

ACTS
OF THE
LEGISLATURE
OF
WEST VIRGINIA



Regular Session, 2017
Constitutional Amendment, 2017
First Extraordinary Session, 2017

Volume I
Chapters 1 - 139

WEST VIRGINIA HOUSE OF DELEGATES
HONORABLE TIM ARMSTEAD
SPEAKER OF THE HOUSE

COMPILED AND PUBLISHED
UNDER THE DIRECTION
OF

STEPHEN J. HARRISON
CLERK OF THE HOUSE



OFFICE OF THE CLERK OF THE HOUSE
212 MAIN UNIT
STATE CAPITOL
CHARLESTON, WEST VIRGINIA

CLERK'S OFFICE LEGISLATIVE GROUP

Bo Hoover
Assistant Clerk/Parliamentarian

Robert Altmann	Lynn Lewis
Anne Landgrebe	Lori Skull

FOREWORD

These volumes contain the Acts of the First Regular Session and the First Extraordinary Session of the 83rd Legislature, 2017.

First Regular Session, 2017

The First Regular Session of the 83rd Legislature convened on January 11, 2017, and following the election of officers of the two houses, the opening and publishing of the returns of the election of state officers at the general election held on the 8th day of November, 2016, all as prescribed by Section 18, Article VI of the Constitution of the State, the adoption of rules to govern the proceedings of the two houses and concurrently and separately acting on certain other matters incident to organization, took an adjournment until February 8, 2017, as provided by the aforesaid section of the Constitution. Reconvening, pursuant to the adjournment, the constitutional sixty-day limit on the duration of the session was midnight, April 8, 2017. The Governor issued a proclamation on April 8, 2017, extending the session for a period not to exceed one day for the purpose of considering the Budget bill, and the Legislature adjourned *sine die* on April 9, 2017.

Bills totaling 1,802 were introduced in the two houses during the session (1,108 House and 694 Senate). The Legislature passed 262 bills, 132 House and 130 Senate.

The Governor vetoed seventeen bills (**Com. Sub. for H. B. 2018**, Budget Bill, making appropriations of public money out of the Treasury in accordance with section fifty-one, article six of the Constitution; **Com. Sub. for H. B. 2196**, Relating to the secondary schools athletic commission; **H. B. 2446**, Relating to the requirement that all executive branch agencies maintain a website that contains specific information; **Com. Sub. for H. B. 2589**, Permitting students who are homeschooled or attend private schools to enroll and take classes at the county's vocational school; **Com. Sub. for H. B. 2646**, Terminating the Women's Commission and discontinue its functions; **S. B. 28**, Creating new system for certain contiguous counties to establish regional recreation

authorities; **S. B. 172**, Eliminating salary for Water Development Authority board members; **Com. Sub. for S. B. 239**, Limiting use of wages by employers and labor organizations for political activities; **Com. Sub. for S. B. 248**, Clarifying composition and chairmanship of Commission on Special Investigations; **Com. Sub. for S. B. 255**, Relating generally to filling vacancies in elected office; **S. B. 330**, Relating to WV Workplace Freedom Act; **Com. Sub. for S. B. 347**, Relating to modernization of Physician Assistant Practice Act; **Com. Sub. for S. B. 437**, Discontinuing WV Greyhound Breeding Development Fund; **Com. Sub. for S. B. 441**, Establishing Municipal Home Rule Pilot Program; **Com. Sub. for S. B. 606**, Relating to minimum wage and maximum hours for employees; **Com. Sub. for S. B. 622**, Relating generally to tax procedures and administration; and **Com. Sub. for S. B. 656**, Relating to Student Data Accessibility, Transparency and Accountability Act.) Notwithstanding the objections of the Governor, the Legislature again passed S. B. 330, leaving a total of 246 bills, 127 House and 119 Senate, which became law.

There were 205 Concurrent Resolutions introduced during the session, 141 House and 64 Senate, of which 45 House and 21 Senate were adopted. 26 House Joint Resolutions and 10 Senate Joint Resolutions were introduced, proposing amendments to the State Constitution, of which 1 Senate Joint Resolution (**Com. Sub. for S. J. R. 6**, Roads to Prosperity Amendment of 2017) was adopted. The House introduced 19 House Resolutions, and the Senate introduced 74 Senate Resolutions, of which 13 House and 74 Senate were adopted.

First Extraordinary Session, 2017

The Proclamation, as amended, calling the Legislature into Extraordinary Session on May 4, 2017, contained fifteen items for consideration.

The Legislature introduced 42 bills during the Extraordinary Session, 23 House Bills and 19 Senate Bills.

Six concurrent resolutions were adopted. These included the following three concurrent resolutions related to adjournment: **S. C. R. 101**, Providing for adjournment of Legislature until May 15, 2017, which was adopted on May 5, 2017; **S. C. R. 102**, Providing for adjournment of Legislature until June 5, 2017, which was adopted on May 24, 2017 and **H. C. R. 2**, Providing for an adjournment of the Legislature until June 26, 2017, which was adopted on June 16, 2017. The following three concurrent resolutions related to committees of conference were adopted: **S. C. R. 103**, Suspending provisions of Joint Rule 3 relating to committee of conference on House Bill 107; **S. C. R. 104**, Suspending provisions of Joint Rule 3 relating to committee of conference on House Bill 106; **S. C. R. 105**, Suspending provisions of Joint Rule 3 relating to committee of conference on House Bill 106.

During the First Extraordinary session, the Senate adopted 6 Senate Resolutions. The Legislature passed 8 bills, 3 House and 5 Senate.

The Governor vetoed one bill, (**Com. Sub. for H. B. 113**, Relating to the sale of Jackie Withrow Hospital by the DHHR); and one bill became law without his signature (**S. B. 1013**, Budget Bill), leaving a total of 7 bills, 2 House and 5 Senate, which became law.

The Legislature adjourned the First Extraordinary Session *sine die* on June 26, 2017.

STEPHEN J. HARRISON

*Clerk of the House and
Keeper of the Rolls.*

TABLE OF CONTENTS

ACTS

Regular Session, 2017

GENERAL LAWS

*Denotes Committee Substitute

Chapter	Bill No.		Page
ACTIONS AND SUITS			
1.	(*SB497)	Relating to liability for health care providers who provide services at school athletic events	1
2.	(*HB2850)	Relating to product liability actions.....	2
3.	(*SB338)	Relating to medical professional liability	6
4.	(*HB2678)	Changing the amounts of prejudgment and post-judgment interest to reflect today's economic conditions.....	18
5.	(*SB575)	Relating generally to shooting ranges.....	22
AGRICULTURE			
6.	(*HB2453)	Expanding the list of persons the Commissioner of Agriculture may license to grow or cultivate industrial hemp	25
7.	(*SB531)	Relating to renewal date for apiary certificates of registration	26

TABLE OF CONTENTS

8. (*HB2552) Increasing the pet food registration fee and directing that the additional money be deposited into the West Virginia Spay Neuter Assistance Fund..... 28

ALL-TERRAIN VEHICLES

9. (SB691) Relating to off-road vehicles 32

APPROPRIATIONS

10. (*HB2740) Making a supplementary appropriation to the Department of Administration..... 36
11. (*HB2801) Expiring funds to the unappropriated balance in the State Fund from the Department of Revenue, Office of the Secretary – Revenue Shortfall Reserve Fund 38
12. (HB3103) Making a supplementary appropriation to the Department of Health and Human Resources..... 49
13. (*SB299) Supplementing, amending, decreasing and increasing items of appropriations from State Road Fund to DOH..... 52
14. (*SB300) Supplemental appropriation from unappropriated balance in Treasury to Division of Personnel 54
15. (*SB301) Supplemental appropriation of federal funds from Treasury to State Board of Education, School Lunch Program 55
16. (*SB302) Supplemental appropriation of federal funds from Treasury to Division of Human Services 56
17. (*SB303) Supplemental appropriation of public moneys from Treasury to DHHR..... 58
18. (*SB305) Supplemental appropriation of public moneys from Treasury to Fire Commission..... 60

TABLE OF CONTENTS

19.	(*SB306)	Supplemental appropriation of federal funds from Treasury to WorkForce West Virginia.....	62
20.	(*SB362)	Authorizing redirection of certain amounts to General Revenue Fund	63
21.	(SB694)	Expiring funds to unappropriated surplus balance in General Revenue Fund to Department of Administration.....	71

BROADBAND EXPANSION

22.	(*HB3093)	Establishing Broadband Enhancement and Expansion Policies	73
-----	-----------	---	----

BUSINESS STRUCTURE

23.	(SB608)	Clarifying lawful business structures are unaffected by enactment of prohibitory legislation	121
-----	---------	--	-----

CHILD WELFARE

24.	(*SB445)	Amending definition of "abused child"	127
25.	(*SB456)	Relating to standards for termination of parental rights in child abuse and neglect cases	133

CLAIMS AGAINST THE STATE

26.	(*HB2805)	Finding and declaring certain claims against the State and its agencies to be moral obligations of the State.....	135
27.	(SB566)	Claims against State	173
28.	(*HB2475)	Authorizing the Tax Commissioner to collect tax, interest and penalties due and owing from payments to vendors and contractors from the Auditor and other state, county, district or municipal officers and agents	175

TABLE OF CONTENTS

29. (*HB2447) Renaming the Court of Claims the State Claims
Commission..... 178

CODE REPEALED

30. (SB171) Repealing Programs of All-Inclusive Care for
Elderly..... 214
31. (SB170) Repealing State Hemophilia Program..... 215
32. (SB176) Repealing article concerning detection of
tuberculosis, high blood pressure and diabetes..... 216
33. (SB169) Repealing article providing assistance to Korea
and Vietnam veterans exposed to certain
chemical defoliants..... 216
34. (SB349) Repealing outdated code related to Division of
Corrections 217
35. (HB2119) Repealing West Virginia Health Benefit
Exchange Act 218

CONSUMER CREDIT

36. (*SB563) Relating to Consumer Credit and Protection Act..... 218
37. (*SB344) Relating to application of payments on
consumer credit sale and loans 231

CONTROLLED SUBSTANCES

38. (*HB2329) Prohibiting the production, manufacture or
possession of fentanyl..... 238
39. (*HB2526) Classifying additional drugs to Schedules I, II,
IV and V of controlled substances..... 267
40. (*HB2579) Increasing the penalties for transporting
controlled substances..... 302

TABLE OF CONTENTS

41.	(*SB219)	Relating to conspiracy to commit crimes under Uniform Controlled Substances Act.....	305
42.	(*SB220)	Relating to offenses and penalties under Uniform Controlled Substances Act.....	308
43.	(*SB333)	Requiring all DHHR-licensed facilities access WV Controlled Substances Monitoring Program Database.....	310
44.	(*HB2083)	Increasing the felony criminal penalties for exposing children to methamphetamine manufacturing.....	323
45.	(HB2653)	Extending the Multi State Real-Time Tracking System.....	324

CORPORATIONS

46.	(SB490)	Clarifying standard of liability for officers of corporation	325
-----	---------	--	-----

COURTS

47.	(SB444)	Establishing Court Advanced Technology Subscription Fund.....	328
48.	(*HB2731)	Clarifying civil actions heard in circuit court	330
49.	(*SB247)	Authorizing prosecuting attorney designate and deliver grand jury records for investigative purposes.....	331

CRIMES AND THEIR PUNISHMENT

50.	(*SB442)	Relating generally to crimes against persons.....	334
51.	(HB3018)	Adding definition of correctional employee to the list of persons against whom an assault is a felony.....	339

TABLE OF CONTENTS

52.	(*SB206)	Relating generally to criminal offense of kidnapping.....	343
53.	(*HB2367)	Establishing a criminal offense of organized retail crime.....	346
54.	(*SB240)	Creating crime of nonconsensual distribution of sexual images	348
55.	(*SB288)	Increasing penalty for crime of child abuse causing death by parent, guardian, custodian or other person.....	351
56.	(*SB76)	Creating WV Second Chance for Employment Act.....	353
57.	(*HB2585)	Creating felony crime of conducting financial transactions involving proceeds of criminal activity.....	363

CRIMINAL PROCEDURE

58.	(*SB233)	Excluding from protection oral communications uttered in child care center under Wiretapping and Electronic Surveillance Act	368
59.	(*SB455)	Relating generally to commitment of persons to custody of Commissioner of Corrections	372
60.	(*HB2726)	Authorizing home incarceration officers to arrest participants for violating the terms and conditions of his or her supervision with or without a court order	375
61.	(SB41)	Extending time person may be subject to probation.....	377
62.	(*SB515)	Relating to parole requirements for hearings and release	378

TABLE OF CONTENTS

63. (HB2766) Establishing a new special revenue fund,
designated the Adult Drug Court Participation
Fund..... 389

DOMESTIC RELATIONS

64. (*HB2674) Relating to access to and receipt of certain
information regarding a protected person 391
65. (*SB225) Allowing magistrates to conduct proceeding for
temporary emergency protective order
dealing with temporary custody by family
court..... 396
66. (*HB2479) Uniform Deployed Parents Custody and
Visitation Act 399

ECONOMIC DEVELOPMENT

67. (HB2856) Declaring public policy and legislative intent
for improving the marketing, quality and
frequency of passenger rail service of the
Cardinal Passenger Train..... 417

EDUCATION

68. (SB231) Relating to State Board of Education and
Medicaid-eligible children..... 420
69. (*HB2195) Relating to requiring comprehensive drug
awareness and prevention program in all
public schools..... 423
70. (*HB3080) Requiring instruction in the Declaration of
Independence and the United States
Constitution 426
71. (*SB40) Requiring inclusion of protocols for response to
after-school emergencies in school crisis
response plans 430

TABLE OF CONTENTS

72.	(*HB2711)	Abolishing regional educational service agencies and providing for the transfer of property and records	432
73.	(*HB2494)	Providing that statewide school report cards are only to be made available to custodial parents and guardians of students upon request	485
74.	(*SB186)	Adjusting date when children become eligible for certain school programs and school attendance requirements	488
75.	(*HB2373)	Authorizing school bus drivers trained in administration of epinephrine auto-injectors to administer auto-injectors	501
76.	(*SB36)	Permitting school nurses to possess and administer opioid antagonists	506
77.	(*SB630)	Establishing Accessibility and Equity in Public Education Enhancement Act	509
78.	(*HB2702)	Relating to excused absences for personal illness from school.....	516
79.	(*HB2561)	Relating to public school support	522
80.	(*HB2720)	Allowing the School Building Authority to transfer funds allocated into the School Construction Fund	538
81.	(HB2188)	Extending the length of time for the special Community-Based Pilot Demonstration Project to Improve Outcomes for At-Risk Youth.....	546
82.	(*SB388)	Relating to dangerous weapons	548

ELECTIONS

83.	(*HB2364)	Prohibiting electioneering within or near early voting locations during early voting periods	555
-----	-----------	--	-----

TABLE OF CONTENTS

84. (*HB2781) Requiring a person desiring to vote to present documentation identifying the voter to one of the poll clerks 560

85. (*HB2319) Relating to candidates or candidate committees for legislative office disclosing contributions 564

ENVIRONMENTAL RESOURCES

86. (SB687) Relating generally to coal mining, safety and environmental protection 566

87. (*SB505) Providing five-year reclamation period following completion of well pads for horizontal wells 631

88. (*HB2506) Relating to the permit limit calculations and allowing overlapping mixing zones for calculating permit limits for drinking water criteria 634

89. (*HB2811) Relating to the definition of aboveground storage tanks 637

ESTATES, PROPERTY AND TRUSTS

90. (*HB2404) Barring persons who are convicted of certain criminal offenses from acquiring property from their victims 645

91. (*SB358) Relating generally to trustee sale of timeshare estates 649

92. (*SB581) Relating generally to administration of trusts 655

93. (HB2967) Relating generally to administration of estates and trusts 671

ETHICS

94. (*HB2001) Relating to ethics and transparency in government 685

TABLE OF CONTENTS

FEES

95.	(*SB588)	Relating to reproduction, distribution and sale of tax maps	732
96.	(*HB2980)	Relating to civil lawsuit filing fees for multiple defendant civil action	744
97.	(*HB3048)	Relating to collection of Tier II fees for chemical inventories.....	750
98.	(*SB454)	Providing more efficient collection and submission of state moneys received from court transactions or court services.....	753
99.	(SB547)	Modifying fees paid to Secretary of State.....	765

FLOOD PROTECTION

100.	(*HB2935)	Relating to state flood protection planning.....	779
------	-----------	--	-----

GOVERNMENT AGENCIES AND BOARDS

101.	(*SB204)	Requiring persons appointed to fill vacancy by Governor have same qualifications for vacated office and receive same compensation and expenses.....	785
102.	(*SB221)	Relating to composition of PEIA Finance Board.....	787
103.	(*HB2897)	Raising the amount required for competitive bidding of construction contracts by the State and its subdivisions	790
104.	(*HB2724)	Relating to creating a pilot program under the Herbert Henderson Office of Minority Affairs	809
105.	(*SB461)	Exempting WV State Police from state purchasing requirements.....	813

