to a health organization, the commissioner shall:

(1) Take such actions as are required under section four of this article regarding a health organization with respect to which a regulatory action level event has occurred; or
33 (2) If the commissioner considers it to be in the best interests of the policyholders and creditors of the health organization and of the public, take such actions as are necessary to cause the health organization to be placed under regulatory control under article ten of this chapter. If the commissioner takes such actions, the authorized control level event shall be considered sufficient grounds for the commissioner to take action under article ten of this chapter, and the commissioner has the rights, powers and duties with respect to the health organization as are set forth in article ten of this chapter. If the commissioner takes actions under this subdivision pursuant to an adjusted RBC report, the health organization is entitled to such protections as are afforded to health organizations under article ten of this chapter pertaining to summary proceedings.

§33-40A-6. Mandatory control level event.

1 (a) “Mandatory control level event” means any of the following events:

3 (1) The filing of an RBC report which indicates that the health organization’s total adjusted capital is less than its mandatory control level RBC;

6 (2) Notification by the commissioner to the health organization of an adjusted RBC report that indicates the event in subdivision (1) of this subsection, if the health organization does not challenge the adjusted RBC report under section seven of this article; or

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

16 (b) If it is a mandatory control level event, the commissioner shall take such actions as are necessary to place the health
organization under regulatory control under article ten of this chapter. In that event, the mandatory control level event is sufficient grounds for the commissioner to take action under article ten of this chapter, and the commissioner has the rights, powers and duties with respect to the health organization as are set forth in article ten of this chapter. If the commissioner takes actions pursuant to an adjusted RBC report, the health organization is entitled to the protections of article ten of this chapter pertaining to summary proceedings. Notwithstanding any of the foregoing, the commissioner may forego action for up to ninety days after the mandatory control level event if the commissioner finds there is a reasonable expectation that the mandatory control level event may be eliminated within the ninety-day period.


Upon the occurrence of any of the following events the health organization has the right to a confidential departmental hearing, on a record, at which the health organization may challenge any determination or action by the commissioner. The health organization shall notify the commissioner of its request for a hearing within five days after the notification by the commissioner under subsection (a), (b), (c) or (d) of this section. Upon receipt of the health organization’s request for a hearing, the commissioner shall set a date for the hearing, which shall be no less than ten nor more than thirty days after the date of the health organization’s request. The events include:

(a) Notification to a health organization by the commissioner of an adjusted RBC report;

(b) Notification to a health organization by the commissioner that:

(1) The health organization’s RBC plan or revised RBC plan is unsatisfactory; and
(2) Notification constitutes a regulatory action level event with respect to the health organization;

(c) Notification to a health organization by the commissioner that the health organization has failed to adhere to its RBC plan or revised RBC plan and that the failure has a substantial adverse effect on the ability of the health organization to eliminate the company action level event with respect to the health organization in accordance with its RBC plan or revised RBC plan; or

(d) Notification to a health organization by the commissioner of a corrective order with respect to the health organization.

§33-40A-8. Confidentiality; prohibition on announcements; prohibition on use in ratemaking.

(a) All RBC reports (to the extent the information is not required to be set forth in a publicly available annual statement schedule) and RBC plans (including the results or report of any examination or analysis of a health organization performed pursuant to this statute and any corrective order issued by the commissioner pursuant to examination or analysis) with respect to a domestic health organization or foreign health organization that are in the possession or control of the commissioner are confidential by law and privileged, are not subject to the provisions of chapter twenty-nine-b of this code, are not subject to subpoena, and are not subject to discovery or admissible in evidence in any private civil action. However, the commissioner may use the documents, materials or other information in the furtherance of any regulatory or legal action brought as a part of the commissioner’s official duties.

(b) Neither the commissioner nor any person who received documents, materials or other information while acting under the authority of the commissioner are permitted or required to testify
in any private civil action concerning any confidential
documents, materials or information subject to subsection (a) of
this section.

(c) In order to assist in the performance of the
commissioner’s duties, the commissioner:

(1) May share documents, materials or other information,
including the confidential and privileged documents, materials
or information subject to subsection (a) of this section, with
other state, federal and international regulatory agencies, with
the NAIC and its affiliates and subsidiaries, and with state,
federal and international law-enforcement authorities, provided
that the recipient agrees to maintain the confidentiality and
privileged status of the document, material or other information;

(2) May receive documents, materials or information,
including otherwise confidential and privileged documents,
materials or information, from the NAIC and its affiliates and
subsidiaries, and from regulatory and law-enforcement officials
of other foreign or domestic jurisdictions, and shall maintain as
confidential or privileged any document, material or information
received with notice or the understanding that it is confidential
or privileged under the laws of the jurisdiction that is the source
of the document, material or information; and

(3) May enter into agreements governing sharing and use of
information consistent with this subsection.

(d) No waiver of any applicable privilege or claim of
confidentiality in the documents, materials or information may
occur as a result of disclosure to the commissioner under this
section or as a result of sharing as authorized in subdivision (3),
subsection (c) of this section.

(e) It is the finding of the Legislature that the comparison of
a health organization’s total adjusted capital to any of its RBC
levels is a regulatory tool which may indicate the need for corrective action with respect to the health organization, and is not intended as a means to rank health organizations generally. Therefore, except as otherwise required under the provisions of this article, the making, publishing, disseminating, circulating or placing before the public, or causing, directly or indirectly to be made, published, disseminated, circulated or placed before the public, in a newspaper, magazine or other publication, or in the form of a notice, circular, pamphlet, letter or poster, or over a radio or television station, or in any other way, an advertisement, announcement or statement containing an assertion, representation or statement with regard to the RBC levels of any health organization, or of any component derived in the calculation, by any health organization, agent, broker or other person engaged in any manner in the insurance business would be misleading and is therefore prohibited: Provided, That if any materially false statement with respect to the comparison regarding a health organization’s total adjusted capital to its RBC levels (or any of them) or an inappropriate comparison of any other amount to the health organization’s RBC levels is published in any written publication and the health organization is able to demonstrate to the commissioner with substantial proof the falsity of the statement, or the inappropriateness, as the case may be, then the health organization may publish an announcement in a written publication if the sole purpose of the announcement is to rebut the materially false statement.

(f) It is the further finding of the Legislature that the RBC instructions, RBC reports, adjusted RBC reports, RBC plans and revised RBC plans are intended solely for use by the commissioner in monitoring the solvency of health organizations and the need for possible corrective action with respect to health organizations and shall not be used by the commissioner for ratemaking nor considered or introduced as evidence in any rate proceeding nor used by the commissioner to calculate or derive
any elements of an appropriate premium level or rate of return for any line of insurance that a health organization or any affiliate is authorized to write.