TABLE OF CONTENTS

106.	(SB686)	Exempting facilities governed by DHHR that provide direct patient care	818
107.	(*HB2797)	Codifying statutory immunity for government agencies and officials from actions of third-parties using documents or records.....	819
108.	(HB3037)	Removing the Division of Energy as an independent agency	820
109.	(HB2427)	Requiring agencies listed in the online state phone directory to update certain employee information.....	827
110.	(HB2962)	Enlarging the authority of the Tax Commissioner to perform background investigations of employees and contractors	829
111.	(SB667)	Limiting authority of Attorney General to disclose certain information provided by Tax Commissioner.....	833
112.	(*HB2941)	Requiring the Commissioner of the Division of Highways to utilize the Attorney General for all legal assistance and services.....	840
113.	(*HB2948)	Establishing timelines for taking final action on certain permits	846
114.	(*SB671)	Relating to WV Anatomical Board.....	883
115.	(*SB337)	Hiring correctional officers without regard to placement on correctional officer register	885
116.	(SB495)	Relating to regulation of events by State Athletic Commission	886
117.	(HB3106)	Relating to increasing the number of limited video lottery terminals.....	891
118.	(HB2833)	Specifying the contents and categories of information for inclusion in annual reports	895

TABLE OF CONTENTS

119.	(*HB2503)	Relating to the rule-making authority for Board of Osteopathic Medicine.....	898
120.	(SB400)	Regarding appointments to WV Infrastructure and Jobs Development Council	900
121.	(*HB2767)	Authorizing the Secretary of State to transmit electronic versions of undeliverable mail to the circuit clerks	903

HIGHER EDUCATION

122.	(*HB2815)	Relating to higher education governance.....	931
123.	(*HB2542)	Relating to public higher education personnel.....	1041
124.	(HB2706)	Authorizing legislative rules regarding higher education	1071
125.	(SB198)	Expanding Health Sciences Program to allow certain medical practitioners in underserved areas.....	1078

HUMAN SERVICES

126.	(*SB634)	Relating generally to certain agreements between DHHR and state's medical schools.....	1082
127.	(*HB2519)	Medicaid program compact	1083
128.	(*HB2739)	Relating to supplemental Medicaid provider reimbursement.....	1084

HUMAN TRAFFICKING

129.	(*HB2318)	Relating generally to human trafficking	1087
------	-----------	---	------

INSURANCE

130.	(*HB2486)	Providing that when a party's health condition is at issue in a civil action, medical records and releases for medical information may be requested and required without court order	1112
------	-----------	--	------

TABLE OF CONTENTS

131.	(HB2300)	Regulating step therapy protocols.....	1114
132.	(*HB2683)	Relating to West Virginia Insurance Guaranty Association Act	1128
133.	(*HB2619)	Risk Management and Own Risk and Solvency Assessment Act	1150
134.	(*SB522)	Relating to pharmacy audits	1160

LABOR

135.	(*SB419)	Creating special revenue fund sources for Division of Labor to meet statutory obligations	1170
136.	(*HB2857)	West Virginia Safer Workplaces Act.....	1192
137.	(*SB224)	Repealing requirement for employer's bond for wages and benefits.....	1204
138.	(SB330)	Relating to WV Workplace Freedom Act.....	1211

LEGISLATIVE RULES

139.	(*SB151)	Authorizing Department of Administration promulgate legislative rules.....	1213
140.	(*SB113)	Authorizing DEP promulgate legislative rules	1215
141.	(*SB125)	Authorizing DHHR and Health Care Authority promulgate legislative rules.....	1218
142.	(*SB116)	Authorizing MAPS promulgate legislative rules	1223
143.	(*SB127)	Authorizing certain Department of Revenue to promulgate legislative rules.....	1227

TABLE OF CONTENTS

144. (*HB2219) Authorizing miscellaneous boards and agencies to promulgate legislative rules..... 1237

145. (*SB134) Authorizing Bureau of Commerce to promulgate legislative rules..... 1264

LEGISLATURE

146. (SB554) Relating to false swearing in legislative proceeding 1267

147. (*HB2898) Authorizing the Joint Committee on Government and Finance to request and obtain criminal background checks of employees of the Legislature 1268

148. (*HB2839) Updating the procedures for legislative review of departments and licensing boards..... 1269

LIENS

149. (*SB261) Relating to increasing salary or wages of judgment debtor..... 1278

LITTERING

150. (*HB2303) Increasing criminal penalties for littering 1282

MANUFACTURED HOMES

151. (SB658) Establishing procedure for retitling mobile and manufactured homes..... 1288

MOTOR VEHICLES

152. (*HB2402) Relating to abandoned antique vehicles..... 1291

153. (*HB2180) Authorizing the issuance of special "In God We Trust" motor vehicle registration plates..... 1311

154. (SB235) Relating to motorcycle registration renewal 1351

TABLE OF CONTENTS

155. (*SB173) Relating generally to autocycles..... 1355

MUNICIPALITIES

156. (*SB631) Prosecuting violations of municipal building code 1362
157. (*HB2603) Relating to municipal policemen's or firemen's pension and relief funds that are funded at one hundred and twenty-five percent or more 1376
158. (*HB2601) Relating to municipal policemen's or municipal firemen's pension and relief funds 1383
159. (SB392) Relating to Municipal Police Officers and Firefighters Retirement System 1387
160. (*HB2709) Authorizing the City of South Charleston to levy a special district excise tax..... 1398
161. (*HB3096) Relating to operation and regulation of certain water and sewer utilities owned or operated by political subdivisions of the State 1400
162. (*HB2109) Relating to the West Virginia Land Reuse Agency Authorization Act..... 1435

NATURAL RESOURCES

163. (*HB2679) Relating to the possession of firearms in parks and park facilities 1440
164. (*HB2949) Exempting specified Division of Natural Resources' contracts for some replacement, repair or design for repairs to facilities from review and approval requirements..... 1450
165. (*SB473) Permitting collection and sale of naturally shed deer antlers 1458
166. (*SB345) Allowing certain hunting and trapping on private lands on Sundays 1462

TABLE OF CONTENTS

167. (SB493) Providing increase in compensation for conservation officers 1468

OUTSIDE SPEAKER SYSTEMS

168. (HB2548) Relating to the use of outside speakers by persons licensed to manufacture, sell, possess for sale, transport or distribute nonintoxicating beer 1472

PROFESSIONS AND OCCUPATIONS

169. (*HB2631) Relating to time standards for disposition of complaint proceedings..... 1479
170. (*HB2804) Removing chiropractors from the list of medical professions required to obtain continuing education on mental health conditions common to veterans and family members 1481
171. (*SB4) Allowing licensed professionals donate time to care of indigent and needy in clinical setting..... 1485
172. (HB2628) Relating generally to the powers and duties of the Board of Medicine and the Board of Osteopathic Medicine..... 1527
173. (*HB2509) Relating to the practice of telemedicine..... 1553
174. (*HB2359) Relating to offenses and penalties for practicing osteopathic medicine without a license 1566
175. (*HB2301) Relating to direct primary care 1568
176. (HB2518) Creating a legislative rule to permit a pharmacist or pharmacy intern to administer certain immunizations 1572
177. (*HB2846) Including high school students participating in a competency based pharmacy technician education and training program as persons qualifying to be a pharmacy technician trainee..... 1577

TABLE OF CONTENTS

178.	(HB2522)	Nurse licensure compact.....	1579
179.	(HB2691)	Allowing a person who is qualified by training to be a barber and a cosmetologist to elect to practice solely as a barber.....	1606
180.	(HB2348)	Eliminating any requirement that class hours of students be consecutive	1609
181.	(*HB2347)	Allowing schools licensed to provide barber, cosmetology and related training to hold theory classes and clinical classes at different locations	1610
182.	(*SB350)	Allowing licensed professional counselors be issued temporary permit	1611

PUBLIC EMPLOYEES

183.	(*SB523)	Converting to biweekly pay cycle for state employees.....	1621
184.	(*HB2006)	Increasing the penalties for violating the Whistle-blower Law	1656

PUBLIC HEALTH

185.	(*HB2459)	Relating to regulation of health care and the certificate of need process	1657
186.	(*HB2002)	Relating to parental notification of abortions performed on unemancipated minors	1739
187.	(HB2431)	Allowing influenza immunizations to be offered to patients and residents of specified facilities	1747
188.	(*HB2620)	West Virginia Drug Overdose Monitoring Act.....	1748

TABLE OF CONTENTS

189.	(SB188)	Correcting definition of "telehealth" in medication-assisted treatment programs.....	1754
190.	(*SB360)	Creating Legislative Coalition on Diabetes Management.....	1760
191.	(SB578)	Relating generally to copies of health care records furnished to patients.....	1765
192.	(*HB2520)	Prohibiting the use of a tanning device by a person under the age of eighteen.....	1769
193.	(*SB339)	Creating Legislative Coalition on Chronic Pain Management.....	1771
194.	(*HB2428)	Establishing additional substance abuse treatment facilities.....	1777
195.	(*SB386)	Creating WV Medical Cannabis Act.....	1779
196.	(*SB187)	Providing for confidentiality of patients' medical records.....	1850
197.	(*SB398)	Creating Emergency Volunteer Health Practitioners Act.....	1853

PUBLIC LIBRARIES

198.	(*HB2792)	Requiring the Library Commission to survey the libraries of the State.....	1864
------	-----------	--	------

PUBLIC SAFETY

199.	(*HB2759)	Creating Statewide Interoperable Radio Network.....	1867
200.	(*SB230)	Relating to certain WV officials carrying concealed firearm nationwide.....	1881
201.	(HB2796)	Relating to the West Virginia National Guard entering into contracts and subcontracts for specialized technical services.....	1887

TABLE OF CONTENTS

202.	(*SB280)	Moving administration of Civil Air Patrol to Adjutant General	1890
203.	(SB690)	Authorizing WV State Police impose and collect fees for agencies and entities using their facilities.....	1897
204.	(SB684)	Relating generally to WV State Police	1901
205.	(*HB2939)	Relating to the sale of items in the State Police Academy post exchange to the public	1908
206.	(*HB2676)	Transferring the Security Office under the Division of Culture and History to the Division of Protective Services	1910
207.	(*HB2167)	Creating a Silver Alert program for senior citizens.....	1915
208.	(*SB636)	Authorizing State Fire Commission establish program to address problems facing VFDs	1920

PUBLIC SERVICE COMMISSION

209.	(*SB180)	Relating to PSC jurisdiction over certain telephone company and internet services	1922
210.	(SB174)	Exempting transportation of household goods from PSC jurisdiction.....	1930

PUBLIC TRUST

211.	(HB3022)	Relating to the reporting of fraud, misappropriation of moneys and other violations of law to the Commission on Special Investigations.....	1933
------	----------	---	------

RECORDS AND PAPERS

212.	(*SB214)	Adopting Uniform Electronic Legal Material Act.....	1936
------	----------	---	------

TABLE OF CONTENTS

REGULATION OF TRADE

213. (*SB602) Creating uniform system of recording and indexing fictitious names used by sole proprietors 1941
214. (*SB402) Relating to covenants not to compete between physicians and hospitals 1942
215. (*HB2961) Relating generally to charitable bingo games and charitable raffles 1945

RETIREMENT

216. (*HB2586) Relating to required minimum distribution of retirement benefits of plans administered by the Consolidated Public Retirement Board..... 1956
217. (SB321) Reporting requirements of employee information to CPRB 1982

ROADS AND HIGHWAYS

218. (*HB2722) Eliminating the financial limitations on utilizing the design-build program for highway construction..... 1984
219. (HB2878) Increasing amount of authorized Federal Grant Anticipation Notes for which Division of Highways may apply 1986
220. (*HB2721) Removing the cost limitation on projects completed by the Division of Highways..... 1987

SCHOOL PERSONNEL

221. (*HB2637) Relating to employment of retired teachers and prospective employable professional personnel in areas of critical need and shortage 1995

TABLE OF CONTENTS

222.	(*HB2771)	Relating to temporary teaching certificates for Armed Forces spouses.....	2003
223.	(*HB2704)	Prohibiting persons convicted of sexual offenses against children with whom they hold positions of trust from holding certification or license valid in public schools.....	2009
224.	(SB256)	Relating to prohibiting aiding and abetting of sexual abuse by school personnel.....	2012

SECURITIES

225.	(*HB2851)	Updating fee structure provisions for broker-dealers	2014
------	-----------	--	------

STATEWIDE INDEPENDENT LIVING COUNCIL

226.	(SB564)	Relating to Statewide Independent Living Council	2024
------	---------	--	------

TAXATION

227.	(*SB533)	Relating to taxes on wine and intoxicating liquors.....	2034
228.	(*HB2734)	Authorizing a method for the collection and remittance of property taxes related to dealers' heavy equipment inventory	2041
229.	(HB2774)	Defining special aircraft property	2044
230.	(HB2963)	Eliminating tax lien waiver requirement for estates of nonresidents.....	2046
231.	(*HB2555)	Relating to tax credits for apprenticeship training in construction trades	2048
232.	(SB25)	Creating farm-to-food bank tax credit	2050

TABLE OF CONTENTS

233.	(SB364)	Incorporating changes to Streamlined Sales and Use Tax Agreement.....	2054
234.	(HB2594)	Updating the meaning of federal adjusted gross income and certain other terms used in the West Virginia Personal Income Tax Act	2056
235.	(SB433)	Permitting counties increase excise tax on privilege of transferring real property.....	2058
236.	(HB2590)	Updating the meaning of federal taxable income and certain other terms used in the West Virginia Corporation Net Income Tax Act.....	2061
237.	(*SB486)	Relating to health care provider taxes.....	2062

TOURISM

238.	(*SB535)	Reorganizing Division of Tourism	2065
239.	(*SB637)	Relating to private club operations requirements.....	2079

TRAFFIC REGULATIONS

240.	(HB2684)	Imposing penalties for repeat violations of the prohibition against driving under the influence on a suspended license.....	2086
241.	(HB3053)	Relating to motor vehicle lighting	2089
242.	(SB164)	Relating to traffic regulations and special load limits.....	2092
243.	(*HB3064)	Allowing vehicles of a size and weight exceeding certain specifications to operate over specified routes.....	2093
244.	(*SB5)	Disqualifying CDL for DUI conviction in certain cases.....	2097

TABLE OF CONTENTS

UNEMPLOYMENT COMPENSATION

245. (*SB222) Relating to disqualification for unemployment
benefits 2119

246. (SB365) Maintaining solvency of Unemployment
Compensation Fund..... 2126

CONSTITUTIONAL AMENDMENT, 2017

RESOLUTION NO.	Page
(*SJR6)	Roads to Prosperity Amendment of 2017..... 2129

TABLE OF CONTENTS

ACTS

First Extraordinary Session, 2017

GENERAL LAWS

*Denotes Committee Substitute

Chapter Bill No. Page

APPROPRIATIONS

1. (SB1013) Budget Bill 2133

LIENS

2. (HB111) Relating generally to tax procedures and
administration..... 2351

PROFESSIONS AND OCCUPATIONS

3. (SB1014) Relating generally to physician assistants 2356

PUBLIC HEALTH

4. (*HB117) Relating to West Virginia Health Care
Authority 2379

ROADS AND HIGHWAYS

5. (SB1003) Relating generally to WV Parkways Authority 2393

TABLE OF CONTENTS

TAXATION

6. (SB1006) Increasing funding for State Road Fund..... 2423

VOLUNTEER FIRE DEPARTMENTS

7. (SB1010) Relating to Volunteer Fire Department
Workers' Compensation Premium Subsidy
Fund 2484

MEMBERS OF THE HOUSE OF DELEGATES

REGULAR SESSION, 2017

OFFICERS

Speaker: Tim Armstead – Elkview
Clerk: Stephen J. Harrison – Cross Lanes
Sergeant-at-Arms: Marshall Clay – Fayetteville
Doorkeeper: Frank Larese – Belle

<u>Name</u>	<u>District</u>	<u>City</u>	<u>Occupation</u>	<u>Term</u>
Ambler, George "Boogie" (R)	42 nd	Fort Spring	Businessman/Educator/Farmer	81 st – 83 rd
Anderson, Everette W. Jr. (R)	8 th	Williamstown	Educator	71 st – 83 rd
Armstead, Tim (R)	40 th	Elkview	Attorney	Appt. 9/5/1998, 73 rd ; 74 th – 83 rd
Arvon, Karen "Lynne" (R)	31 st	Beckley	Medical Sales/Social Services	81 st – 83 rd
Atkinson III, Martin "Rick" (R)	11 th	Reedy	Director of Sales	82 nd – 83 rd
Baldwin, Jr, Stephen (D)	42 nd	Ronceverte	Minister	83 rd
Barrett, Jason (D)	61 st	Martinsburg	Restaurant Owner	81 st ; 83 rd
Bates, Mick (D)	30 th	Beckley	Physical Therapist/ Small Business Owner	82 nd – 83 rd
Blair, Saira (R)	59 th	Martinsburg	Student	83 rd
Boggs, Brent (D)	34 th	Gassaway	Railroad Engineer	73 rd – 83 rd
Brewer, Scott (D)	13 th	New Haven	Union Carpenter	83 rd
Butler, Jim (R)	14 th	Henderson	Excavating Contractor	81 st – 83 rd
Byrd, Andrew D. (D)	35 th	South Charleston	Attorney/Small Business Owner	83 rd
Canestraro, Joe (D)	4 th	Benwood	Lawyer/Assistant Prosecuting Attorney	83 rd
Capito, Moore (R)	35 th	Charleston	Attorney	83 rd
Caputo, Mike (D)	50 th	Rivesville	UMWA, District 31 Vice-President	73 rd – 83 rd
Cooper, Roy G. (R)	28 th	Wayside	Retired U. S. Navy	81 st – 83 rd
Cowles, Daryl E. (R)	58 th	Berkeley Springs	Businessman	78 th – 83 rd
Criss, Vernon (R)	10 th	Parkersburg	Executive	69 th ; 83 rd
Dean, Mark (R)	21 st	Verner	Principal	83 rd
Deem, Frank (R)	10 th	Vienna	Businessman, Oil and Gas Producer	52 nd – 56 th ; 57 th – 62 nd (Senate); 64 th – 65 th (Senate); 69 th ; 72 nd – 79 th (Senate); 82 nd – 83 rd
Diserio, Phillip (D)	2 nd	Follansbee	Retired Electrician	81 st ; 83 rd
Eldridge, Jeff (D)	22 nd	Alum Creek	Self Employed	77 th – 79 th ; 81 st – 83 rd
Ellington, Joe (R)	27 th	Princeton	Physician	80 th – 83 rd
Espinosa, Paul (R)	66 th	Charles Town	General Manager, Telecommunications	81 st – 83 rd
Evans, Allen V. (R)	54 th	Petersburg	Businessman/Farmer	70 th – 83 rd
Evans, Edward (D)	26 th	Welch	Retired Science Teacher	83 rd

MEMBERS OF THE HOUSE OF DELEGATES - Continued

Name	District	City	Occupation	Term
Fast, Tom (R)	32 nd	Fayetteville	Attorney	82 nd – 83 rd
Ferro, Michael T. (D)	4 th	McMechen	Retired Educator/Coach	79 th – 83 rd
Fleischauer, Barbara Evans (D)	51 st	Morgantown	Attorney/Small Business Owner	72 nd – 76 th ; 78 th – 83 rd
Fluharty, Shawn (D)	3 rd	Wheeling	Attorney	82 nd – 83 rd
Folk, Michael “Mike” (R)	63 rd	Martinsburg	Airline Pilot; Farmer	81 st – 83 rd
Foster, Geoff (R)	15 th	Winfield	Construction Supply	82 nd – 83 rd
Foster, Nancy Reagan (R)	38 th	Scott Depot	Business Owner	83 rd
Frich, Cindy (R)	51 st	Morgantown	Sales/Volunteer Home Care	76 th – 77 th ; 81 st – 83 rd
Gearheart, Marty (R)	27 th	Bluefield	Businessman	80 th – 83 rd
Hamilton, Bill (R)	45 th	Buckhannon	Independent Insurance Agency Owner	76 th – 83 rd
Hamrick, Danny (R)	48 th	Clarksburg	Consulting, Media Production	81 st – 83 rd
Hanshaw, Roger (R)	33 rd	Wallback	Attorney	82 nd – 83 rd
Harshbarger, Jason (R)	7 th	Pullman	Natural Gas Storage Project Management	83 rd
Hartman, William G. (D)	43 rd	Elkins	Retired Independent Insurance Agent	76 th – 83 rd
Hicks, Kenneth Paul (D)	19 th	Kenova	Attorney	82 nd – 83 rd
Higginbotham, Joshua (R)	13 th	Poca	Author	83 rd
Hill, Jordan (R)	41 st	Summersville	Human Resources	82 nd – 83 rd
Hollen, Ray (R)	9 th	Elizabeth	Retired USCG, Retired WV State Police	83 rd
Hornbuckle, Sean (D)	16 th	Huntington	Financial Services Broker	82 nd – 83 rd
Householder, Eric (R)	64 th	Martinsburg	Small Business Owner	80 th – 83 rd
Howell, Gary (R)	56 th	Keyser	Small Business Owner	80 th – 83 rd
Iaquinta, Richard (D)	48 th	Clarksburg	Teacher/Coach	76 th – 81 st , 83 rd
Isner, Phil (D)	43 rd	Elkins	Attorney	83 rd
Kelly, John (R)	10 th	Parkersburg	Retired, Chemical Industry	82 nd – 83 rd
Kessinger, Kayla (R)	32 nd	Mount Hope	Director of Human Resources	82 nd – 83 rd
Lane, Charlotte (R)	35 th	Charleston	Lawyer	64 th ; 67 th ; 70 th ; 83 rd
Lewis, Tony (R)	53 rd	Eggon	Cable Splicer/Farmer	83 rd
Longstreth, Linda (D)	50 th	Fairmont	Administrator/Educator	77 th – 83 rd
Love, Shirley (D)	32 nd	Oak Hill	Retired	Appt. 8/8/1994, 71 st (Senate); 72 nd – 78 th (Senate); 83 rd
Lovejoy, Chad (D)	17 th	Huntington	Attorney	83 rd
Lynch, Dana (D)	44 th	Webster Springs	Retired	81 st – 83 rd
Marcum, Justin (D)	20 th	Williamson	Attorney	Appt. 1/21/2012, 80 th ; 81 st – 83 rd
Martin, Patrick (R)	45 th	Weston	Business Owner	83 rd

MEMBERS OF THE HOUSE OF DELEGATES - Continued

Name	District	City	Occupation	Term
Maynard, Zack (R)	22 nd	Harts	Self Employed	83 rd
McGeehan, Pat (R)	1 st	Chester	Business Sales/Author	79 th ; 82 nd – 83 rd
Miley, Tim (D)	48 th	Bridgeport	Attorney	77 th – 83 rd
Miller, Carol (R)	16 th	Huntington	Small Business Owner/Bufalo Farmer	78 th – 83 rd
Miller, Rodney (D)	23 rd	Madison	Retired Sheriff/ Executive Director Sheriff's Assn	83 rd
Moore, Riley (R)	67 th	Harpers Ferry		83 rd
Moye, Ricky (D)	29 th	Crab Orchard	Businessman/School Bus Operator	78 th – 83 rd
Nelson, Eric (R)	35 th	Charleston	Businessman	80 th – 83 rd
O'Neal, John IV (R)	28 th	Beckley	Businessman	80 th – 83 rd
Overington, John (R)	62 nd	Martinsburg	Public Relations/Former Educator	67 th – 83 rd
Paynter, Tony (R)	25 th	Hanover	Truck Driver	83 rd
Pethtel, Dave (D)	5 th	Hundred	Educator	69 th – 71 st ; 74 th – 83 rd
Phillips, Rupert, Jr. (R)*	24 th	Laredo	Sales Manager	80 th – 83 rd
Pushkin, Mike (D)	37 th	Charleston	Taxi Driver/Musician	82 nd – 83 rd
Pyles, Rodney (D)	51 st	Morgantown	Retired	83 rd
Queen, Ben (R)	48 th	Bridgeport	Media Entrepreneur/Photography	83 rd
Robinson, Andrew (D)	36 th	Charleston	Real Estate Appraiser/Broker	83 rd
Rodighiero, Ralph (D)	24 th	Logan	Delivery Driver	78 th – 80 th ; 82 nd – 83 rd
Rohrbach, Matthew (R)	17 th	Huntington	Physician	82 nd – 83 rd
Romine, Chuck (R)	16 th	Huntington	Retired Insurance Agent	59 th – 61 st ; 74 th ; 83 rd
Romine, William Roger (R)	6 th	West Union	Retired School Administrator	75 th – 83 rd
Rowan, Ruth (R)	57 th	Points	Retired Educator	77 th – 83 rd
Rowe, Larry L. (D)	36 th	Charleston	Attorney	73 rd – 74 th ; 75 th – 76 th (Senate); 82 nd – 83 rd
Shott, John (R)	27 th	Bluefield	Attorney	79 th (Resigned and Appt. to Senate May 2010); 81 st – 83 rd
Sobonya, Kelli (R)	18 th	Barboursville	Realtor	76 th – 83 rd
Sponagle, Isaac (D)	55 th	Franklin	Attorney	81 st – 83 rd
Statler, Joe (R)	51 st	Core	Retired	82 nd – 83 rd
Storch, Erika (R)	3 rd	Wheeling	Financial Officer	80 th – 83 rd
Summers, Amy (R)	49 th	Flemington	Registered Nurse	82 nd – 83 rd
Sypolt, Terri Funk (R)	52 nd	Kingwood	Assessor	83 rd
Thompson, Robert (D)	19 th	Wayne	Teacher	83 rd

*Note: Delegate Phillips switched from Democrat to Independent on January 26, 2017, and from Independent to Republican on May 11, 2017.

MEMBERS OF THE HOUSE OF DELEGATES - Continued

Name	District	City	Occupation	Term
Upson, Jill (R)	65 th	Charles Town	Former Retail Manager	82 nd – 83 rd
Wagner, Danny (R)	47 th	Philippi	Retired Educator and Coach	82 nd – 83 rd
Walters, Ron (R)	39 th	Charleston	Insurance Executive/President	71 st – 73 rd ; 75 th – 83 rd
Ward, Guy (R)	50 th	White Hall	Fairmont Community Development Partnership	83 rd
Westfall, Steve (R)	12 th	Ripley	Insurance Agent	81 st – 83 rd
White, Brad (R)	36 th	Charleston	Insurance Agent/Owner	82 nd – 83 rd
Williams, John (D)	51 st	Morgantown	Insurance Sales	83 rd
Wilson, S. Marshall (R)	60 th	Gerrardstown	Author/Army Officer	83 rd
Zatezalo, Mark (R)	1 st	Weirton	Hydrogeologist	82 nd – 83 rd

MEMBERS OF THE SENATE

REGULAR SESSION, 2017

OFFICERS

President: Mitch Carmichael – Ripley

Clerk: Clark Barnes – French Creek

Sergeant-at-Arms: Andrew Palmer – Charleston

Doorkeeper: Jeffrey Branham – Cross Lanes

Name	District	City	Occupation	Term
Azinger, Mike (R)	3 rd	Vienna	Manager, Contractor Group	82 nd (House); 83 rd
Beach, Bob (D)	13 th	Morgantown		Appt. 5/1998, 73 rd ; 75 th – 79 th (House); 80 th – 83 rd
Blair, Craig (R)	15 th	Martinsburg	Businessman	76 th – 79 th (House); 79 th – 83 rd
Boley, Donna (R)	3 rd	St. Marys	Retired	Appt. 5/14/85; 67 th ; 68 th – 83 rd
Boso, Greg (R)	11 th	Summersville	Civil Engineer	82 nd – 83 rd
Carmichael, Mitch (R)	4 th	Ripley	Director of Commercial Sales	75 th – 80 th (House); 81 st – 83 rd
Clements, Charles H. (R)*	2 nd	New Martinsville	Retired	77 th (House); Appt. 1/2017, 83 rd
Cline, Sue (R)	9 th	Brenton	Real Estate Agent	Appt. 1/2016, 82 nd ; 83 rd
Facemire, Doug (D)	12 th	Sutton	Owner, Grocery Chain	79 th – 83 rd
Ferns, Ryan (R)	1 st	Wheeling	Physical Therapist	80 th – 81 st (House); 83 rd
Gaunch, Ed (R)	8 th	Charleston	Retired/Former President/ Insurance	82 nd – 83 rd
Hall, Mike (R)	4 th	Winfield		72 nd – 77 th (House); 78 th – 83 rd
Jeffries, Glenn (D)	8 th	Red House	Businessman	83 rd
Karnes, Robert (R)	11 th	Tallmansville	Information and Technology Field Services	82 nd – 83 rd
Mann, Kenny (R)	10 th	Ballard	Funeral Director	83 rd
Maroney, Mike (R)	2 nd	Glen Dale	Physician	83 rd
Maynard, Mark (R)	6 th	Genoa	Automobile Dealer	82 nd – 83 rd
Miller, Ronald (D)	10 th	Lewisburg	Self-Employed	80 th – 83 rd
Mullins, Jeff (R)	9 th	Shady Spring	Insurance	82 nd – 83 rd
Ojeda II, Richard (D)	7 th	Holden	Retired US Army/JROTC Instructor	83 rd
Palumbo, Corey (D)	17 th	Charleston	Attorney	76 th – 78 th (House); 79 th – 83 rd
Plymale, Robert (D)	5 th	Huntington	Businessman	71 st – 83 rd
Prezioso, Roman (D)	13 th	Fairmont	Administrator	69 th – 73 rd (House); 73 rd – 83 rd

Note: Senator Kent Leonhardt served during the January 11, 2017 Organizational Session but resigned January 15, 2017 to become Commissioner of Agriculture. Senator Clements was appointed January 28, 2017 and took the oaths of office on February 2, 2017.

MEMBERS OF THE SENATE - Continued

Name	District	City	Occupation	Term
Romano, Mike (D)	12 th	Clarksburg	Attorney/CPA	82 nd – 83 rd
Rucker, Patricia (R)	16 th	Harpers Ferry	Home Schooling Mother	83 rd
Smith, Randy (R)	14 th	Davis	Coal Miner	81 st – 82 nd (House); 83 rd
Stollings, Ron (D)	7 th	Madison	Physician	78 th – 83 rd
Swope, Chandler (R)	6 th	Bluefield	Retired	83 rd
Sypolt, Dave (R)	14 th	Kingwood	Professional Land Surveyor	78 th – 83 rd
Takubo, Tom (R)	17 th	South Charleston	Physician	82 nd – 83 rd
Trump, Charles (R)	15 th	Berkeley Springs	Lawyer	71 st – 78 th (House); 82 nd – 83 rd
Unger, John II (D)	16 th	Martinsburg	Businessman/Economic Development	74 th – 83 rd
Weld, Ryan (R)	1 st	Wellsburg	Physical Therapist	82 nd – 83 rd
Woelfel, Mike (D)	5 th	Huntington	Lawyer	82 nd – 83 rd

HOUSE OF DELEGATES COMMITTEES

COMMITTEES OF THE HOUSE OF DELEGATES
Regular Session, 2017

STANDING

AGRICULTURE AND NATURAL RESOURCES

Allen Evans, Chair (*Agriculture*), Bill Hamilton, Chair (*Natural Resources*), Roger Romine, Vice Chair (*Agriculture*), George Ambler, Vice Chair, (*Natural Resources*), Isaac Sponaugle, Minority Chair, (*Agriculture*), Ralph Rodighiero, Minority Chair, (*Natural Resources*), Robert Thompson, Minority Vice Chair (*Agriculture*), Ken Hicks, Minority Vice Chair (*Natural Resources*), Anderson, Atkinson, Cooper, Folk, Hanshaw, Harshbarger, Lewis, C. Miller, Moore, Overington, Summers, Wagner, Baldwin, Brewer, Eldridge, Love, Lynch

BANKING AND INSURANCE

Cindy Frich, Chair (*Banking*), Steve Westfall, Chair (*Insurance*), Jill Upson, Vice Chair (*Banking*), Brad White, Vice Chair, (*Insurance*), Justin Marcum, Minority Chair, (*Banking*), Bill Hartman, Minority Chair (*Insurance*), Chad Lovejoy, Minority Vice Chair, (*Banking*), Andrew Robinson, Minority Vice Chair, (*Insurance*) Arvon, Capito, Criss, Deem, A. Evans, Householder, McGeehan, Nelson, O'Neal, C. Romine, Shott, Walters, Bates, Iaquinta, Isner, Rowe, Sponaugle

EDUCATION

Paul Espinosa, Chair, Joe Statler, Vice Chair, Ricky Moye, Minority Chair, Sean Hornbuckle, Minority Vice Chair, Blair, Cooper, Dean, Folk, Harshbarger, Higginbotham, Kelly, Rohrbach, R. Romine, Rowan, Upson, Wagner, Westfall, Wilson, Baldwin, E. Evans, Hicks, Pyles, Rodighiero, Rowe, Thompson