(a) The provisions of this article are supplemental to any other provisions of the laws of this state, and do not preclude or limit any other powers or duties of the commissioner under such laws, including, but not limited to, article ten and article thirty-four of this chapter.

(b) The commissioner may propose rules for legislative approval in accordance with article three, chapter twenty-nine-a of this code, as are necessary to effectuate the purposes of this article and to prevent circumvention and evasion thereof.

(c) The commissioner may exempt from the application of this article a domestic health organization that:

(1) Writes direct business only in this state;

(2) Assumes no reinsurance in excess of five percent of direct premiums written; and

(3) Writes direct annual premiums for comprehensive medical business of $2 million or less; or

(4) Is a limited health service organization that covers less than two thousand lives.

§33-40A-10. Foreign health organizations.

(a)(1) A foreign health organization, upon the written request of the commissioner, shall submit to the commissioner an RBC report as of the end of the calendar year just ended, not later than the later of:
(A) The date an RBC report would be required to be filed by a domestic health organization under this article; or

(B) Fifteen days after the request is received by the foreign health organization.

(2) A foreign health organization, at the written request of the commissioner, shall promptly submit to the commissioner a copy of any RBC plan that is filed with the insurance commissioner of any other state.

(b) If there is a company action level event, regulatory action level event or authorized control level event with respect to a foreign health organization as determined under the RBC statute applicable in the state of domicile of the health organization (or, if no RBC statute is in force in that state, under the provisions of this article), if the insurance commissioner of the state of domicile of the foreign health organization fails to require the foreign health organization to file an RBC plan in the manner specified under that state’s RBC statute (or, if no RBC statute is in force in that state, under section three of this article), the commissioner may require the foreign health organization to file an RBC plan with the commissioner. The failure of the foreign health organization to file an RBC plan with the commissioner is grounds to order the health organization to cease and desist from writing new insurance business in this state.

(c) If there is a mandatory control level event with respect to a foreign health organization, and no domiciliary receiver has been appointed with respect to the foreign health organization under the rehabilitation and liquidation statute applicable in the state of domicile of the foreign health organization, the commissioner may make application to the circuit court of Kanawha County permitted under section two, article ten of this chapter with respect to the liquidation of property of foreign health organizations found in this state, and the occurrence of the
mandatory control level event shall be considered adequate grounds for the application.


There is no liability on the part of, and no cause of action may arise against, the commissioner or the West Virginia Office of the Insurance Commissioner or its employees or agents for any action taken by them in the performance of their powers and duties under this article.


All notices by the commissioner to a health organization that may result in regulatory action under this article are effective upon dispatch if transmitted by registered or certified mail, or in the case of any other transmission shall be effective upon the health organization’s receipt of notice.

CHAPTER 138

(H. B. 4655 - By Delegates Walters and Perry)

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

AN ACT to amend and reenact §33-25E-2 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §33-25E-5, all relating to vision care insurance, benefit and discount plans; defining terms; prohibiting requirement that eye care providers give discounts on noncovered services or materials; prohibiting eye care providers from charging more to enrollees for noncovered services than the
customary rate; requiring reasonable reimbursements, requiring fee schedule and stating that plans may not provide for nominal reimbursements in order to claim that a service or material is covered; prohibiting plans from falsely representing benefits; specifying application to subcontractors; prohibiting the requirement that eye care providers be credentialed through a designated vision plan as a condition of participation in a health care network; providing pay parity for optometrists and ophthalmologists; providing that optometrists and ophthalmologists be held to the same credentialing standards; setting forth requirements for alterations to and content of eye care provider agreements; requiring that eye care providers be permitted to use any lab or supplier; creating a private right of action for persons or entities adversely affected, including injunctive relief, specifying damages and providing for attorney fees and costs; placing limits on chargebacks of administrative fees and other recoupments; authorizing suits for injunctions by Insurance Commissioner; prohibiting discrimination against a provider based on geographic location of the eye care provider; and providing effective date.

Be it enacted by the Legislature of West Virginia:

That §33-25E-2 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 §33-25E-5, all to read as follows:

ARTICLE 25E. PATIENTS’ EYE CARE ACT.


1 For the purposes of this article:

2 (1) “Commissioner” means the Insurance Commissioner of
3 West Virginia.
(2) “Covered services” and “covered materials” means services or materials for which reimbursement from the insurer or vision care plan or vision care discount plan is available under an enrollee’s vision plan or contract, or for which a reimbursement would be available but for the application of contractual limitations such as deductibles, copayments, coinsurance, waiting periods, annual or lifetime maximums, frequency limitations, alternative benefit payments or other limitations.

(3) “Covered person” means an individual enrolled in a health benefit plan or an eligible dependent of that person.

(4) “Enrollee” means any individual enrolled in a health care plan, vision care plan or vision care discount plan provided by a group, employer or other entity that purchases or supplies coverage for a vision care plan or vision care discount plan.

(5) “Eye care provider” means a licensed doctor of optometry practicing under the authority of article eight, chapter thirty of this code or a licensed medical physician specializing in ophthalmology licensed in West Virginia to practice medicine and surgery under the authority of article three, chapter thirty of this code or osteopathy under article fourteen, chapter thirty of this code.

(6) “Eye care benefits” means coverage for the diagnosis, treatment and management of eye disease and injury.

(7) “Health benefit policy” means any individual or group plan, policy or contract providing medical, hospital or surgical coverage issued, delivered, issued for delivery or renewed in this state by an insurer, after January 1, 2001. It does not include credit accident and sickness, long-term care, Medicare supplement, champus supplement, disability or limited benefits policies.
(8) “Insurer” means any health care corporation, health maintenance organization, accident and sickness insurer, nonprofit hospital service corporation, nonprofit medical service corporation or similar entity.

(9) “Materials” means ophthalmic devices, including, but not limited to, lenses, devices containing lenses, artificial intraocular lenses, ophthalmic frames and other lens-mounting apparatus, prisms, lens treatments and coatings, contact lenses and prosthetic devices to correct, relieve or treat defects or abnormal conditions of the human eye or its adnexa.

(10) “Services” means the professional work performed by an eye care provider.

(11) “Subcontractor” means any company, group or third party entity, including, but not limited to, agents, servants, partially- or wholly-owned subsidiaries and controlled organizations that is contracted by the insurer, vision care plan or vision care discount plan to supply services or materials for an eye care provider or enrollee to fulfill the benefit plan of an insurer, vision care plan or vision care discount plan.

(12) “Vision care benefits” means benefits for the refraction of the eyes and other optical benefits.

(13) “Vision care discount plan” means a business arrangement or contract offered by an insurer in which a person, in exchange for fees, dues, charges or other consideration, offers access for its plan members to providers of eye care or ancillary services and the right to receive discounts on eye care or ancillary services provided under the discount vision care plan from those providers.