HOUSE OF DELEGATES COMMITTEES

ENERGY

Bill Anderson, Chair, John Kelly, Vice Chair (*Oil and Gas*), Mark Zatezalo, Vice Chair (*Coal*), David Pethtel, Minority Chair, Jeff Eldridge, Minority Vice Chair, Hamilton, Harshbarger, Higginbotham, Kessinger, Martin, Maynard, Paynter, R. Romine, Statler, Storch, Sypolt, Upson, Ward, Boggs, Caputo, Hicks, Lynch, Marcum, Miley, Phillips

ENROLLED BILLS

Roger Hanshaw, Chair, Steve Westfall, Vice Chair, Lane, Marcum, Pushkin

FINANCE

Eric Nelson, Chair, Eric Householder, Vice Chair, Brent Boggs, Minority Chair, Mick Bates, Minority Vice Chair, Ambler, Anderson, Butler, Cowles, Ellington, Espinosa, A. Evans, Frich, Gearheart, Hamilton, C. Miller, Storch, Walters, Westfall, Barrett, Hartman, Longstreth, Moye, Pethtel, Rowe, Sponaugle

GOVERNMENT ORGANIZATION

Gary Howell, Chair, Lynne Arvon, Vice Chair, Michael Ferro, Minority Chair, Phil Diserio, Minority Vice Chair, Atkinson, Criss, Hamrick, Hill, Lewis, Martin, Maynard, McGeehan, Paynter, Queen, C. Romine, Sypolt, Ward, Brewer, Caputo, Eldridge, Iaquina, Lynch, Marcum, Pyles, Williams

HEALTH AND HUMAN RESOURCES

Joe Ellington, Chair, Amy Summers, Vice Chair, Linda Longstreth, Minority Chair, Mike Pushkin, Minority Vice Chair, Arvon, Atkinson, Butler, Cooper, Criss, Dean, Hill, Hollen, Householder, Queen, Rohrbach, Rowan, Sobonya, White, Baldwin, Bates, Fleischauer, Fluharty, Iaquina, Love, Rodighiero

HOUSE OF DELEGATES COMMITTEES

INDUSTRY AND LABOR

Tom Fast, Chair, Geoff Foster, Vice Chair, Scott Brewer Chair, Phil Isner, Vice Chair, Blair, Cowles, Dean, Ellington, N. Foster, Harshbarger, Hill, Householder, Overington, Shott, Sobonya, Statler, Ward, White, Caputo, Diserio, Ferro, Fluharty, Hicks, R. Miller, Pushkin

INTERSTATE COOPERATION

Erikka Storch, Chair, Danny Hamrick, Vice Chair, Ellington, Higginbotham, R. Romine, Barrett, Ferro

JUDICIARY

John Shott, Chair, Roger Hanshaw, Vice Chair, Barbara Fleischauer, Minority Chair, Shawn Fluharty, Minority Vice Chair, Capito, Deem, Fast, G. Foster, N. Foster, Hollen, Kessinger, Lane, Moore, O'Neal, Overington, Sobonya, Summers, Zatezalo, Byrd, Canestraro, Isner, Lovejoy, R. Miller, Pushkin, Robinson

PENSIONS AND RETIREMENT

Ron Walters, Chair, Mike Folk, Vice Chair, Anderson, Hamilton, O'Neal, E. Evans, Pethtel

POLITICAL SUBDIVISIONS

Erikka Storch, Chair, Saira Blair, Vice Chair, Rodney Miller, Minority Chair, John Williams, Minority Vice Chair, Anderson, Cowles, Folk, G. Foster, Gearheart, Hamrick, Hanshaw, Householder, Lane, Queen, Rohrbach, Statler, Summers, Barrett, Byrd, Canestraro, Longstreth, Moye, Pyles, Robinson, Rowe

PREVENTION AND TREATMENT OF SUBSTANCE ABUSE

Joe Ellington, Chair, Kayla Kessinger, Vice Chair, Frich, Hollen, Sobonya, Storch, Upson, Baldwin, Bates, Boggs, Hornbuckle

HOUSE OF DELEGATES COMMITTEES

ROADS AND TRANSPORTATION

Marty Gearheart, Chair, Danny Hamrick, Vice Chair, Mike Caputo, Minority Chair, Ed Evans, Minority Vice Chair, Ambler, Butler, Capito, Criss, Dean, Espinosa, Fast, Howell, Lane, Maynard, Paynter, Rohrbach, Statler, Wagner, Boggs, Canestraro, Diserio, Hartman, Moye, Phillips, Williams

RULE MAKING REVIEW

Kelli Sobonya, Chair, Cindy Frich, Vice Chair, G. Foster, Hanshaw, Fleischauer, Rowe

RULES

Tim Armstead, Chair, Anderson, Cowles, Ellington, Espinosa, Hanshaw, Howell, C. Miller, Nelson, O'Neal, Overington, Shott, Sobonya, Boggs, Caputo, Ferro, Fleischauer, Miley, Moye, Pethel

SENIOR CITIZEN ISSUES

Ruth Rowan, Chair, Matt Rohrbach, Vice Chair, Dana Lynch, Minority Chair, Rodney Pyles, Minority Vice Chair, A. Evans, Kelly, Lewis, Martin, Maynard, Paynter, Queen, C. Romine, R. Romine, Sypolt, Walters, White, Zatezalo, Boggs, Eldridge, Ferro, Fleischauer, Love, Lovejoy, Moye, Pethel

SMALL BUSINESS AND ECONOMIC DEVELOPMENT

Jordan Hill, Chair, Rick Atkinson, Vice Chair, Larry Rowe, Minority Chair, Jason Barrett, Minority Vice Chair, Blair, Espinosa, N. Foster, Higginbotham, Kelly, Kessinger, Martin, C. Miller, Moore, Storch, Ward, Westfall, Wilson, Zatezalo, Bates, Byrd, Marcum, Miley, Phillips, Sponaugle, Thompson

HOUSE OF DELEGATES COMMITTEES

VETERANS' AFFAIRS AND HOMELAND SECURITY

Jim Butler, Chair (*Homeland Security*), Roy Cooper, Chair (*Veterans' Affairs*), Pat McGeehan, Vice Chair (*Homeland Security*), Danny Wagner, Vice Chair (*Veterans' Affairs*), Andrew Byrd, Minority Chair (*Homeland Security*), Richard Iaquina, Minority Chair (*Veterans' Affairs*), Stephen Baldwin, Minority, Vice Chair (*Homeland Security*), Joe Canestraro, Minority Vice Chair (*Veterans' Affairs*) Arvon, Higginbotham, Hollen, Howell, Kelly, Kessinger, Lewis, Paynter, Rowan, Sypolt, Upson, Wilson, Ferro, Fleischauer, Longstreth, Lynch, Pushkin

SENATE COMMITTEES

COMMITTEES OF THE SENATE
Regular Session, 2017

STANDING

AGRICULTURE AND RURAL DEVELOPMENT

Senators Sybolt (Chair), Rucker (Vice Chair), Clements, Cline, Mann, Maynard, Smith, Beach, Miller, Ojeda, Woelfel.

BANKING AND INSURANCE

Senators Gaunch (Chair), Azinger (Vice Chair), Clements, Hall, Mann, Maroney, Mullins, Swope, Facemire, Palumbo, Prezioso, Romano, Woelfel.

CONFIRMATIONS

Senators Boley (Chair), Ferns (Vice Chair), Azinger, Blair, Boso, Gaunch, Miller, Plymale, Prezioso.

ECONOMIC DEVELOPMENT

Senators Maroney (Chair), Maynard (Vice Chair), Blair, Boso, Cline, Mann, Smith, Swope, Takubo, Jeffries, Miller, Stollings, Romano, Woelfel.

EDUCATION

Senators Mann (Chair), Karnes (Vice Chair), Azinger, Boley, Hall, Maynard, Rucker, Swope, Trump, Beach, Plymale, Romano, Stollings, Unger.

ENERGY, INDUSTRY AND MINING

Senators Smith (Chair), Sybolt (Vice Chair), Blair, Boley, Cline, Ferns, Gaunch, Mullins, Swope, Facemire, Jeffries, Ojeda, Woelfel.

SENATE COMMITTEES

ENROLLED BILLS

Senators Maynard (Chair), Azinger, Gaunch, Palumbo, Presiozo.

FINANCE

Senators Hall (Chair), Mullins (Vice Chair), Blair, Boley, Boso, Ferns, Gaunch, Mann, Maroney, Sypolt, Takubo, Facemire, Palumbo, Plymale, Prezioso, Stollings, Unger.

GOVERNMENT ORGANIZATION

Senators Blair (Chair), Gaunch (Vice Chair), Boso, Clements, Maroney, Smith, Sypolt, Takubo, Weld, Facemire, Jeffries, Miller, Palumbo, Woelfel.

HEALTH AND HUMAN RESOURCES

Senators Takubo (Chair), Maroney (Vice Chair), Azinger, Clements, Karnes, Rucker, Trump, Weld, Palumbo, Plymale, Prezioso, Stollings, Unger.

INTERSTATE COOPERATION

Senators Cline (Chair), Azinger (Vice Chair), Maroney, Maynard, Sypolt, Palumbo, Unger.

JUDICIARY

Senators Trump (Chair), Weld (Vice Chair), Azinger, Clements, Cline, Ferns, Karnes, Maynard, Rucker, Smith, Swope, Beach, Jeffries, Miller, Ojeda, Romano, Woelfel.

MILITARY

Senators Weld (Chair), Boley (Vice Chair), Azinger, Clements, Cline, Sypolt, Facemire, Ojeda, Palumbo.

SENATE COMMITTEES

NATURAL RESOURCES

Senators Maynard (Chair), Mann (Vice Chair), Cline, Karnes, Rucker, Smith, Sypolt, Takubo, Beach, Facemire, Prezioso, Stollings, Woelfel.

PENSIONS

Senators Gaunch (Chair), Hall (Vice Chair), Maroney, Mullins, Weld, Plymale, Romano.

RULES

Senators Carmichael (Chair), Blair, Boley, Ferns, Hall, Sypolt, Trump, Palumbo, Prezioso, Plymale, Stollings.

TRANSPORTATION AND INFRASTRUCTURE

Senators Boso (Chair), Swope (Vice Chair), Gaunch, Maroney, Maynard, Rucker, Beach, Jeffries, Plymale.

SELECT COMMITTEE ON TAX REFORM

Senators Karnes (Chair), Blair (Vice Chair), Ferns, Boso, Gaunch, Jeffries, Plymale.

COMMITTEE ON THE WORKFORCE

Senators Swope (Chair), Weld (Vice Chair), Boso, Karnes, Mullins, Rucker, Smith, Beach, Jeffries, Ojeda, Stollings.

LEGISLATURE OF WEST VIRGINIA

ACTS

FIRST REGULAR SESSION, 2017

CHAPTER 1

**(Com. Sub. for S. B. 497 - By Senators Stollings,
Takubo, Plymale, Maroney and Facemire)**

[Passed March 31, 2017; in effect ninety days from passage.]
[Approved by the Governor on April 11, 2017.]

AN ACT to amend and reenact §55-7-19 of the Code of West Virginia, 1931, as amended, relating to liability for health care providers who provide services at school athletic events; providing that persons licensed, certified or registered in this state or another state to provide health care or professional health care services are subject to limited liability if they render emergency care or treatment at a public or private elementary or secondary school athletic event; outlining circumstances under which liability can be limited; eliminating provisions limiting liability to the extent of insurance coverage; eliminating reference to standard of care in medical professional liability act; and establishing that acts of willful misconduct are not subject to limited liability.

Be it enacted by the Legislature of West Virginia:

That §55-7-19 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 7. ACTIONS FOR INJURIES.

§55-7-19. Liability of health care providers who render services at school athletic events; limiting liability; exceptions.

1 (a) Any person licensed by, or certified or registered in,
2 this state or another state to provide health care or
3 professional health care services: (1) Who is in attendance
4 at an athletic event sponsored by a public or private
5 elementary or secondary school; and (2) who gratuitously
6 and in good faith agrees to render emergency care or
7 treatment to any participant during the event in connection
8 with an emergency arising during or as the result of the
9 event, without objection of the participant, may not be held
10 liable for any civil damages as a result of the care or
11 treatment, or as a result of any act or failure to act in
12 providing or arranging further medical treatment.

13 (b) The limitation of liability established by the
14 provisions of this section does not apply to acts or omissions
15 constituting gross negligence or willful misconduct. For
16 purposes of this section, the term “athletic event” includes
17 scheduled practices for any athletic event.

CHAPTER 2

**(Com. Sub. for H. B. 2850 - By Delegates Shott,
O'Neal, Sobonya and Moore)**

[Passed April 7, 2017; in effect ninety days from passage.]
[Approved by the Governor on April 26, 2017.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §55-7-31, relating to product liability actions; limiting product liability action against seller other than the manufacturer of the product except in certain circumstances; defining terms; and providing an effective date.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §55-7-31, to read as follows:

ARTICLE 7. ACTIONS FOR INJURIES.

§55-7-31. Limitation on products liability actions; innocent seller.

1 (a) As used in this section:

2 (1) “Manufacturer” means a person who designs,
3 assembles, fabricates, produces, constructs or otherwise
4 prepares a product or a component part of a product before
5 the sale of the product to a user or consumer.

6 (2) “Person” means a natural person, partnership, firm,
7 association or corporation.

8 (3) “Product” means any tangible object, article or
9 good, including attachments, accessories and component
10 parts.

11 (4) “Product liability action” means any civil action
12 brought against a manufacturer or seller of a product, based
13 in whole or in part on the doctrine of strict liability in tort,
14 for or on account of personal injury, death or property
15 damage caused by or resulting from:

16 (A) The manufacture, construction, design, formula,
17 installation, preparation, assembly, testing, packaging,
18 labeling, marketing or sale of a product;

19 (B) The failure to warn or protect against a danger or
20 hazard in the use, misuse or unintended use of a product; or

21 (C) The failure to provide proper instructions for the
22 use of a product.

23 (5) “Seller” means a wholesaler, distributor, retailer, or
24 other individual or entity, other than a manufacturer, that is
25 regularly engaged in the selling of a product whether the

26 sale is for resale by the purchaser or is for use or
27 consumption by the ultimate consumer. “Seller” includes a
28 lessor or bailor regularly engaged in the business of the
29 lease or bailment of the product.

30 (b) No product liability action shall be maintained
31 against a seller, unless:

32 (1) The seller had actual knowledge of the defect in the
33 product that was a proximate cause of the harm for which
34 recovery is sought;

35 (2) The seller exercised substantial control over the
36 aspect of the manufacture, construction, design, formula,
37 installation, preparation, assembly, testing, labeling,
38 warnings or instructions of the product that was a proximate
39 cause of the harm for which recovery is sought;

40 (3) The seller altered, modified or installed the product
41 after the product left the possession of the manufacturer and
42 the alteration, modification or installation was:

43 (A) Not authorized or requested by the manufacturer or
44 not performed in compliance with the directions or
45 specifications of the manufacturer; and

46 (B) A proximate cause of the harm for which recovery
47 is sought;

48 (4) The seller made an express warranty regarding the
49 product that was independent of any express warranty made
50 by the manufacturer regarding the product, the product
51 failed to conform to that express warranty by the seller and
52 that failure was a proximate cause of the harm for which
53 recovery is sought;

54 (5) The seller resold the product after the product’s first
55 sale for use or consumption and the product was not in
56 substantially the same condition as it was at the time the
57 product left the possession of the manufacturer and the

58 changed condition of the product was a proximate cause of
59 the harm for which recovery is sought;

60 (6) The seller failed to exercise reasonable and product-
61 appropriate care in assembling, maintaining, storing,
62 transporting or repairing the product and such failure was a
63 proximate cause of the harm for which recovery is sought;

64 (7) The seller removed or failed to convey to the user
65 or consumer of the product the manufacturer's labels,
66 warnings or instructions and such failure was a proximate
67 cause of the harm for which recovery is sought;

68 (8) The seller is a controlled subsidiary of a
69 manufacturer, or the manufacturer is a controlled subsidiary
70 of the seller;

71 (9) The seller repackages the product or has placed his
72 or her own brand name or label on the product: *Provided*,
73 That this does not include a seller, who is not otherwise a
74 manufacturer, who:

75 (A) Did not exercise substantial control as described in
76 subdivision (2) of this subsection; and

77 (B) Discloses the identity of the actual manufacturer of
78 the product;

79 (10) The manufacturer cannot be identified, despite a
80 good-faith exercise of due diligence, to identify the
81 manufacturer of the product;

82 (11) The manufacturer is not subject to service of
83 process under the laws of the state;

84 (12) The manufacturer is insolvent in that the
85 manufacturer is unable to pay its debts as they become due
86 in the ordinary course of business: *Provided*, That a
87 manufacturer who has been judicially declared insolvent or
88 is no longer in existence through dissolution is conclusively

89 presumed for the purposes of this subdivision to be
90 insolvent; or

91 (13) The court determines by clear and convincing
92 evidence that the party asserting the product liability action
93 would be unable to enforce a judgment against the product
94 manufacturer.