(14) “Vision care plan” means an entity that creates, promotes, sells, provides, advertises or administers an integrated
or stand-alone vision benefit plan, or a vision care insurance policy or contract which provides vision benefits to an enrollee pertaining to the provision of covered services or covered materials.


(a) An agreement between an insurer, vision care plan or vision care discount plan and an eye care provider may not seek to or require that an eye care provider provide services or materials at a fee limited or set by the insurer, vision care plan or vision care discount plan, unless the services or materials are reimbursed as covered services or covered materials under the contract.

(1) An eye care provider may not charge more for services and materials that are non-covered services or non-covered materials to an enrollee of a vision care plan, vision care discount plan or insurer than his or her usual and customary rate for the services and materials.

(2) Reimbursements paid by an insurer, vision care plan or vision care discount plan for covered services and covered materials, regardless of supplier or optical lab used to obtain materials, shall be reasonable, shall be clearly listed on a fee schedule that is made available to the eye care provider prior to accepting a contract from the insurer, vision care plan or vision discount plan and shall not provide nominal reimbursement or advertise services and materials to be covered with additional copay or coinsurance if the health plan, vision care plan or vision care discount plan does not reimburse for the services or materials in order to claim that services and materials are covered services and materials.

(3) Insurers, vision care plans and vision care discount plans shall not falsely represent, publish or disseminate the benefits
that are provided to groups, employers or individual enrollees as a means of selling coverage to or communicating benefit coverage to enrollees.

(4) All provisions in this section apply to any successors in interest of an insurer, vision care plan or vision care discount plan and apply to any subcontractors that are used by an insurer, vision care plan or vision care discount plan to supply materials or services to an eye care provider or enrollee and are subject to all applicable penalties as provided in this section.

(b) An agreement between an insurer, vision care plan or vision care discount plan and an eye care provider may not require that an eye care provider must participate with or be credentialed by any specific vision care plan or vision care discount plan as a condition of participation in the health care network of the insurer to provide covered medical services to its enrollees.

(1) Any insurer issuing or renewing a health benefit plan, vision care plan or vision care discount plan issued or renewed which provides coverage for services rendered by an eye care provider shall provide the same reimbursement for services to optometrists as allowed for those services rendered by physicians or osteopaths.

(2) An insurer may not require an optometrist to meet terms and conditions that are not required of a physician or osteopath as a condition for participation in its provider network for the provision of services that are within the scope of practice of an optometrist.

(3) If an eye care provider enters into any subcontract agreement with another provider to provide covered services or covered materials to an enrollee which provides that the subcontracted provider will bill the vision care plan or enrollee
directly for the subcontracted services or materials, the subcontract agreement shall meet all requirements of this section.

(4) The provisions of subdivisions (1), (2) and (3) of this subsection also apply to any agreements an insurer enters into for services covered under the health benefit plan, vision care plan or vision care discount plan.

(c) An insurer, vision care plan or vision care discount plan may not change or alter an agreement entered into with an eye care provider without performing the following steps:

(1) Mailing a certified letter detailing proposed changes to the eye care provider;

(2) Obtaining agreement or disagreement to the proposed changes from the eye care provider; and

(3) Providing a new agreement after three or more material changes are made to an existing agreement from an insurer, vision care plan or vision care discount plan.

(d) An agreement between an insurer, vision care plan or vision care discount plan and an eye care provider may not restrict or limit, either directly or indirectly, the eye care provider’s choice of sources and suppliers of services or materials or use of optical labs provided by the eye care provider to an enrollee.

(e) An insurer, vision care plan or vision care discount plan may not change the terms, discounts or reimbursement rates contained in the agreement, regardless of supplier or fabricating lab used to supply materials, without a signed acknowledgement of written agreement from the eye care provider.

(f) A person or entity adversely affected by a violation of this section may bring action in a court of competent jurisdiction
for injunctive relief against the insurer, vision care plan or vision care discount plan and, upon prevailing, may recover monetary damages of no more than $1,000 for each instance found to be in violation of this section, plus attorneys’ fees and costs.

(g) In a fiscal year, an insurer, vision care plan or vision care discount plan may not charge back or otherwise recoup administrative fees or other amounts from an eye care provider in a total amount of more than three percent of the payments received by the eye care provider from the insurer, vision care plan or vision care discount plan for providing services to enrollees without the written agreement of the eye care provider.

(h) The Commissioner may seek an injunction against an insurer, vision care plan or vision care discount plan in a court of competent jurisdiction for violation of this section.

(i) The requirements of this section apply to insurers, vision care plans, vision care discount plans, contracts, addendums and certificates executed, delivered, issued for delivery, continued or renewed in the State of West Virginia.

(1) An insurer, vision care plan or vision care discount plan contract may not be in effect for more than two years from the date that it was first signed.

(2) An insurer, vision care plan or vision care discount plan may not construe recredentialing as recontracting with an eye care provider.

(j) An insurer, vision care plan or vision care discount plan may not discriminate against any eye care provider who is located within the geographic coverage area of the insurer, vision care plan or vision care discount plan and who is willing to meet the terms and conditions for participation established by the insurer, vision care plan or vision care discount plan,
including West Virginia Medicaid programs and Medicaid partnerships.

(k) This section becomes effective on July 1, 2016, and applies to vision care plans and vision care discount plans which take effect or are renewed on or after July 1, 2016.

CHAPTER 139

(H. B. 4734 - By Delegates McCuskey, Shott, Deem, Sobonya, Folk, Fast, Manchin, Moore, Fluharty, Fleischauer and Caputo)

[Passed March 11, 2016; in effect October 1, 2016.] [Approved by the Governor on March 25, 2016.]

AN ACT to amend and reenact §33-30-6 and §33-30-8 of the Code of West Virginia, 1931, as amended, all relating to mine subsidence insurance; increasing the maximum amount of total insured value reinsured by Board of Risk and Insurance Management; and deleting threshold provision for loss coverage.

Be it enacted by the Legislature of West Virginia:

That §33-30-6 and §33-30-8 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 30. MINE SUBSIDENCE INSURANCE.

§33-30-6. Mine subsidence coverage; waivers.

1 Beginning October 1, 1982, every insurance policy issued or renewed insuring on a direct basis a structure located in this state shall include, at a separately stated premium, insurance for loss
occurring on or after October 1, 1982, caused by mine
subsidence unless waived by the insured: A waiver is not
required and the coverage may only be provided if requested by
the insured in the following counties: Berkeley, Cabell, Calhoun,
Hampshire, Hardy, Jackson, Jefferson, Monroe, Morgan,
Pendleton, Pleasants, Ritchie, Roane, Wirt, and Wood: The
effective date of a new policy or endorsement containing mine
subsidence insurance coverage shall be on the thirtieth calendar
day after the application date. The premium charged for
coverage shall be set by the board. At no time may the
deductible be less than $250 nor more than $500; and total
insured value reinsured by the board may not exceed $200,000.
In no event may the amount of mine subsidence reinsurance
exceed the amount of the fire insurance on the structure.


All companies authorized to write fire insurance in this state
shall enter into a reinsurance agreement with the board in which
each insurer agrees to cede to the board one hundred percent, up
to $200,000, of any subsidence insurance coverage issued and,
in consideration of the ceding commission retained by the
insurer, agree to absorb all expenses of the insurer necessary for
sale of policies and any administration duties of the mine
subsidence insurance program imposed upon it pursuant to the
terms of the reinsurance agreement. The board is authorized to
undertake adjustment of losses and administer the fund, or it may
provide in a reinsurance agreement that the insurer do so. The
board shall agree to reimburse the insurer from the fund for all
amounts paid policyholders for claims resulting from mine
subsidence and shall pay from the fund all costs of
administration incurred by the board but an insurer is not
required to pay any claim for any loss insured under this article
except to the extent that the amount available in the mine
subsidence insurance fund, as maintained pursuant to sections
19 four and five of this article, is sufficient to reimburse the insurer
20 for such claim under this section, and without moral obligation.

CHAPTER 140

(Com. Sub. for S. B. 465 - By Senators Carmichael, Gaunch, Maynard, Karnes, Sypolt and Walters)

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

AN ACT to amend and reenact §33-31-2 of the Code of West Virginia, 1931, as amended; and to amend and reenact §33-46A-9 of said code, all relating to allowing professional employer organizations to insure certain risks through an insurance captive; establishing that professional employer organizations holding the appropriate license may insure its risks for insurance for accident and sickness as defined in current code; providing that such coverage for all employees and covered employees may be through a captive insurance company; eliminating prohibition against professional employer organizations offering or establishing self-funding health plans for covered employees; providing that professional employer organizations can offer plans not fully insured by authorized insurers so long as the plan complies with current code requirements; clarifying that all employees covered by a professional employer organization’s health benefit plan shall be considered employees of the professional employer organization; clarifying that health benefit plans offered under this provision shall be treated as a single employer welfare benefit plan; deleting obsolete code provision related to a study that was never conducted; and authorizing insurance commissioner to promulgate and adopt rules with respect to professional employer organizations sponsoring health benefit plans.
Be it enacted by the Legislature of West Virginia:

That §33-31-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §33-46A-9 of said code be amended and reenacted, all to read as follows:

ARTICLE 31. CAPTIVE INSURANCE.

§33-31-2. Licensing; authority.

(a) Any captive insurance company, when permitted by its articles of association, charter or other organizational document, may apply to the commissioner for a license to do any and all insurance comprised in section ten, article one of this chapter:

Provided, That all captive insurance companies, except pure captive insurance companies, shall maintain their principal office and principal place of business in this state: Provided, however, That:

(1) No pure captive insurance company may insure any risks other than those of its parent and affiliated companies or controlled unaffiliated business;

(2) No association captive insurance company may insure any risks other than those of the member organizations of its association and their affiliated companies;

(3) No industrial insured captive insurance company may insure any risks other than those of the industrial insureds that comprise the industrial insured group and their affiliated companies;

(4) No risk retention group may insure any risks other than those of its members and owners;

(5) No captive insurance company may provide personal motor vehicle or homeowner’s insurance coverage or any component thereof;
(6) No captive insurance company may accept or cede reinsurance except as provided in section eleven of this article;

(7) No risk retention group may retain any risk on any one subject of insurance, whether located or to be performed in West Virginia or elsewhere, in an amount exceeding ten percent of the surplus required by section four of this article unless approved by the commissioner;

(8) Any captive insurance company may provide excess workers’ compensation insurance to its parent and affiliated companies, unless prohibited by the federal law or laws of the state having jurisdiction over the transaction. Any captive insurance company, unless prohibited by federal law, may reinsure workers’ compensation of a qualified self-insured plan of its parent and affiliated companies; and

(9) Any captive insurance company which insures risks described in subsections (a) and (b), section ten, article one of this chapter shall comply with all applicable state and federal laws.

(10) A professional employer organization licensed pursuant to the provisions of article forty-six-a of this chapter may insure its risks for insurance coverage for accident and sickness, as such insurance coverage is defined under subsection (b), section ten, article one of this chapter, for all employees and covered employees through a captive insurance company.

(b) No captive insurance company may do any insurance business in this state unless:

(1) It first obtains from the commissioner a license authorizing it to do insurance business in this state;

(2) Its board of directors or, in the case of a reciprocal insurer, its subscribers’ advisory committee, holds at least one meeting each year in this state; and
(3) It appoints a registered agent to accept service of process and to otherwise act on its behalf in this state: Provided, That whenever such registered agent cannot with reasonable diligence be found at the registered office of the captive insurance company, the Secretary of State shall be an agent of such captive insurance company upon whom any process, notice or demand may be served.

(c) (1) Before receiving a license, a captive insurance company shall:

(A) File with the commissioner a certified copy of its organizational documents, a statement under oath of its president and secretary showing its financial condition, and any other statements or documents required by the commissioner; and

(B) Submit to the commissioner for approval a description of the coverages, deductibles, coverage limits and rates, together with such additional information as the commissioner may reasonably require. In the event of any subsequent material change in any item in such description, the captive insurance company shall submit to the commissioner for approval an appropriate revision and shall not offer any additional kinds of insurance until a revision of such description is approved by the commissioner. The captive insurance company shall inform the commissioner of any material change in rates within thirty days of the adoption of such change.