95 (c) The provisions of this section apply to any civil
96 action involving a product that was sold on or after the
97 effective date of this said Enrolled House Bill 2850.

CHAPTER 3

**(Com. Sub. for S. B. 338 - By Senators Trump, Smith,
Blair, Swope, Azinger, Mullins, Ferns, Weld, Gaunch
and Cline)**

[Passed March 31, 2017; in effect ninety days from passage.]
[Approved by the Governor on April 8, 2017.]

AN ACT to amend and reenact §55-7B-2, §55-7B-4, §55-7B-6, §55-7B-10 and §55-7B-11 of the Code of West Virginia, 1931, as amended, all relating to medical professional liability; defining the term “occurrence” in medical professional liability causes of action; providing for statute of limitations on certain actions for medical professional liability; establishing venue in claims against certain health care providers; addressing screening certificates of merit in certain medical professional liability causes of action; tolling the statute of limitations under certain circumstances; establishing the effective date; and providing for severability.

Be it enacted by the Legislature of West Virginia:

That §55-7B-2, §55-7B-4, §55-7B-6, §55-7B-10 and §55-7B-11 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 7B. MEDICAL PROFESSIONAL LIABILITY.

§55-7B-2. Definitions.

1 (a) “Board” means the State Board of Risk and
2 Insurance Management.

3 (b) “Collateral source” means a source of benefits or
4 advantages for economic loss that the claimant has received
5 from:

6 (1) Any federal or state act, public program or
7 insurance which provides payments for medical expenses,
8 disability benefits, including workers’ compensation
9 benefits, or other similar benefits. Benefits payable under
10 the Social Security Act and Medicare are not considered
11 payments from collateral sources except for Social Security
12 disability benefits directly attributable to the medical injury
13 in question;

14 (2) Any contract or agreement of any group,
15 organization, partnership or corporation to provide, pay for
16 or reimburse the cost of medical, hospital, dental, nursing,
17 rehabilitation, therapy or other health care services or
18 provide similar benefits, but excluding any amount that a
19 group, organization, partnership, corporation or health care
20 provider agrees to reduce, discount or write off of a medical
21 bill;

22 (3) Any group accident, sickness or income disability
23 insurance, any casualty or property insurance, including
24 automobile and homeowners’ insurance, which provides
25 medical benefits, income replacement or disability
26 coverage, or any other similar insurance benefits, except life
27 insurance, to the extent that someone other than the insured,
28 including the insured’s employer, has paid all or part of the

29 premium or made an economic contribution on behalf of the
30 plaintiff; or

31 (4) Any contractual or voluntary wage continuation
32 plan provided by an employer or otherwise or any other
33 system intended to provide wages during a period of
34 disability.

35 (c) “Consumer Price Index” means the most recent
36 Consumer Price Index for All Consumers published by the
37 United States Department of Labor.

38 (d) “Emergency condition” means any acute traumatic
39 injury or acute medical condition which, according to
40 standardized criteria for triage, involves a significant risk of
41 death or the precipitation of significant complications or
42 disabilities, impairment of bodily functions or, with respect
43 to a pregnant woman, a significant risk to the health of the
44 unborn child.

45 (e) “Health care” means:

46 (1) Any act, service or treatment provided under,
47 pursuant to or in the furtherance of a physician’s plan of
48 care, a health care facility’s plan of care, medical diagnosis
49 or treatment;

50 (2) Any act, service or treatment performed or
51 furnished, or which should have been performed or
52 furnished, by any health care provider or person supervised
53 by or acting under the direction of a health care provider or
54 licensed professional for, to or on behalf of a patient during
55 the patient’s medical care, treatment or confinement,
56 including, but not limited to, staffing, medical transport,
57 custodial care or basic care, infection control, positioning,
58 hydration, nutrition and similar patient services; and

59 (3) The process employed by health care providers and
60 health care facilities for the appointment, employment,
61 contracting, credentialing, privileging and supervision of
62 health care providers.

63 (f) “Health care facility” means any clinic, hospital,
64 pharmacy, nursing home, assisted living facility,
65 residential care community, end-stage renal disease
66 facility, home health agency, child welfare agency,
67 group residential facility, behavioral health care facility
68 or comprehensive community mental health center,
69 intellectual/developmental disability center or program, or
70 other ambulatory health care facility, in and licensed,
71 regulated or certified by the State of West Virginia under
72 state or federal law and any state-operated institution or
73 clinic providing health care and any related entity to the
74 health care facility.

75 (g) “Health care provider” means a person,
76 partnership, corporation, professional limited liability
77 company, health care facility, entity or institution licensed by,
78 or certified in, this state or another state, to provide health care
79 or professional health care services, including, but not limited
80 to, a physician, osteopathic physician, physician assistant,
81 advanced practice registered nurse, hospital, health care
82 facility, dentist, registered or licensed practical nurse,
83 optometrist, podiatrist, chiropractor, physical therapist,
84 speech-language pathologist, audiologist, occupational
85 therapist, psychologist, pharmacist, technician, certified
86 nursing assistant, emergency medical service personnel,
87 emergency medical services authority or agency, any
88 person supervised by or acting under the direction of a
89 licensed professional, any person taking actions or
90 providing service or treatment pursuant to or in furtherance
91 of a physician’s plan of care, a health care facility’s plan
92 of care, medical diagnosis or treatment; or an officer,
93 employee or agent of a health care provider acting in the
94 course and scope of the officer’s, employee’s or agent’s
95 employment.

96 (h) “Medical injury” means injury or death to a patient
97 arising or resulting from the rendering of or failure to render
98 health care.

99 (i) “Medical professional liability” means any liability
100 for damages resulting from the death or injury of a person
101 for any tort or breach of contract based on health care
102 services rendered, or which should have been rendered, by
103 a health care provider or health care facility to a patient. It
104 also means other claims that may be contemporaneous to or
105 related to the alleged tort or breach of contract or otherwise
106 provided, all in the context of rendering health care services.

107 (j) “Medical professional liability insurance” means a
108 contract of insurance or any actuarially sound self-funding
109 program that pays for the legal liability of a health care
110 facility or health care provider arising from a claim of
111 medical professional liability. In order to qualify as medical
112 professional liability insurance for purposes of this article,
113 a self-funding program for an individual physician must
114 meet the requirements and minimum standards set forth in
115 section twelve of this article.

116 (k) “Noneconomic loss” means losses, including, but
117 not limited to, pain, suffering, mental anguish and grief.

118 (l) “Occurrence” means any and all injuries to a patient
119 arising from health care rendered by a health care facility or
120 a health care provider and includes any continuing,
121 additional or follow-up care provided to that patient for
122 reasons relating to the original health care provided,
123 regardless if the injuries arise during a single date or
124 multiple dates of treatment, single or multiple patient
125 encounters, or a single admission or a series of admissions.

126 (m) “Patient” means a natural person who receives or
127 should have received health care from a licensed health care
128 provider under a contract, expressed or implied.

129 (n) “Plaintiff” means a patient or representative of a
130 patient who brings an action for medical professional
131 liability under this article.

132 (o) “Related entity” means any corporation,
133 foundation, partnership, joint venture, professional limited
134 liability company, limited liability company, trust, affiliate
135 or other entity under common control or ownership,
136 whether directly or indirectly, partially or completely,
137 legally, beneficially or constructively, with a health care
138 provider or health care facility; or which owns directly,
139 indirectly, beneficially or constructively any part of a health
140 care provider or health care facility.

141 (p) “Representative” means the spouse, parent,
142 guardian, trustee, attorney or other legal agent of another.

**§55-7B-4. Health care injuries; limitations of actions;
exceptions; venue.**

1 (a) A cause of action for injury to a person alleging
2 medical professional liability against a health care provider,
3 except a nursing home, assisted living facility, their related
4 entities or employees or a distinct part of an acute care
5 hospital providing intermediate care or skilled nursing care
6 or its employees, arises as of the date of injury, except as
7 provided in subsection (c) of this section, and must be
8 commenced within two years of the date of such injury, or
9 within two years of the date when such person discovers, or
10 with the exercise of reasonable diligence, should have
11 discovered such injury, whichever last occurs: *Provided,*
12 That in no event shall any such action be commenced more
13 than ten years after the date of injury.

14 (b) A cause of action for injury to a person alleging
15 medical professional liability against a nursing home,
16 assisted living facility, their related entities or employees or
17 a distinct part of an acute care hospital providing
18 intermediate care or skilled nursing care or its employees
19 arises as of the date of injury, except as provided in
20 subsection (c) of this section, and must be commenced
21 within one year of the date of such injury, or within one year
22 of the date when such person discovers, or with the exercise
23 of reasonable diligence, should have discovered such injury,

24 whichever last occurs: *Provided*, That in no event shall any
25 such action be commenced more than ten years after the
26 date of injury.

27 (c) A cause of action for injury to a minor, brought by
28 or on behalf of a minor who was under the age of ten years
29 at the time of such injury, shall be commenced within two
30 years of the date of such injury, or prior to the minor's
31 twelfth birthday, whichever provides the longer period.

32 (d) The periods of limitation set forth in this section
33 shall be tolled for any period during which the health care
34 provider or its representative has committed fraud or
35 collusion by concealing or misrepresenting material facts
36 about the injury.

37 (e) Any medical professional liability action against a
38 nursing home, assisted living facility, related entity or
39 employee or a distinct part of an acute care hospital
40 providing intermediate care or skilled nursing care or its
41 employees shall be brought in the circuit court of the county
42 in which the nursing home, assisted living facility or acute
43 care hospital providing intermediate care or skilled nursing
44 care, at which the alleged act of medical professional
45 liability occurred is located, unless otherwise agreed upon
46 by the nursing home, assisted living facility, related entity
47 or a distinct part of an acute care hospital providing
48 intermediate care or skilled nursing care and the plaintiff.
49 Nothing in this subsection shall prohibit a party from
50 removing the action to federal court.

§55-7B-6. Prerequisites for filing an action against a health care provider; procedures; sanctions.

1 (a) Notwithstanding any other provision of this code,
2 no person may file a medical professional liability action
3 against any health care provider without complying with the
4 provisions of this section.

5 (b) At least thirty days prior to the filing of a medical
6 professional liability action against a health care provider,
7 the claimant shall serve by certified mail, return receipt
8 requested, a notice of claim on each health care provider the
9 claimant will join in litigation. The notice of claim shall
10 include a statement of the theory or theories of liability upon
11 which a cause of action may be based, and a list of all health
12 care providers and health care facilities to whom notices of
13 claim are being sent, together with a screening certificate of
14 merit. The screening certificate of merit shall be executed
15 under oath by a health care provider qualified as an expert
16 under the West Virginia rules of evidence and shall state
17 with particularity: (1) The expert's familiarity with the
18 applicable standard of care in issue; (2) the expert's
19 qualifications; (3) the expert's opinion as to how the
20 applicable standard of care was breached; and (4) the
21 expert's opinion as to how the breach of the applicable
22 standard of care resulted in injury or death. A separate
23 screening certificate of merit must be provided for each
24 health care provider against whom a claim is asserted. The
25 person signing the screening certificate of merit shall have
26 no financial interest in the underlying claim, but may
27 participate as an expert witness in any judicial proceeding.
28 Nothing in this subsection may be construed to limit the
29 application of Rule 15 of the Rules of Civil Procedure.

30 (c) Notwithstanding any provision of this code, if a
31 claimant or his or her counsel, believes that no screening
32 certificate of merit is necessary because the cause of action
33 is based upon a well-established legal theory of liability
34 which does not require expert testimony supporting a breach
35 of the applicable standard of care, the claimant or his or her
36 counsel shall file a statement specifically setting forth the
37 basis of the alleged liability of the health care provider in
38 lieu of a screening certificate of merit.

39 (d) Except for medical professional liability actions
40 against a nursing home, assisted living facility, their related
41 entities or employees or a distinct part of an acute care

42 hospital providing intermediate care or skilled nursing care
43 or its employees, if a claimant or his or her counsel has
44 insufficient time to obtain a screening certificate of merit
45 prior to the expiration of the applicable statute of
46 limitations, the claimant shall comply with the provisions of
47 subsection (b) of this section except that the claimant or his
48 or her counsel shall furnish the health care provider with a
49 statement of intent to provide a screening certificate of merit
50 within sixty days of the date the health care provider
51 receives the notice of claim.

52 (e) In medical professional liability actions against a
53 nursing home, assisted living facility, their related entities
54 or employees or a distinct part of an acute care hospital
55 providing intermediate care or skilled nursing care or its
56 employees, if a claimant or his or her counsel has
57 insufficient time to obtain a screening certificate of merit
58 prior to the expiration of the applicable statute of
59 limitations, the claimant shall comply with the provisions of
60 subsection (b) of this section except that the claimant or his
61 or her counsel shall furnish the health care provider with a
62 statement of intent to provide a screening certificate of merit
63 within one hundred eighty days of the date the health care
64 provider receives the notice of claim.

65 (f) Any health care provider who receives a notice of
66 claim pursuant to the provisions of this section may
67 respond, in writing, to the claimant or his or her counsel
68 within thirty days of receipt of the claim or within thirty
69 days of receipt of the screening certificate of merit if the
70 claimant is proceeding pursuant to the provisions of
71 subsection (d) or (e) of this section. The response may state
72 that the health care provider has a bona fide defense and the
73 name of the health care provider's counsel, if any.

74 (g) Upon receipt of the notice of claim or of the
75 screening certificate of merit, if the claimant is proceeding
76 pursuant to the provisions of subsection (d) or (e) of this
77 section, the health care provider is entitled to prelitigation

78 mediation before a qualified mediator upon written demand
79 to the claimant.

80 (h) If the health care provider demands mediation
81 pursuant to the provisions of subsection (g) of this section,
82 the mediation shall be concluded within forty-five days of
83 the date of the written demand. The mediation shall
84 otherwise be conducted pursuant to rule 25 of the trial court
85 rules, unless portions of the rule are clearly not applicable
86 to a mediation conducted prior to the filing of a complaint
87 or unless the Supreme Court of Appeals promulgates rules
88 governing mediation prior to the filing of a complaint. If
89 mediation is conducted, the claimant may depose the health
90 care provider before mediation or take the testimony of the
91 health care provider during the mediation.

92 (i)(1) Except for medical professional liability actions
93 against a nursing home, assisted living facility, their related
94 entities or employees or a distinct part of an acute care
95 hospital providing intermediate care or skilled nursing care
96 or its employees, and except as otherwise provided in this
97 subsection, any statute of limitations applicable to a cause
98 of action against a health care provider upon whom notice
99 was served for alleged medical professional liability shall
100 be tolled from the date of mail of a notice of claim to thirty
101 days following receipt of a response to the notice of claim,
102 thirty days from the date a response to the notice of claim
103 would be due, or thirty days from the receipt by the claimant
104 of written notice from the mediator that the mediation has
105 not resulted in a settlement of the alleged claim and that
106 mediation is concluded, whichever last occurs.

107 (2) In medical professional liability actions against a
108 nursing home, assisted living facility, their related entities
109 or employees or a distinct part of an acute care hospital
110 providing intermediate care or skilled nursing care or its
111 employees, except as otherwise provided in this subsection,
112 any statute of limitations applicable to a cause of action
113 against a health care provider upon whom notice was served
114 for alleged medical professional liability shall be tolled one

115 hundred eighty days from the date of mail of a notice of
116 claim to thirty days following receipt of a response to the
117 notice of claim, thirty days from the date a response to the
118 notice of claim would be due, or thirty days from the receipt
119 by the claimant of written notice from the mediator that the
120 mediation has not resulted in a settlement of the alleged
121 claim and that mediation is concluded, whichever last
122 occurs.

123 (3) If a claimant has sent a notice of claim relating to
124 any injury or death to more than one health care provider,
125 any one of whom has demanded mediation, then the statute
126 of limitations shall be tolled with respect to, and only with
127 respect to, those health care providers to whom the claimant
128 sent a notice of claim to thirty days from the receipt of the
129 claimant of written notice from the mediator that the
130 mediation has not resulted in a settlement of the alleged
131 claim and that mediation is concluded.

132 (j) Notwithstanding any other provision of this code, a
133 notice of claim, a health care provider's response to any
134 notice claim, a screening certificate of merit and the results
135 of any mediation conducted pursuant to the provisions of
136 this section are confidential and are not admissible as
137 evidence in any court proceeding unless the court, upon
138 hearing, determines that failure to disclose the contents
139 would cause a miscarriage of justice.

§55-7B-10. Effective date; applicability of provisions.