(2) Each applicant captive insurance company shall also file with the commissioner evidence of the following:

(A) The amount and liquidity of its assets relative to the risks to be assumed;

(B) The adequacy of the expertise, experience and character of the person or persons who will manage it;
(C) The overall soundness of its plan of operation;

(D) The adequacy of the loss prevention programs of its
insureds; and

(E) Such other factors deemed relevant by the commissioner
in ascertaining whether the proposed captive insurance company
will be able to meet its policy obligations;

(3) Information submitted pursuant to this subsection shall
be and remain confidential and may not be made public by the
commissioner or an employee or agent of the commissioner
without the written consent of the company, except that:

(A) Such information may be discoverable by a party in a
civil action or contested case to which the captive insurance
company that submitted such information is a party, upon a
showing by the party seeking to discover such information that:

(i) The information sought is relevant to and necessary for
the furtherance of such action or case;

(ii) The information sought is unavailable from other
nonconfidential sources; and

(iii) A subpoena issued by a judicial or administrative officer
of competent jurisdiction has been submitted to the
commissioner: Provided, That the provisions of this subdivision
shall not apply to any risk retention group; and

(B) The commissioner may, in the commissioner’s
discretion, disclose such information to a public officer having
jurisdiction over the regulation of insurance in another state if:

(i) The public official shall agree in writing to maintain the
confidentiality of such information; and

(ii) The laws of the state in which such public official serves
require such information to be and to remain confidential.
(d) Each captive insurance company shall pay to the commissioner a nonrefundable fee of $200 for examining, investigating and processing its application for license, and the commissioner is authorized to retain legal, financial and examination services from outside the department, the reasonable cost of which may be charged against the applicant. The provisions of subsection (r), section nine, article two of this chapter shall apply to examinations, investigations and processing conducted under the authority of this section. In addition, each captive insurance company shall pay a license fee for the year of registration and a renewal fee for each year thereafter of $300.

(e) If the commissioner is satisfied that the documents and statements that such captive insurance company has filed comply with the provisions of this article, the commissioner may grant a license authorizing it to do insurance business in this state until May 31, thereafter, which license may be renewed.

(f) A captive insurance company shall notify the commissioner in writing within thirty days of becoming aware of any material change in information previously submitted to the commissioner, including information submitted in or with the license application.

ARTICLE 46A. PROFESSIONAL EMPLOYER ORGANIZATIONS.


(a) A professional employer organization that sponsors a health benefit plan shall be considered the employer of all of its covered employees, and all covered employees of one or more client employers participating in a health benefit plan sponsored by a single professional employer organization shall be considered employees of that professional employer.
organization. For purposes of state law, such health benefit plans shall be treated as a single employer welfare benefit plan.

(b) If a professional employer organization offers to its covered employees any health benefit plan which is not fully insured by an authorized insurer, the professional employer organization must comply with the provisions of article thirty-one of this chapter. The Insurance Commissioner of West Virginia is authorized to promulgate and adopt rules with respect to professional employer organizations sponsoring health benefit plans in accordance with this section.

CHAPTER 141

(Com. Sub. for H. B. 4502 - By Delegates Lane, Miller and Sobonya)

[Passed March 10, 2016; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2016.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §5-1-29, relating to reciprocity agreements with contiguous states and the District of Columbia; authorizing the governor to enter into and renew reciprocity agreements with the governors and other appropriate state governmental agencies from states that share contiguous borders with this state, and the District of Columbia, to establish regulations, licensing requirements and taxation for small businesses headquartered in this state or in contiguous states or the District of Columbia that conduct business in both this state and the contiguous state; providing the governor discretionary power to delegate such authority to the Attorney General or secretary of an executive branch department to negotiate and enter into such
reciprocity agreements on behalf of the governor; requiring any reciprocity agreement that impacts or affects taxation, either the receipt or payment thereof, to be approved by legislative act; and defining terms.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §5-1-29, to read as follows:

ARTICLE 1. THE GOVERNOR.

§5-1-29. Reciprocity agreements to establish regulations, licensing requirements and taxes for small businesses in contiguous states and the District of Columbia doing business in West Virginia.

(a) The Governor is hereby authorized to enter into and renew reciprocity agreements with the governors and other appropriate state governmental agencies from states that share contiguous borders with this state, and the District of Columbia, to establish regulations, licensing requirements and taxation for small businesses headquartered in this state or contiguous states or the District of Columbia that conduct business in both. In the discretion of the Governor, the Attorney General or secretary of an executive branch department may be delegated and empowered in writing to negotiate and enter into such reciprocity agreements on behalf of the Governor.

(b) Notwithstanding the authority granted in subsection (a) of this section, any reciprocity agreement that impacts or affects taxation, either the receipt or payment thereof, may not be entered into unless and until such agreement is approved by the Legislature by act.

(c) For the purposes of this section, the term “small business” has the same meaning as prescribed under section seven-a, article thirteen-c, chapter eleven of this code.
CHAPTER 142

(S. B. 1 - By Senators Cole (Mr. President), Blair, Boso, Ferns, Gaunch, Trump, Carmichael, Sypolt and Takubo)

[Passed February 5, 2016; in effect ninety days from passage.]
[Vetoed by the Governor. Repassed notwithstanding the objections of the Governor, February 12, 2016.]

AN ACT to amend and reenact §21-1A-3 and §21-1A-4 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new article, designated §21-5G-1, §21-5G-2, §21-5G-3, §21-5G-4, §21-5G-5, §21-5G-6 and §21-5G-7, all relating to establishing the West Virginia Workplace Freedom Act; removing certain provisions under the Labor-Management Relations Act for the Private Sector to be consistent with the West Virginia Workplace Freedom Act; clarifying what constitutes an unfair labor practice under the Labor-Management Relations Act for the Private Sector to be consistent with the West Virginia Workplace Freedom Act; eliminating the statutory provisions that allow an employment agreement to require membership in a labor organization as a condition of employment; granting employees the right to refrain from paying any dues, fees, assessments or other similar charges, however denominated, of any kind or amount to a labor organization as a condition or continuation of employment; granting employees the right to refrain from paying any dues, fees, assessments or other similar charges, however denominated, of any kind or amount to any third party, including a charity, in lieu of payment to a labor organization as a condition or continuation of employment; eliminating statutory provisions that allow, as an exception to the prohibitions against unfair labor practices by an employer, an employment agreement to require
membership in a labor organization as a condition of employment; eliminating statutory provisions that allow an employer to justify discrimination against an employee for nonmembership in a labor organization in certain circumstances; prohibiting any requirement that a person become or remain a member of a labor organization as a condition or continuation of employment; prohibiting any requirement that a person pay any dues, fees, assessments or other similar charges, however denominated, of any kind or amount to a labor organization as a condition or continuation of employment; prohibiting any requirement that, as a condition or continuation of employment, a person pay any charity or third party in lieu of paying dues, fees, assessments or other similar charges, however denominated, of any kind or amount that is equivalent to or a pro rata portion of dues, fees, assessments or other charges required of members of a labor organization; providing that any agreement, contract, understanding or practice of any kind between any labor organization and an employer or public body which provides for the exclusion from employment of any person because of membership in, affiliation with, resignation from, or refusal to join or affiliate with any labor organization or employee organization of any kind to be unlawful, null and void, and of no legal effect; creating a criminal offense for any person who knowingly requires another person, as a condition or continuation of employment, to perform any conduct prohibited by the West Virginia Workplace Freedom Act; providing for criminal penalties; providing for civil relief; establishing a civil cause of action which, if proven in a court of competent jurisdiction, may permit a person to recover damages, including compensatory and punitive damages, costs and attorney’s fees, injunctive relief or other appropriate equitable relief against any person or persons violating or threatening to violate the West Virginia Workplace Freedom Act; providing for exceptions to the application of the West Virginia Workplace Freedom Act; defining terms; establishing provisions addressing the construction, applicability and severability of the West Virginia Workplace Freedom Act; clarifying application of the West
Virginia Workplace Freedom Act to collective bargaining or collective bargaining agreements in the building and construction industry; and providing that the West Virginia Workplace Freedom Act applies to any written or oral contract or agreement entered into, modified, renewed or extended after July 1, 2016 and shall not otherwise apply or abrogate a written or oral contract or agreement in effect on or before June 30, 2016.