1 (a) The provisions of House Bill 149, enacted during
2 the first extraordinary session of the Legislature, 1986, shall
3 be effective at the same time that the provisions of Enrolled
4 Senate Bill 714, enacted during the regular session of the
5 Legislature, 1986, become effective, and the provisions of
6 said House Bill 149 shall be deemed to amend the
7 provisions of Enrolled Senate Bill 714. The provisions of
8 this article shall not apply to injuries which occur before the
9 effective date of said Enrolled Senate Bill 714.

10 The amendments to this article as provided in House
11 Bill 601, enacted during the sixth extraordinary session of
12 the Legislature, 2001, apply to all causes of action alleging
13 medical professional liability which are filed on or after
14 March 1, 2002.

15 The amendments to this article provided in Enrolled
16 Committee Substitute for House Bill 2122 during the
17 regular session of the Legislature, 2003, apply to all causes
18 of action alleging medical professional liability which are
19 filed on or after July 1, 2003.

20 (b) The amendments to this article provided in
21 Enrolled Committee Substitute for Senate Bill 6 during the
22 regular session of the Legislature, 2015, apply to all causes
23 of action alleging medical professional liability which are
24 filed on or after July 1, 2015.

25 (c) The amendments to this article provided in Enrolled
26 Committee Substitute for Senate Bill 338 during the regular
27 session of the Legislature, 2017, apply to all causes of action
28 alleging medical professional liability which arise or accrue
29 on or after July 1, 2017.

§55-7B-11. Severability.

1 (a) If any provision of this article as enacted during the
2 first extraordinary session of the Legislature, 1986, in
3 House Bill 149, or as enacted during the regular session of
4 the Legislature, 1986, in Senate Bill 714, or as enacted
5 during the regular session of the Legislature, 2015, or in
6 Senate Bill 338, as enacted during the regular session of the
7 Legislature, 2017, or the application thereof to any person
8 or circumstance is held invalid, the invalidity does not affect
9 other provisions or applications of this article, and to this
10 end, the provisions of this article are declared to be
11 severable.

12 (b) If any provision of the amendments to section five
13 of this article, any provision of section six-d of this article

14 or any provision of the amendments to section eleven,
15 article six, chapter fifty-six of this code as provided in
16 House Bill 601, enacted during the sixth extraordinary
17 session of the Legislature, 2001, is held invalid, or the
18 application thereof to any person is held invalid, then,
19 notwithstanding any other provision of law, every other
20 provision of said House Bill 601 shall be deemed invalid
21 and of no further force and effect.

22 (c) If any provision of the amendments to section six
23 or ten of this article or any provision of section six-a, six-b
24 or six-c of this article as provided in House Bill 601, enacted
25 during the sixth extraordinary session of the Legislature,
26 2001, is held invalid, the invalidity does not affect other
27 provisions or applications of this article, and to this end,
28 such provisions are deemed severable.

CHAPTER 4

**(Com. Sub. for H. B. 2678 - By Delegates Anderson,
Arvon, Overington, G. Foster, R. Romine,
Householder, Upson and Shott)**

[Passed March 17, 2017; in effect January 1, 2018.]
[Approved by the Governor on March 30, 2017.]

AN ACT to amend and reenact §56-6-31 of the Code of West Virginia, 1931, as amended, relating to the rate of interest allowed for prejudgment and post-judgment interest; providing that every judgment or decree for the payment of money entered by any court of this state shall bear simple interest; providing that the court may award prejudgment interest on all or some of the amount of the special or liquidated damages; defining special damages; proving that if an obligation is based upon a written agreement, then the obligation bears prejudgment interest at the rate and terms set

forth in the written agreement until the date the judgment or decree is entered; providing that the rate of prejudgment interest is two percentage points above the Fifth Federal Reserve District secondary discount rate in effect on January 2, of the year in which the right to bring the action has accrued; providing that the court will determine that prejudgment interest rate and that the determined rate shall remain constant from that date until the date of the judgment or decree; providing that the rate of prejudgment interest may not exceed nine percent per annum or be less than four percent per annum; requiring that the administrative office of the Supreme Court of Appeals shall annually determine the prejudgment interest rate and take appropriate measures to notify the courts and members of the West Virginia State Bar of the rate of interest in effect; creating an exception to how prejudgment interest is calculated for cases in which the right to bring the action accrued prior to 2009; providing that the rate of post-judgment interest is two percentage points above the Fifth Federal Reserve District secondary discount rate in effect on January 2, of the year in which the judgment or decree is entered; providing that the rate of post-judgment interest may not exceed nine percent per annum or be less than four percent per annum; requiring that the administrative office of the Supreme Court of Appeals shall annually determine the post-judgment interest rate and take appropriate measures to notify the courts and members of the West Virginia State Bar of the rate of interest in effect; and stating that the amendments to this section become effective January 1, 2018.

Be it enacted by the Legislature of West Virginia:

That §56-6-31 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 6. TRIAL.

§56-6-31. Interest on judgment or decree.

1 (a) Except where it is otherwise provided by law, every
2 judgment or decree for the payment of money, whether in
3 an action sounding in tort, contract, or otherwise, entered by
4 any court of this state shall bear simple, not compounding,
5 interest, whether it is stated in the judgment decree or not.

6 (b) Prejudgment – In any judgment or decree that
7 contains special damages, as defined below, or for
8 liquidated damages, the court may award prejudgment
9 interest on all or some of the amount of the special or
10 liquidated damages, as calculated after the amount of any
11 settlements. Any such amounts of special or liquidated
12 damages shall bear simple, not compounding, interest.
13 Special damages include lost wages and income, medical
14 expenses, damages to tangible personal property and similar
15 out-of-pocket expenditures, as determined by the court. If
16 an obligation is based upon a written agreement, the
17 obligation bears prejudgment interest at the rate and terms
18 set forth in the written agreement until the date the judgment
19 or decree is entered and, after that, the judgment interest is
20 the same rate as provided for below in subsection (c) of this
21 section.

22 (1) Notwithstanding the provisions of section five,
23 article six, chapter forty-seven of this code, the rate of
24 prejudgment interest is two percentage points above the
25 Fifth Federal Reserve District secondary discount rate in
26 effect on January 2, of the year in which the right to bring
27 the action has accrued, as determined by the court and that
28 established rate shall remain constant from that date until
29 the date of the judgment or decree, notwithstanding changes
30 in the federal reserve district discount rate in effect in
31 subsequent years prior to the date of the judgment or decree:
32 *Provided*, That the rate of the prejudgment interest may not
33 exceed nine percent per annum or be less than four percent
34 per annum. The administrative office of the Supreme Court
35 of Appeals shall annually determine the prejudgment
36 interest rate to be paid upon judgment or decrees for the
37 payment of money and shall take appropriate measures to

38 notify the courts and members of the West Virginia State
39 Bar of the rate of interest in effect for the calendar year in
40 question. Once the rate of prejudgment interest is
41 established as provided in this section, that established rate
42 shall remain constant for the prejudgment interest for that
43 particular judgment or decree, notwithstanding changes in
44 the Federal Reserve District discount rate in effect in
45 subsequent years.

46 (2) Notwithstanding subsection (b)(1) of this section
47 and section five, article six, chapter forty-seven of this code,
48 for all cases in which the right to bring the action accrued
49 prior to 2009, the court may award prejudgment interest on
50 all or some of the amount of the special or liquidated
51 damages, as calculated after the amount of any settlement,
52 at the interest rate that was in effect as of January 2, of the
53 year in which the right to bring the action accrued.

54 (c) Post-judgment - Notwithstanding the provisions of
55 section five, article six, chapter forty-seven of this code, the
56 rate of post-judgment interest on judgments and decrees for
57 the payment of money is two percentage points above the
58 Fifth Federal Reserve District secondary discount rate in
59 effect on January 2, of the year in which the judgment or
60 decree is entered: *Provided*, That the rate of post-judgment
61 interest may not exceed nine percent per annum or be less
62 than four percent per annum. The administrative office of
63 the Supreme Court of Appeals shall annually determine the
64 post-judgment interest rate to be paid upon judgments or
65 decrees for the payment of money and shall take appropriate
66 measures to promptly notify the courts and members of the
67 West Virginia State Bar of the rate of interest in effect for
68 the calendar year in question. Once the rate of interest is
69 established by a judgment or decree as provided in this
70 section that established rate shall after that remain constant
71 for that particular judgment or decree, notwithstanding
72 changes in the Federal Reserve District discount rate in
73 effect in subsequent years.

74 (d) Amendments to this section enacted by the
75 Legislature during the 2017 regular session become
76 effective January 1, 2018.

CHAPTER 5

(Com. Sub. for S. B. 575 - By Senator Trump)

[Passed April 4, 2017; in effect ninety days from passage.]
[Approved by the Governor on April 14, 2017.]

AN ACT to amend and reenact §61-6-23 of the Code of West Virginia, 1931, as amended, relating generally to shooting ranges; limiting applicability of municipal and county noise ordinances for shooting ranges to those ordinances in effect at the time construction of a shooting range is begun or operation of a shooting range is begun, whichever is earlier in time; declaring that shooting ranges taken by eminent domain which reopen within two years of the final order of condemnation in the same municipality or county are subject to the noise control standards in effect at the time construction or operation of the condemned shooting range began, whichever occurred earlier in time; and declaring legislative intent that amendments to the section enacted during the 2017 regular session are retroactive.

Be it enacted by the Legislature of West Virginia:

That §61-6-23 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 6. CRIMES AGAINST THE PEACE.

§61-6-23. Shooting range; limitations on nuisance actions; noise ordinances.

1 (a) As used in this section:

2 (1) "Person" means an individual, proprietorship,
3 partnership, corporation, club or other legal entity; and

4 (2) "Shooting range" means an area, whether indoor or
5 outdoor, designed and operated for the use of rifles,
6 shotguns, pistols, silhouettes, skeet, trap, black powder or
7 any other similar shooting.

8 (b) Except as provided in this section, a person may not
9 maintain a nuisance action for noise against a shooting
10 range located in the vicinity of that person's property if the
11 shooting range was established as of the date of the person
12 acquiring the property. If there is a substantial change in use
13 of the shooting range or there is a period of shooting
14 inactivity at a shooting range for a period exceeding one
15 year after the person acquires the property, then the person
16 may maintain a nuisance action if the action is brought
17 within two years from the beginning of the substantial
18 change in use of the shooting range, or the resumption of
19 shooting activity: *Provided*, That if a municipal or county
20 ordinance regulating noise exists, subsection (e) of this
21 section controls.

22 (c) A person who owned property in the vicinity of a
23 shooting range that was established after the person
24 acquired the property may maintain a nuisance action for
25 noise against that shooting range only if the action is
26 brought within two years after the establishment of the
27 shooting range or two years after a substantial change in use
28 of the shooting range or from the time shooting activity is
29 resumed: *Provided*, That if a municipal or county ordinance
30 regulating noise exists, subsection (e) of this section
31 controls.

32 (d) Actions authorized by the provisions of this section
33 are not applicable to any indoor shooting range, the owner
34 or operator of which holds all necessary and required
35 licenses and the shooting range being in compliance with all
36 applicable state, county and municipal laws, rules or

37 ordinances regulating the design and operation of such
38 facilities.

39 (e) (1) No municipal or county ordinance regulating
40 noise may subject a shooting range to noise control
41 standards more stringent than those standards in effect at the
42 time construction or operation of the shooting range began,
43 whichever occurred earlier in time. The operation or use of
44 a shooting range may not be enjoined based on noise, nor
45 may any person be subject to an action for nuisance or
46 criminal prosecution in any matter relating to noise resulting
47 from the operation of a shooting range, if the shooting range
48 is operating in compliance with all ordinances relating to
49 noise in effect at the time the construction or operation of
50 the shooting range began, whichever occurred earlier in
51 time.

52 (2) No shooting range operating or approved for
53 operation within this state which has been condemned
54 through an eminent domain proceeding, and which relocates
55 to another site within the same political subdivision within
56 two years of the final condemnation order, may be subject
57 to any noise control standard more stringent than that in
58 effect at the time construction or operation of the shooting
59 range which was condemned began, whichever occurred
60 earlier in time.

61 (f) It is the intent of the Legislature in enacting the
62 amendments to this section during the 2017 regular session
63 of the Legislature that the amendments be applied
64 retroactively.



CHAPTER 6

(Com. Sub. for H. B. 2453 - By Delegates Eldridge,
Butler and Summers)

[Passed April 5, 2017; in effect ninety days from passage.]
[Approved by the Governor on April 25, 2017.]

AN ACT to amend and reenact §19-12E-5 of the Code of West Virginia, 1931, as amended, relating to expanding the list of persons the Commissioner of Agriculture may license to grow or cultivate industrial hemp.

Be it enacted by the Legislature of West Virginia:

That §19-12E-5 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 12E. INDUSTRIAL HEMP DEVELOPMENT ACT.

§19-12E-5. Industrial hemp - licensing.

1 (a) A person growing industrial hemp for commercial
2 purposes shall apply to the commissioner for license on a
3 form prescribed by the commissioner.

4 (b) The application for a license must include the name
5 and address of the applicant and the legal description of the
6 land area to be used for the production of industrial hemp.

7 (c) The commissioner shall require each first-time
8 applicant for a license to file a set of the applicant's
9 fingerprints, taken by a law-enforcement officer, and any
10 other information necessary to complete a statewide and
11 nationwide criminal history check with the criminal
12 investigation bureau of the department of justice for state

13 processing and with the Federal Bureau of Investigation for
14 federal processing. All of the costs associated with the
15 criminal history check are the responsibility of the
16 applicant. Criminal history records provided to the
17 department under this section are confidential. The
18 commissioner may use the records only to determine if an
19 applicant is eligible to receive a license for the production
20 of industrial hemp.

21 (d) If the applicant has completed the application
22 process to the satisfaction of the commissioner, the
23 commissioner shall issue the license which is valid until
24 December 31, of the year of application. An individual
25 licensed under this section is presumed to be growing
26 industrial hemp for commercial purposes.

27 (e) Notwithstanding any provision of this article, rule
28 or the provisions of chapter sixty-a of this code to the
29 contrary, the Commissioner of Agriculture may license
30 qualified persons and state institutions of higher learning to
31 lawfully grow or cultivate industrial hemp in this state, but
32 institutions of higher learning may only lawfully grow
33 industrial hemp for research and educational purposes.

CHAPTER 7

(Com. Sub. for S. B. 531 - By Senator Sypolt)

[Passed March 31, 2017; in effect ninety days from passage.]
[Approved by the Governor on April 11, 2017.]

AN ACT to amend and reenact §19-13-4 of the Code of West Virginia, 1931, as amended, relating to the renewal date for apiary certificates of registration.

Be it enacted by the Legislature of West Virginia:

That §19-13-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 13. INSPECTION AND PROTECTION OF AGRICULTURE.

§19-13-4. Registration of bees; identification of apiaries; limitation on liability.

1 (a) All persons keeping bees in this state shall apply for
2 a certificate of registration for beekeeping from the
3 commissioner, within ten days of the date that bees are
4 acquired, by notifying the commissioner, in writing, of the
5 number and location of colonies they own or rent, or which
6 they keep for someone else, whether the bees are located on
7 their own property or someone else's property. All apiary
8 certificates of registration expire on June 30 of each year
9 and must be renewed annually. Apiary certificates of
10 registration issued in 2017 will be valid through June 30,
11 2018.

12 (b) All persons owning or operating an apiary which is
13 not located on their own property must post the name and
14 address of the owner or operator in a conspicuous place in
15 the apiary.

16 (c) A person who:

17 (1) Owns and operates an apiary;

18 (2) Is registered with the commissioner; and

19 (3) Operates the apiary in a reasonable manner and in
20 conformance with the West Virginia Department of
21 Agriculture's written best management practices provided
22 by rule, is not liable for any personal injury or property
23 damage that occurs in connection with the keeping and
24 maintaining of bees, bee equipment, queen breeding
25 equipment, apiaries and appliances. The limitation of
26 liability established by this section does not apply to

27 intentional tortious conduct or acts or omissions
28 constituting gross negligence.

29 (d) The commissioner shall promulgate legislative rules
30 in accordance with article three, chapter twenty-nine-a of
31 this code regarding the best management standards for the
32 operation of apiaries. The limitation on liability contained
33 in subsection (c) shall not take effect until legislative rules
34 are promulgated in accordance with article three, chapter
35 twenty-nine-a of this code.

CHAPTER 8

**(Com. Sub. for H. B. 2552 - By Delegates Rohrbach,
Lovejoy, Wagner, Hartman, Ambler, Marcum,
Rowan, Lynch, Fleischauer, Overington and White)**

[Passed April 8, 2017; in effect ninety days from passage.]
[Approved by the Governor on April 26, 2017.]

AN ACT to amend and reenact §19-14-4 and §19-14-5 of the Code of West Virginia, 1931, as amended, all relating to temporarily increasing pet food registration fees; directing that the additional money be deposited into the West Virginia Spay and Neuter Assistance Fund; requiring spay and neuter services purchased with these funds be performed within the state.

Be it enacted by the Legislature of West Virginia:

That §19-14-4 and §19-14-5 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

**ARTICLE 14. WEST VIRGINIA COMMERCIAL FEED
LAW.**

§19-14-4. Special revenue fund.

1 Except as otherwise provided in this article, all fees and
2 penalties collected under the provisions of this article shall
3 be deposited with the state Treasurer in a special revenue
4 account. Such moneys shall be expended by the
5 commissioner of agriculture for inspection, sampling,
6 analysis, and other expenses necessary for the
7 administration of this article.

§19-14-5. Permits; registration.

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

3 (b) A person must apply for a permit or registration at
4 least fifteen days prior to the expiration of the current permit
5 or registration expires; or at least fifteen days prior to the
6 date that the person intends to engage in business or market
7 products in this state. All applications shall be accompanied
8 by the fee established in this section. A penalty of \$2 shall
9 be added to the fee for all permits or registrations that are
10 not applied for or renewed within the time limit.

11 (c) Persons manufacturing commercial feed or
12 customer-formula feed in this state must obtain a
13 Commercial Feed Manufacturing Permit, except all persons
14 manufacturing feed for only his/her animals on his/her
15 premises. Application forms shall be provided by the
16 commissioner and include such information as established
17 by rules. A separate permit shall be obtained for each
18 manufacturing facility or location in this state. Each
19 Commercial Feed Manufacturing Permit application shall
20 be accompanied by an application fee of \$15. Each permit
21 issued shall expire on December 31, next following the date
22 of issue.

23 (d) Each person first distributing commercial feed into
24 West Virginia trade channels must obtain a Commercial
25 Feed Distributor Permit, except: (1) Persons distributing pet

26 food exclusively, (2) persons holding a valid Commercial
27 Feed Manufacturing Permit, and (3) persons distributing
28 only those feeds that they register. Application forms shall
29 be provided by the commissioner and include such
30 information as established by rules. Each Commercial Feed
31 Distributor Permit application shall be accompanied by an
32 application fee of \$10. Each permit issued shall expire on
33 December 31, next following the date of issue.

34 (e) All commercial feed distributed or used in this state,
35 except customer-formula feed, must be registered.
36 Commercial feed that can be uniquely identified by its
37 brand name, product name, physical form or other
38 descriptive term shall be registered as a separate product.
39 Commercial feed that is packaged in such weights as to
40 apply to several categories shall be registered in each
41 applicable category. Application forms shall be provided by
42 the commissioner and include such information as
43 established by rules.

44 (1) Commercial feed, other than pet food, in packages
45 over ten pounds or bulk shall be registered permanently. A
46 registration fee of \$10 per product shall accompany each
47 application for registration, except that there will be no fee
48 for a revision of a commercial feed already on file that
49 involves a change in the net weight, a change in the list of
50 ingredients, and/or a change in the guarantee for vitamins or
51 minerals.

52 (2) On the thirty-first day of August, 1991, permanent
53 registrations for pet food in packages over ten pounds are
54 void and application for registration and payment of fees
55 will be required. Pet food, including specialty pet foods, in
56 packages over ten pounds or bulk shall be registered
57 annually. A registration fee of \$50 per product shall
58 accompany each application for registration. The
59 registration shall expire on the thirty-first day of August
60 next following the date of issue: *Provided*, That until June
61 30, 2027, an additional registration fee of \$50 per product
62 shall accompany each application for registration and the

63 additional registration fee shall be deposited into the West
64 Virginia Spay Neuter Assistance Fund for spay and
65 neutering services performed within this state by licensed
66 veterinarians.

67 (3) Commercial feed, excluding specialty pet food in
68 packages of one pound or less, in packages of ten pounds
69 and under shall be registered annually. A registration fee of
70 \$40 per product shall accompany each application for
71 registration. The registration shall expire on December 31,
72 next following the date of issue: *Provided*, That until June
73 1, 2027, an additional registration fee of \$35 per product
74 shall accompany each application for registration and the
75 additional registration fee shall be deposited into the West
76 Virginia Spay Neuter Assistance Fund for spay and
77 neutering services performed within this state by licensed
78 veterinarians.

79 (4) Specialty pet food in packages of one pound or less
80 shall be registered annually. A registration fee of \$20 per
81 product shall accompany each application for registration.
82 The registration shall expire on December 31, next
83 following the date of issue.

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

87 (g) Alteration of commercial feed that changes the label
88 requires a new application for a Commercial Feed
89 Registration be made and approved before distribution.

CHAPTER 9

(S. B. 691 - By Senators Maynard, Karnes, Stollings, Sypolt and Takubo)

[Passed April 8, 2017; in effect ninety days from passage.]
[Approved by the Governor on April 24, 2017.]

AN ACT to amend and reenact §17-2A-11 of the Code of West Virginia, 1931, as amended; to amend and reenact §17F-1-9 of said code; and to amend and reenact §20-15-2 of said code, all relating to off-highway vehicles; defining terms; creating digital road map for certain roads and vehicles, including off-highway vehicles; and making technical corrections.

Be it enacted by the Legislature of West Virginia:

That §17-2A-11 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §17F-1-9 of said code be amended and reenacted; and that §20-15-2 of said code be amended and reenacted, all to read as follows:

CHAPTER 17. ROADS AND HIGHWAYS.

ARTICLE 2A. WEST VIRGINIA COMMISSIONER OF HIGHWAYS.

§17-2A-11. Road maps; digital road map.

1 (a) The commissioner shall prepare and currently
2 maintain a master road and highway map which will show
3 all of the state roads and highways located, created and
4 classified as provided by law; the mileage of roads and
5 highways; the status of improvements; and travel conditions
6 when practical. The commissioner may make economical
7 reproductions of the map for official use and public
8 information purposes, including a digital road map. The

9 goal is for the maps to be computerized and searchable by
10 the public to map routes for travel throughout the state.

11 (b) The digital road map shall indicate whether public
12 roads are unpaved and unimproved, unpaved and improved,
13 unlined and paved, or lined and paved. The digital road map
14 shall further indicate the types of vehicles that may use each
15 road, including full-size vehicles and off-highway vehicles,
16 such as all-terrain vehicles, utility-terrain vehicles,
17 motorcycles and off-road vehicles.

CHAPTER 17F. ALL-TERRAIN VEHICLES.

ARTICLE 1. REGULATION OF ALL-TERRAIN VEHICLES.

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

1 (a) As used in this chapter:

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

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

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

16 (4) “Off-highway vehicle” means a vehicle intended for
17 off-highway use and includes all-terrain vehicles, utility-
18 terrain vehicles, motorcycles and off-road vehicles;

19 (5) “Off-road vehicle” means a vehicle that is suitable
20 for off-road use. It includes a four-wheel drive vehicle such
21 as a Jeep, pickup or sport utility vehicle. It also includes a
22 specially designed, modified or customized off-road vehicle
23 that is of a similar size to a vehicle manufactured for
24 highway use.

25 (b) As used in this article, “all-terrain vehicle” and
26 “vehicle”, or the plural, mean all-terrain vehicles, utility-
27 terrain vehicles, motorcycles and off-highway vehicles.

CHAPTER 20. NATURAL RESOURCES.

ARTICLE 15. ATV AND OHV RESPONSIBILITY ACT.

§20-15-2. Definitions.

1 The terms in this article have the following meaning,
2 unless the context clearly requires a different meaning:

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

10 (2) “Authorized outfitter” or “licensee” means a
11 commercial outfitter, which is a person, partnership, limited
12 liability company, corporation, other organization, or any
13 combination thereof, licensed by the Hatfield-McCoy
14 Regional Recreation Authority, or other regional recreation
15 authorities, who operates from any temporary or permanent
16 camp, private or public lodge, or private home, who
17 provides guided tours or the rental of all-terrain vehicles,
18 utility-terrain vehicles or motorcycles for use on assigned
19 lands for monetary profit or gain.

20 (3) “Low-pressure tire” means every tire in which
21 twenty pounds per square inch or less of compressed air is
22 designed to support the load.

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

26 (5) “Off-highway vehicle”, “off-highway recreational
27 vehicle” or “OHV” means a vehicle intended for off-
28 highway use and includes all-terrain vehicles, utility-terrain
29 vehicles, motorcycles and off-road vehicles. All permissible
30 off-highway vehicles, including off-road vehicles, are
31 incorporated by reference in this article.

32 (6) “Off-road vehicle” or “ORV” means a vehicle that
33 is suitable for off-road use. It includes a four-wheel drive
34 vehicle such as a Jeep, pickup or sport utility vehicle. It also
35 includes a specially designed, modified or customized off-
36 road vehicle that is of a similar size to a vehicle
37 manufactured for highway use.

38 (7) “Participant” means any person using the land, trails
39 and facilities of the Hatfield-McCoy Regional Recreation
40 Authority or other regional recreation authorities.

41 (8) “Regional recreational authority” means the
42 Hatfield-McCoy Regional Recreation Authority or any
43 regional recreation authority established and organized
44 pursuant to the provisions of article fourteen-a of this
45 chapter; and

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



CHAPTER 10

**(Com. Sub. for H. B. 2740 - By Mr. Speaker (Mr.
Armstead) and Delegate Miley)
[By Request of the Executive]**

[Passed March 7, 2017; in effect from passage.]
[Approved by the Governor on March 13, 2017.]

AN ACT expiring funds to the unappropriated surplus balance in the State Fund, General Revenue, for the fiscal year ending June 30, 2017 in the amount of \$15,300,000 from the Department of Revenue, Office of the Secretary – Revenue Shortfall Reserve Fund, fund 7005, fiscal year 2017, organization 0701, and making a supplementary appropriation of public moneys out of the Treasury from the balance of moneys remaining as an unappropriated surplus balance in the State Fund, General Revenue, to the Department of Administration, Public Defender Services, fund 0226, fiscal year 2017, organization 0221, by supplementing and amending the appropriation for the fiscal year ending June 30, 2017.

Whereas, The Governor submitted to the Legislature the Executive Budget document, dated February 8, 2017, which included a Statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2016, and further included the estimate of revenues for the fiscal year 2017, less net appropriation balances forwarded and regular appropriations for the fiscal year 2017 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, 2017; 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, 2017, in the Department of Revenue, Office of the Secretary – Revenue Shortfall Reserve Fund, fund 7005, fiscal year 2017, organization 0701, be decreased by expiring the amount of \$15,300,000, to the unappropriated surplus balance of the State Fund, General Revenue to be available for appropriation during the fiscal year ending June 30, 2017.

And, That the total appropriation for the fiscal year ending June 30, 2017, to fund 0226, fiscal year 2017, organization 0221, 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 ADMINISTRATION

4 27 – Public Defender Services

5 (WV Code Chapter 29)

6 Fund 0226 FY 2017 Org 0221

7			General
8		Appro-	Revenue
9		priation	Fund

10 5 Appointed Counsel Fees –

11	Surplus	43500	\$	15,300,000
----	---------------	-------	----	------------



CHAPTER 11

**(Com. Sub. for H. B. 2801 - By Delegate Miley)
[By Request of the Executive]**

[Passed April 8, 2017; in effect from passage.]
[Approved by the Governor on April 14, 2017.]

AN ACT expiring funds to the unappropriated balance in the State Fund, General Revenue, for the fiscal year ending June 30, 2017, in the amount of \$2,000,000 from the Legislative, Senate, fund 0165, fiscal year 2012, organization 2100, appropriation 02100, in the amount of \$1,000,000 from the Legislative, Senate, fund 0165, fiscal year 2012, organization 2100, appropriation 06400, in the amount of \$500,000 from the Legislative, House of Delegates, fund 0170, fiscal year 2015, organization 2200, appropriation 00500, in the amount of \$1,500,000 from the Legislative, House of Delegates, fund 0170, fiscal year 2015, organization 2200, appropriation 02100, in the amount of \$500,000 from the Legislative, Joint Expenses, fund 0175, fiscal year 2015, organization 2300, appropriation 10400, in the amount of \$2,000,000 from the Executive, Governor's Office, fund 0101, fiscal year 2005, organization 0100, appropriation 66500, in the amount of \$800,000 from the Executive, Governor's Office – Civil Contingent Fund, fund 0105, fiscal year 2005, organization 0100, appropriation 08400, in the amount of \$200,000 from the Executive, Governor's Office – Civil Contingent Fund, fund 0105, fiscal year 2008, organization 0100, appropriation 11400, in the amount of \$400,000 from the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2009, organization 0307, appropriation 13100, in the amount of \$400,000 from the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2011, organization 0307, appropriation 13100, in the amount

of \$200,000 from the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2012, organization 0307, appropriation 13100, in the amount of \$500,000 from the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2007, organization 0307, appropriation 81900, in the amount of \$500,000 from the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2008, organization 0307, appropriation 81900, in the amount of \$500,000 from the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2009, organization 0307, appropriation 81900, in the amount of \$1,600,000 from the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2010, organization 0307, appropriation 81900, in the amount of \$1,500,000 from the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2011, organization 0307, appropriation 81900, in the amount of \$640,000 from the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2012, organization 0307, appropriation 81900, in the amount of \$628,000 from the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2014, organization 0307, appropriation 81900, in the amount of \$932,000 from the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2015, organization 0307, appropriation 81900, in the amount of \$650,000 from the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2012, organization 0307, appropriation 94100, in the amount of \$150,000 from the Department of Education, State Board of Education – State Department of Education, fund 0313, fiscal year 2011, organization 0402, appropriation 16100, in the amount of \$400,000 from the Department of Education, State Board of Education – State Department of Education, fund 0313, fiscal year 2012, organization 0402, appropriation 16100, in the amount of \$400,000 from the Department of Education, State Board of Education – State Department of Education, fund 0313, fiscal year 2013, organization 0402,

appropriation 16100, in the amount of \$150,000 from the Department of Education, State Board of Education – State Department of Education, fund 0313, fiscal year 2014, organization 0402, appropriation 16100, in the amount of \$500,000 from the Department of Education, State Board of Education – State Department of Education, fund 0313, fiscal year 2014, organization 0402, appropriation 88600, in the amount of \$40,000 from the Department of Health and Human Resources – Office of the Secretary, fund 0400, fiscal year 2015, organization 0501, appropriation 19100, in the amount of \$60,000 from the Department of Health and Human Resources – Office of the Secretary, fund 0400, fiscal year 2016, organization 0501, appropriation 19100, in the amount of \$1,000,000 from the Department of Health and Human Resources, Consolidated Medical Services Fund, fund 0525, fiscal year 2014, organization 0506, appropriation 21900, in the amount of \$200,000 from the Department of Military Affairs and Public Safety, Division of Corrections – Correctional Units, fund 0450, fiscal year 2011, organization 0608, appropriation 09700, in the amount of \$200,000 from the Department of Military Affairs and Public Safety, Division of Corrections – Correctional Units, fund 0450, fiscal year 2012, organization 0608, appropriation 09700, in the amount of \$480,000 from the Department of Military Affairs and Public Safety, Division of Corrections – Correctional Units, fund 0450, fiscal year 2012, organization 0608, appropriation 66100, in the amount of \$1,000,000 from the Department of Military Affairs and Public Safety, Division of Corrections – Correctional Units, fund 0450, fiscal year 2012, organization 0608, appropriation 67700, in the amount of \$500,000 from the Department of Military Affairs and Public Safety, Division of Justice and Community Services, fund 0546, fiscal year 2014, organization 0620, appropriation 56100, in the amount of \$100,000 from the Department of Military Affairs and Public Safety, Division of Juvenile Services, fund 0570, fiscal year 2011, organization 0621, appropriation 75500, in the amount of \$80,000 from the Department of Revenue, State Budget Office, fund 0595, fiscal year 2009, organization 0703,

appropriation 09900, in the amount of \$300,000 from the Department of Transportation, Aeronautics Commission, fund 0582, fiscal year 2013, organization 0807, appropriation 13000, in the amount of \$200,000 from the Department of Veterans' Assistance, fund 0456, fiscal year 2013, organization 0613, appropriation 28600, in the amount of \$100,000 from the Department of Veterans' Assistance, fund 0456, fiscal year 2014, organization 0613, appropriation 28600, in the amount of \$500,000 from the West Virginia Council for Community and Technical College Education – Control Account, fund 0596, fiscal year 2012, organization 0420, appropriation 66100, in the amount of \$200,000 from the Higher Education Policy Commission – Administration – Control Account, fund 0589, fiscal year 2012, organization 0441, appropriation 09700, in the amount of \$1,000,000 from the Higher Education Policy Commission – Administration – Control Account, fund 0589, fiscal year 2012, organization 0441, appropriation 66100, in the amount of \$40,404,684.31 from the Department of Revenue, Office of the Secretary – Revenue Shortfall Reserve Fund, fund 7005, fiscal year 2017, organization 0701, in the amount of \$20,000,000 from the Department of Revenue, Insurance Commissioner – Insurance Commission Fund, fund 7152, fiscal year 2017, organization 0704, in the amount of \$100,000 from the State Board of Education, fund 3951, fiscal year 2007, organization 0402, appropriation 09900, in the amount of \$300,000 from the State Board of Education, fund 3951, fiscal year 2008, organization 0402, appropriation 09900, in the amount of \$500,000 from the State Board of Education, fund 3951, fiscal year 2012, organization 0402, appropriation 09900, in the amount of \$500,000 from the State Board of Education, fund 3951, fiscal year 2013, organization 0402, appropriation 39600, in the amount of \$500,000 from the State Board of Education, fund 3951, fiscal year 2014, organization 0402, appropriation 39600, in the amount of \$1,000,000 from the State Board of Education, fund 3951, fiscal year 2014, organization 0402, appropriation 93300, in the amount of \$150,000 from the Division of Culture and History – Lottery Education Fund, fund 3534, fiscal year 2003, organization