Be it enacted by the Legislature of West Virginia:

That §21-1A-3 and §21-1A-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto a new article, designated §21-5G-1, §21-5G-2, §21-5G-3, §21-5G-4, §21-5G-5, §21-5G-6 and §21-5G-7 all to read as follows:

ARTICLE 1A. LABOR-MANAGEMENT RELATIONS ACT FOR THE PRIVATE SECTOR.

§21-1A-3. Rights of employees.

Employees shall have the right to self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities, including the right to refrain from paying any dues, fees, assessments or other similar charges however denominated of any kind or amount to a labor organization or to any third party including, but not limited to, a charity in lieu of a payment to a labor organization.

§21-1A-4. Unfair labor practices.

(a) It shall be an unfair labor practice for an employer:

(1) To interfere with, restrain or coerce employees in the exercise of the rights guaranteed in section three of this article;
(2) To dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it: Provided, That an employer shall not be prohibited from permitting employees to confer with him or her during working hours without loss of time or pay;

(3) By discrimination in regard to hire or tenure of employment or any term or condition of employment, to encourage or discourage membership in any labor organization.

(4) To discharge or otherwise discriminate against an employee because he or she has filed charges or given testimony under this article; and

(5) To refuse to bargain collectively with the representatives of his or her employees, subject to the provisions of subsection (a), section five of this article.

(b) It shall be an unfair labor practice for a labor organization or its agents:

(1) To restrain or coerce: (A) Employees in the exercise of the rights guaranteed in section three of this article: Provided, That this subdivision shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein; or (B) an employer in the selection of his or her representatives for the purposes of collective bargaining or the adjustment of grievances;

(2) To cause or attempt to cause an employer to discriminate against an employee in violation of subdivision (3), subsection (a) of this section or to discriminate against an employee with respect to whom membership in such organization has been denied or terminated on some ground other than his or her failure
to tender the periodic dues and the initiation fees uniformly
required as a condition of acquiring or retaining membership;

(3) To refuse to bargain collectively with an employer,
provided it is the representative of his or her employees subject
to the provisions of subsection (a), section five of this article;

(4) (i) To engage in or induce or encourage any individual
employed by any person to engage in, a strike or a refusal in the
course of employment to use, manufacture, process, transport, or
otherwise handle or work on any goods, articles, materials or
commodities or to perform any services; or (ii) to threaten,
coerce, or restrain any person, where in either case an object
thereof is:

(A) Forcing or requiring any employer or self-employed
person to join any labor or employer organization or to enter into
any agreement which is prohibited by subsection (e) of this
section;

(B) Forcing or requiring any person to cease using, selling,
transporting or otherwise dealing in the products of
any other producer, processor or manufacturer, or to cease doing
business with any other person, or forcing or requiring any other
employer to recognize or bargain with a labor organization as the
representative of his or her employees unless such labor
organization has been certified as the representative of such
employees under the provisions of section five of this article:
Provided, That nothing contained in this paragraph may be
construed to make unlawful, where not otherwise unlawful, any
primary strike or primary picketing;

(C) Forcing or requiring any employer to recognize or
bargain with a particular labor organization as the representative
of his or her employees if another labor organization has been
certified as the representative of such employees under the
provisions of section five of this article;
(D) Forcing or requiring any employer to assign particular work to employees in a particular labor organization or in a particular trade, craft or class rather than to employees in another labor organization or in another trade, craft or class, unless such employer is failing to conform to an order of certification of the board determining the bargaining representative for employees performing such work: Provided, That nothing contained in this subsection shall be construed to make unlawful a refusal by any person to enter upon the premises of any employer (other than his or her own employer), if the employees of such employer are engaged in a strike ratified or approved by a representative of such employees whom such employer is required by law to recognize;

(5) To require of employees covered by an agreement authorized under subdivision (3), subsection (a) of this section, the payment, as a condition precedent to becoming a member of such organization, of a fee in an amount which the board finds excessive or discriminatory under all the circumstances. In making such a finding, the board shall consider, among other relevant factors, the practices and customs of labor organizations in the particular industry, and the wages currently paid to the employees affected;

(6) To cause or attempt to cause an employer to pay or deliver or agree to pay or deliver any money or other thing of value, in the nature of an exaction, for services which are not performed or not to be performed; and

(7) To picket or cause to be picketed, or threaten to picket or cause to be picketed, any employer where an object thereof is forcing or requiring an employer to recognize or bargain with a labor organization as the representative of his or her employees, or forcing or requiring the employees of an employer to accept or select such labor organization as their collective bargaining
representative, unless such labor organization is currently
certified as the representative of such employees:

(A) Where the employer has lawfully recognized in
accordance with this article any other labor organization and a
question concerning representation may not appropriately be
raised under subsection (c), section five of this article;

(B) Where within the preceding twelve months a valid
election under subsection (c), section five of this article has been
conducted; or

(C) Where such picketing has been conducted without a
petition under subsection (c), section five of this article being
filed within a reasonable period of time not to exceed fifteen
days from the commencement of such picketing: Provided, That
when such a petition has been filed the board shall forthwith,
without regard to the provisions of said subsection (c), section
five or the absence of a showing of a substantial interest on the
part of the labor organization, direct an election in such unit as
the board finds to be appropriate and shall certify the results
thereof. Nothing in this subdivision (7) of this subsection shall
be construed to permit any act which would otherwise be an
unfair labor practice under this subsection.

(c) The expressing of any views, argument or opinion, or the
dissemination thereof, whether in written, printed, graphic or
visual form, shall not constitute or be evidence of an unfair labor
practice, or be prohibited under this article, if such expression
contains no threat of reprisal or force or promise of benefit.

(d) For the purposes of this section, to bargain collectively
is the performance of the mutual obligation of the employer and
the representative of the employees to meet at reasonable times
and confer in good faith with respect to wages, hours and other
terms and conditions of employment, or the negotiation of an
agreement, or any question arising thereunder, and the execution
of a written contract incorporating any agreement reached if
requested by either party, but such obligation does not compel
either party to agree to a proposal or require the making a
concession: Provided, That where there is in effect a collective
bargaining contract covering employees, the duty to bargain
collectively shall also mean that no party to such contract shall
terminate or modify such contract, unless the party desiring such
termination or modification:

(1) Gives a written notice to the other party of the proposed
termination or modification sixty days prior to the expiration
date thereof, or in the event such contract contains no expiration
date, sixty days prior to the time it is proposed to make such
termination or modification;

(2) Offers to meet and confer with the other party for the
purpose of negotiating a new contract or a contract containing
the proposed modifications;

(3) Notifies the Commissioner of Labor of the existence of
a dispute;

(4) Continues in full force and effect, without resorting to
strike or lockout, all the terms and conditions of the existing
contract for a period of sixty days after such notice is given or
until the expiration date of such contract, whichever occurs later.
The duties imposed upon employers, employees, and labor
organizations by subdivisions (2), (3) and (4) of this subsection
shall become inapplicable upon an intervening certification of
the board, under which the labor organization or individual,
which is a party to the contract, has been superseded as or ceased
to be the representative of the employees subject to the
provisions of subsection (a), section five of this article, and the
duties so imposed shall not be construed as requiring either party
to discuss or agree to any modification of the terms and
conditions contained in a contract for a fixed period, if such
modification is to become effective before such terms and
conditions can be reopened under the provisions of the contract.
Any employee who engages in a strike within the sixty-day
period specified in this subsection shall lose his or her status as
an employee of the employer engaged in the particular labor
dispute, for the purposes of sections three, four and five of this
article, but such loss of status for such employee shall terminate
if and when he or she is reemployed by such employer.

(e) It shall be an unfair labor practice for any labor
organization and any employer to enter into any contract or
agreement, express or implied, whereby such employer ceases or
refrains or agrees to cease or refrain from handling, using,
selling, transporting, or otherwise dealing in any of the products
of any other employer, or to cease doing business with any other
person and any such contract or agreement entered into
heretofore or hereafter shall be to such extent unenforceable and
void.

ARTICLE 5G. WEST VIRGINIA WORKPLACE FREEDOM
ACT.

§21-5G-1. Definitions.

As used in this article, the following terms have the
following definitions:

(a) The term “person” means any individual, proprietorship,
partnership, firm, association, corporation, labor organization or
any other legal entity.

(b) The term “labor organization” means any organization,
agency, union or employee representation committee of any kind
that exists, in whole or in part, to assist employees in negotiating
with employers concerning grievances, labor disputes, wages,
rates of pay or other terms or conditions of employment.
(c) The term “employer” means any person employing at least one individual in the state, or any agent of an employer employing at least one individual in the state.

(d) The term “state” means any officer, board, branch, commission, department, division, bureau, committee, agency, authority or other instrumentality of the State of West Virginia.

§21-5G-2. Individual’s right to refrain from affiliating with a labor organization.

A person may not be required, as a condition or continuation of employment, to:

1. Become or remain a member of a labor organization;

2. Pay any dues, fees, assessments or other similar charges, however denominated, of any kind or amount to any labor organization; or

3. Pay any charity or third party, in lieu of those payments, any amount that is equivalent to or a pro rata portion of dues, fees, assessments or other charges required of members of a labor organization.

§21-5G-3. Contracting for exclusion from employment because of affiliation or nonaffiliation with a labor organization.

Any agreement, contract, understanding or practice, either written or oral, implied or expressed, between any labor organization and an employer or public body which provides for the exclusion from employment of any person because of membership in, affiliation with, resignation from, or refusal to join or affiliate with any labor organization or employee organization of any kind is hereby declared to be unlawful, null and void, and of no legal effect.

Any person who knowingly requires another person, as a condition or continuation of employment, to perform any of the conduct enumerated in section two of this article, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $500 nor more than $5,000.

§21-5G-5. Civil relief; damages.

Any person injured as a result of any violation or threatened violation of this article shall have a cause of action, and, if proven in a court of competent jurisdiction, may be entitled to the following relief against a person or persons violating or threatening to violate this article:

(1) Compensatory damages;

(2) Costs and reasonable attorney fees, which shall be awarded if the injured person substantially prevails;

(3) Punitive damages in accordance with the provisions of section twenty-nine, article seven, chapter fifty-five of this code;

(4) Preliminary and permanent injunctive relief; and

(5) Any other appropriate equitable relief.


This article does not apply:

(1) To any employee or employer covered by the federal Railway Labor Act, 45 U. S. C. §151, et seq.;

(2) To any employee of the United States or a wholly owned corporation of the United States;
6 (3) To any employee who is employed on property over
7 which the United States government has exclusive jurisdiction
8 for purposes of labor relations; or

9 (4) Where the provisions of this article would otherwise
10 conflict with, or be preempted by, federal law.

§21-5G-7. Construction; applicability; severability.

1 (a) Construction. — Except to the extent expressly
2 prohibited by the provisions of this article, nothing in this article
3 is intended, or should be construed, to change or affect any law
4 concerning collective bargaining or collective bargaining
5 agreements in the building and construction industry.

6 (b) Applicability. — This article applies to any written or
7 oral contract or agreement entered into, modified, renewed or
8 extended after July 1, 2016: Provided, That the provisions of this
9 article shall not otherwise apply to or abrogate a written or oral
10 contract or agreement in effect on or before June 30, 2016.

11 (c) Severability. — If any provision of this act or the
12 application of any such provision to any person or circumstance
13 should be held invalid by a court of competent jurisdiction, the
14 remainder of this act or the application of its provisions to
15 persons or circumstances other than those to which it is held
16 invalid shall not be affected thereby.
AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §21-5H-1, relating to employee personal social media; prohibiting an employer from requesting or requiring that an employee or potential employee disclose any user name, password or other authentication information for accessing a personal account; prohibiting an employer from requesting or requiring that an employee or potential employee access his or her personal account in the employer’s presence; setting forth permissible actions for an employer; specifying required action when an employer inadvertently receives an employee’s or potential employee’s username, password or other authentication information; setting forth circumstances under which an employer is liable for having that information; setting forth authority and obligation of employer to investigate complaints, allegations or the occurrence of sexual, racial or other harassment; and defining the term personal account.

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 §21-5H-1, to read as follows:

ARTICLE 5H. EMPLOYEE PERSONAL SOCIAL MEDIA.

§21-5H-1. Employer access to employee or potential employee personal accounts prohibited.
(a) An employer shall not do any of the following:

(1) Request, require or coerce an employee or a potential employee to disclose a username and password, password or any other authentication information that allows access to the employee or potential employee’s personal account;

(2) Request, require or coerce an employee or a potential employee to access the employee or the potential employee’s personal account in the presence of the employer; or

(3) Compel an employee or potential employee to add the employer or an employment agency to their list of contacts that enable the contacts to access a personal account.

(b) Nothing in this section prevents an employer from:

(1) Accessing information about an employee or potential employee that is publicly available;

(2) Complying with applicable laws, rules or regulations;

(3) Requiring an employee to disclose a username or password or similar authentication information for the purpose of accessing:

(A) An employer-issued electronic device; or

(B) An account or service provided by the employer, obtained by virtue of the employee’s employment relationship with the employer, or used for the employer’s business purposes;

(4) Conducting an investigation or requiring an employee to cooperate in an investigation. The employer may require an employee to share the content that has been reported to make a factual determination, if the employer has specific information about an unauthorized transfer of the employer’s proprietary
information, confidential information or financial data, to an employee’s personal account;

(5) Prohibiting an employee or potential employee from using a personal account during employment hours, while on employer time or for business purposes; or

(6) Requesting an employee to share specific content regarding a personal account for the purposes of ensuring compliance with applicable laws, regulatory requirements or prohibitions against work-related employee misconduct.

(c) If an employer inadvertently receives the username, password or any other authentication information that would enable the employer to gain access to the employee or potential employee’s personal account through the use of an otherwise lawful technology that monitors the employer’s network or employer-provided electronic devices for network security or data confidentiality purposes, then the employer is not liable for having that information, unless the employer:

(1) Uses that information, or enables a third party to use that information, to access the employee or potential employee’s personal account;

(2) After the employer becomes aware that that information was received, does not delete the information as soon as is reasonably practicable, unless that information is being retained by the employer in connection with an ongoing investigation of an actual or suspected breach of the computer, network or data security. Where an employer knows or, through reasonable efforts, should be aware that its network monitoring technology is likely inadvertently to receive such information, the employer shall make reasonable efforts to secure that information.

(d) Nothing in this section diminishes the authority and obligation of an employer to investigate complaints, allegations
or the occurrence of sexual, racial, or other harassment as provided in this code.

(e) As used in this section, “personal account” means an account, service or profile on a social networking website that is used by an employee or potential employee exclusively for personal communications unrelated to any business purposes of the employer.

CHAPTER 144

(H. B. 4324 - By Mr. Speaker (Mr. Armstead), and Delegate Miley)
[By Request of the Executive]

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

AN ACT to amend and reenact §21A-10-11 of the Code of West Virginia, 1931, as amended, relating to authorizing information sharing by Workforce West Virginia related to administration of the Workforce Innovation and Opportunity Act with agencies of state government responsible for vocational rehabilitation, employment and training.

Be it enacted by the Legislature of West Virginia:

That §21A-10-11 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 10. GENERAL PROVISIONS.

§21A-10-11. Reporting requirements and required information; use of information; libel and slander actions prohibited.
(a) Each employer, including labor organizations as defined in subsection (i) of this section, shall, quarterly, submit certified reports on or before the last day of the month next following the calendar quarter, on forms to be prescribed by the commissioner. The reports shall contain:

(1) The employer’s assigned unemployment compensation registration number, the employer’s name and the address at which the employer’s payroll records are maintained;

(2) Each employee’s Social Security account number, name and the gross wages paid to each employee, which shall include the first $12,000 of remuneration and all amounts in excess of that amount, notwithstanding subdivision (1), subsection (b), section twenty-eight, article one-a of this chapter;

(3) The total gross wages paid within the quarter for employment, which includes money wages and the cash value of other remuneration, and shall include the first $12,000 of remuneration paid to each employee and all amounts in excess of that amount, notwithstanding subdivision (1), subsection (b), section twenty-eight, article one-a of this chapter; and

(4) Other information that is reasonably connected with the administration of this chapter.

(b) Information obtained may not be published or be open to public inspection to reveal the identity of the employing unit or the individual.

(c) Notwithstanding the provisions of subsection (b) of this section, the commissioner may provide information obtained to the following governmental entities for purposes consistent with state and federal laws:

(1) The United States Department of Agriculture;
(2) The state agency responsible for enforcement of the Medicaid program under Title XIX of the Social Security Act;

(3) The United States Department of Health and Human Services or any state or federal program operating and approved under Title I, Title II, Title X, Title XIV or Title XVI of the Social Security Act;

(4) Those agencies of state government responsible for economic and community development; early childhood, primary, secondary, postsecondary and vocational education; the West Virginia P-20 longitudinal data system established pursuant to section ten, article one-d, chapter eighteen-b of this code; and vocational rehabilitation, employment and training, including, but not limited to, the administration of the Perkins Act and the Workforce Innovation and Opportunity Act;

(5) The Tax Division, but only for the purposes of collection and enforcement;

(6) The Division of Labor for purposes of enforcing the wage bond and the contractor licensing provisions of chapter twenty-one of this code;

(7) Any agency of this or any other state, or any federal agency, charged with the administration of an unemployment compensation law or the maintenance of a system of public employment offices;

(8) Any claimant for benefits or any other interested party to the extent necessary for the proper presentation or defense of a claim; and

(9) The Insurance Commissioner for purposes of its Workers Compensation regulatory duties.

(d) The agencies or organizations which receive information under subsection (c) of this section shall agree that the
information shall remain confidential as not to reveal the identity
of the employing unit or the individual consistent with the
provisions of this chapter.

(e) The commissioner may, before furnishing any
information permitted under this section, require that those who
request the information shall reimburse the Bureau of
Employment Programs for any cost associated for furnishing the
information.

(f) The commissioner may refuse to provide any information
requested under this section if the agency or organization making
the request does not certify that it will comply with the state and
federal law protecting the confidentiality of the information.

(g) A person who violates the confidentiality provisions of
this section is guilty of a misdemeanor and, upon conviction
thereof, shall be fined not less than $20 nor more than $200 or
confined in a county or regional jail not longer than ninety days,
or both.

(h) An action for slander or libel, either criminal or civil,
may not be predicated upon information furnished by any
employer or any employee to the commissioner in connection
with the administration of any of the provisions of this chapter.

(i) For purposes of subsection (a) of this section, the term
“labor organization” means any organization of any kind, or any
agency or employee representation committee or plan, in which
employees participate and which exists for the purpose, in whole
or in part, of dealing with employers concerning grievances,
labor disputes, wages, rates of pay, hours of employment or
conditions of work. It includes any entity, also known as a hiring
hall, which is used by the organization and an employer to carry
out requirements described in 29 U. S. C. §158(f)(3) of an
agreement between the organization and the employer.