0432, appropriation 86500, in the amount of \$40,000 from the Division of Culture and History – Lottery Education Fund, fund 3534, fiscal year 2012, organization 0432, appropriation 62400, in the amount of \$150,000 from the Library Commission – Lottery Education Fund, fund 3559, fiscal year 2011, organization 0433, appropriation 62500, in the amount of \$250,000 from the Library Commission – Lottery Education Fund, fund 3559, fiscal year 2012, organization 0433, appropriation 62500, in the amount of \$150,000 from the Bureau of Senior Services- Lottery Senior Citizens Fund, fund 5405, fiscal year 2011, organization 0508, appropriation 46200, in the amount of \$350,000 from the Bureau of Senior Services- Lottery Senior Citizens Fund, fund 5405, fiscal year 2012, organization 0508, appropriation 46200, in the amount of \$550,000 from the Bureau of Senior Services- Lottery Senior Citizens Fund, fund 5405, fiscal year 2013, organization 0508, appropriation 46200, in the amount of \$50,000 from the West Virginia Development Office, fund 3170, fiscal year 2007, organization 0307, appropriation 92300, in the amount of \$2,500,000 from the West Virginia Development Office, fund 3170, fiscal year 2008, organization 0307, appropriation 25300, in the amount of \$400,000 from the West Virginia Development Office, fund 3170, fiscal year 2013, organization 0307, appropriation 09600, in the amount of \$1,000,000 from the Division of Corrections – Correctional Units, fund 6283, fiscal year 2010, organization 0608, appropriation 75500, in the amount of \$500,000 from the Office of the Treasurer, Financial Electronic Communication Fund, fund 1345, fiscal year 2017, organization 1300, in the amount of \$1,000,000 from the Attorney General, Consumer Protection Recovery Fund, fund 1509, fiscal year 2017, organization 1500, in the amount of \$2,000,000 from the Department of Administration, Board of Risk and Insurance Management, Premium Tax Savings Fund, fund 2367, fiscal year 2017, organization 0218, in the amount of \$110,467.62 from the Department of Administration, Capitol Complex Parking Garage Fund, fund 2461, fiscal year 2017, organization 0211, in the amount of \$184,848.07 from the Department of Environmental

Protection, Dam Safety Rehabilitation Fund, fund 3025, fiscal year 2017, organization 0313, in the amount of \$500,000 from the Department of Health and Human Resources, Health Care Authority Fund, fund 5375, fiscal year 2017, organization 0507 and in the amount of \$4,000,000 from the Public Service Commission, Public Service Commission Fund, fund 8623, fiscal year 2017, organization 0926.

Whereas, The Governor submitted to the Legislature the Executive Budget Document, dated February 8, 2017, which included a Statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2016, and further included the estimate of revenues for the fiscal year 2017, less net appropriation balances forwarded and regular appropriations for the fiscal year 2017; and

Whereas, The Secretary of the Department of Revenue has submitted a monthly General Revenue Fund Collections Report for the first nine months of fiscal year 2017 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 \$79 million for the first nine months of fiscal year 2017, as compared to the monthly revenue estimates for the first nine months of the fiscal year 2017; and

Whereas, Current economic and fiscal trends are anticipated to result in projected year-end revenue deficits, including potential significant shortfalls in Personal Income Tax, Consumers Sales and Use Tax, and Corporation Net Income 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 \$192 million; and

Whereas, On November 4, 2016, the Governor issued Executive Order 8-16 which redirected certain revenues pursuant to the terms of SB 419 for fiscal year 2017 of approximately \$25.5 million; and

Whereas, On November 15, 2016, the Governor issued Executive Order 9-16 which directed a spending reduction for General Revenue appropriations for fiscal year 2017 of approximately \$59.8 million; and

Whereas, On December 30, 2016, the remaining balance of \$5,000,000 in the Personal Income Tax Reserve Fund was utilized to ensure timely payment of tax refunds; and

Whereas, The Governor finds that the account balances in the listed accounts exceed that which is necessary for the purposes for which the accounts were established; 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; 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, 2017, in the Legislative, Senate, fund 0165, fiscal year 2012, organization 2100, appropriation 02100, be decreased by expiring the amount of \$2,000,000, in the Legislative, Senate, fund 0165, fiscal year 2012, organization 2100, appropriation 06400, be decreased by expiring the amount of \$1,000,000, in the Legislative, House of Delegates, fund 0170, fiscal year 2015, organization 2200, appropriation 00500, be decreased by expiring the amount of \$500,000, in the Legislative, House of Delegates, fund 0170, fiscal year 2015, organization 2200, appropriation 02100, be decreased by expiring the amount of \$1,500,000, in the Legislative, Joint Expenses, fund 0175, fiscal year 2015, organization 2300, appropriation 10400, be decreased by expiring the amount of \$500,000, in the Executive, Governor's Office, fund 0101, fiscal year 2005, organization 0100, appropriation 66500, be decreased by expiring the amount of \$2,000,000, in the Executive, Governor's Office – Civil

Contingent Fund, fund 0105, fiscal year 2005, organization 0100, appropriation 08400, be decreased by expiring the amount of \$800,000, in the Executive, Governor's Office – Civil Contingent Fund, fund 0105, fiscal year 2008, organization 0100, appropriation 11400, be decreased by expiring the amount of \$200,000, in the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2009, organization 0307, appropriation 13100, be decreased by expiring the amount of \$400,000, in the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2011, organization 0307, appropriation 13100, be decreased by expiring the amount of \$400,000, in the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2012, organization 0307, appropriation 13100, be decreased by expiring the amount of \$200,000, in the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2007, organization 0307, appropriation 81900, be decreased by expiring the amount of \$500,000, in the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2008, organization 0307, appropriation 81900, be decreased by expiring the amount of \$500,000, in the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2009, organization 0307, appropriation 81900, be decreased by expiring the amount of \$500,000, in the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2010, organization 0307, appropriation 81900, be decreased by expiring the amount of \$1,600,000, in the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2011, organization 0307, appropriation 81900, be decreased by expiring the amount of \$1,500,000, in the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2012, organization 0307, appropriation 81900, be decreased by expiring the amount of \$640,000, in the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2014, organization 0307, appropriation 81900, be decreased by expiring the amount of \$628,000, in the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2015, organization 0307, appropriation 81900, be decreased by expiring the amount of \$932,000, in the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2012, organization 0307, appropriation 94100, be decreased by expiring the amount

of \$650,000, in the Department of Education, State Board of Education – State Department of Education, fund 0313, fiscal year 2011, organization 0402, appropriation 16100, be decreased by expiring the amount of \$150,000, in the Department of Education, State Board of Education – State Department of Education, fund 0313, fiscal year 2012, organization 0402, appropriation 16100, be decreased by expiring the amount of \$400,000, in the Department of Education, State Board of Education – State Department of Education, fund 0313, fiscal year 2013, organization 0402, appropriation 16100, be decreased by expiring the amount of \$400,000, in the Department of Education, State Board of Education – State Department of Education, fund 0313, fiscal year 2014, organization 0402, appropriation 16100, be decreased by expiring the amount of \$150,000, in the Department of Education, State Board of Education – State Department of Education, fund 0313, fiscal year 2014, organization 0402, appropriation 88600, be decreased by expiring the amount of \$500,000, in the Department of Health and Human Resources – Office of the Secretary, fund 0400, fiscal year 2015, organization 0501, appropriation 19100, be decreased by expiring the amount of \$40,000, in the Department of Health and Human Resources – Office of the Secretary, fund 0400, fiscal year 2016, organization 0501, appropriation 19100, be decreased by expiring the amount of \$60,000, in the Department of Health and Human Resources, Consolidated Medical Services Fund, fund 0525, fiscal year 2014, organization 0506, appropriation 21900, be decreased by expiring the amount of \$1,000,000, in the Department of Military Affairs and Public Safety, Division of Corrections – Correctional Units, fund 0450, fiscal year 2011, organization 0608, appropriation 09700, be decreased by expiring the amount of \$200,000, in the Department of Military Affairs and Public Safety, Division of Corrections – Correctional Units, fund 0450, fiscal year 2012, organization 0608, appropriation 09700, be decreased by expiring the amount of \$200,000, in the Department of Military Affairs and Public Safety, Division of Corrections – Correctional Units, fund 0450, fiscal year 2012, organization 0608, appropriation 66100, be decreased by expiring the amount of \$480,000, in the Department of Military Affairs and Public Safety, Division of Corrections – Correctional Units, fund 0450, fiscal year 2012, organization 0608, appropriation 67700, be decreased by expiring the amount of \$1,000,000, in the Department of Military Affairs

and Public Safety, Division of Justice and Community Services, fund 0546, fiscal year 2014, organization 0620, appropriation 56100, be decreased by expiring the amount of \$500,000, in the Department of Military Affairs and Public Safety, Division of Juvenile Services, fund 0570, fiscal year 2011, organization 0621, appropriation 75500, be decreased by expiring the amount of \$100,000, in the Department of Revenue, State Budget Office, fund 0595, fiscal year 2009, organization 0703, appropriation 09900, be decreased by expiring the amount of \$80,000, in the Department of Transportation, Aeronautics Commission, fund 0582, fiscal year 2013, organization 0807, appropriation 13000, be decreased by expiring the amount of \$300,000, in the Department of Veterans' Assistance, fund 0456, fiscal year 2013, organization 0613, appropriation 28600, be decreased by expiring the amount of \$200,000, in the Department of Veterans' Assistance, fund 0456, fiscal year 2014, organization 0613, appropriation 28600, be decreased by expiring the amount of \$100,000, in the West Virginia Council for Community and Technical College Education – Control Account, fund 0596, fiscal year 2012, organization 0420, appropriation 66100, be decreased by expiring the amount of \$500,000, in the Higher Education Policy Commission – Administration – Control Account, fund 0589, fiscal year 2012, organization 0441, appropriation 09700, be decreased by expiring the amount of \$200,000, in the Higher Education Policy Commission – Administration – Control Account, fund 0589, fiscal year 2012, organization 0441, appropriation 66100, be decreased by expiring the amount of \$1,000,000, in the Department of Revenue, Office of the Secretary – Revenue Shortfall Reserve Fund, fund 7005, fiscal year 2017, organization 0701, be decreased by expiring the amount of \$40,404,684.31, in the Department of Revenue, Insurance Commissioner – Insurance Commission Fund, fund 7152, fiscal year 2017, organization 0704, be decreased by expiring the amount of \$20,000,000, in the State Board of Education, fund 3951, fiscal year 2007, organization 0402, appropriation 09900, be decreased by expiring the amount of \$100,000, in the State Board of Education, fund 3951, fiscal year 2008, organization 0402, appropriation 09900, be decreased by expiring the amount of \$300,000, in the State Board of Education, fund 3951, fiscal year 2012, organization 0402, appropriation 09900, be decreased by expiring the amount of \$500,000, in the

State Board of Education, fund 3951, fiscal year 2013, organization 0402, appropriation 39600, be decreased by expiring the amount of \$500,000, in the State Board of Education, fund 3951, fiscal year 2014, organization 0402, appropriation 39600, be decreased by expiring the amount of \$500,000, in the State Board of Education, fund 3951, fiscal year 2014, organization 0402, appropriation 93300, be decreased by expiring the amount of \$1,000,000, in the Division of Culture and History – Lottery Education Fund, fund 3534, fiscal year 2003, organization 0432, appropriation 86500, be decreased by expiring the amount of \$150,000, in the Division of Culture and History – Lottery Education Fund, fund 3534, fiscal year 2012, organization 0432, appropriation 62400, be decreased by expiring the amount of \$40,000, in the Library Commission – Lottery Education Fund, fund 3559, fiscal year 2011, organization 0433, appropriation 62500, be decreased by expiring the amount of \$150,000, in the Library Commission – Lottery Education Fund, fund 3559, fiscal year 2012, organization 0433, appropriation 62500, be decreased by expiring the amount of \$250,000, in the Bureau of Senior Services – Lottery Senior Citizens Fund, fund 5405, fiscal year 2011, organization 0508, appropriation 46200, be decreased by expiring the amount of \$150,000, in the Bureau of Senior Services – Lottery Senior Citizens Fund, fund 5405, fiscal year 2012, organization 0508, appropriation 46200, be decreased by expiring the amount of \$350,000, in the Bureau of Senior Services – Lottery Senior Citizens Fund, fund 5405, fiscal year 2013, organization 0508, appropriation 46200, be decreased by expiring the amount of \$550,000, in the West Virginia Development Office, fund 3170, fiscal year 2007, organization 0307, appropriation 92300, be decreased by expiring the amount of \$50,000, in the West Virginia Development Office, fund 3170, fiscal year 2008, organization 0307, appropriation 25300, be decreased by expiring the amount of \$2,500,000, in the West Virginia Development Office, fund 3170, fiscal year 2013, organization 0307, appropriation 09600, be decreased by expiring the amount of \$400,000, in the Division of Corrections – Correctional Units, fund 6283, fiscal year 2010, organization 0608, appropriation 75500, be decreased by expiring the amount of \$1,000,000, in the Office of the Treasurer – Financial Electronic Communication Fund, fund 1345, fiscal year 2017,

organization 1300 be decreased by expiring the amount of \$500,000, in the Attorney General, Consumer Protection Recovery Fund, fund 1509, fiscal year 2017, organization 1500, be decreased by expiring the amount of \$1,000,000, in the Department of Administration, Board of Risk and Insurance Management, Premium Tax Savings Fund, fund 2367, fiscal year 2017, organization 0218, be decreased by expiring the amount of \$2,000,000, in the Department of Administration, Capitol Complex Garage Fund, fund 2461, fiscal year 2017, organization 0211, be decreased by expiring the amount of \$110,467.62, in the Department of Environmental Protection, Dam Safety Rehabilitation Fund, fund 3025, fiscal year 2017, organization 0313, be decreased by expiring the amount of \$184,848.07, in the Department of Health and Human Resources, Healthcare Authority Fund, fund 5375, fiscal year 2017, organization 0507, be decreased by expiring the amount of \$500,000 and in the Public Service Commission, Public Service Commission Fund, fund 8623, fiscal year 2017, organization 0926, be decreased by expiring the amount of \$4,000,000, all to the unappropriated balance of the State Fund, General Revenue, to be available during the fiscal year ending June 30, 2017, all to the unappropriated balance of the State Fund, General Revenue, to be available during the fiscal year ending June 30, 2017.

CHAPTER 12

**(H. B. 3103 - By Mr. Speaker (Mr. Armstead) and
Delegate Miley)**

[By Request of the Executive]

[Passed April 8, 2017; in effect from passage.]
[Approved by the Governor on April 14, 2017.]

AN ACT expiring funds to the unappropriated surplus balance in the State Fund, General Revenue, for the fiscal year ending June 30, 2017 in the amount of \$2,700,000 from the Department of Revenue, Office of the Secretary – Revenue

Shortfall Reserve Fund, fund 7005, fiscal year 2017, organization 0701, and making a supplementary appropriation of public moneys out of the Treasury from the balance of moneys remaining as an unappropriated surplus balance in the State Fund, General Revenue, to the Department of Health and Human Resources, Division of Health – Central Office, fund 0407, fiscal year 2017, organization 0506, and to the Department of Health and Human Resources, Division of Human Services, fund 0403, fiscal year 2017, organization 0511, by supplementing and amending the appropriations for the fiscal year ending June 30, 2017.

Whereas, The Governor submitted to the Legislature the Executive Budget document, dated February 8, 2017, which included a Statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2016, and further included the estimate of revenues for the fiscal year 2017, less net appropriation balances forwarded and regular appropriations for the fiscal year 2017 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, 2017; 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, 2017, in the Department of Revenue, Office of the Secretary – Revenue Shortfall Reserve Fund, fund 7005, fiscal year 2017, organization 0701, be decreased by expiring the amount of \$2,700,000, to the unappropriated surplus balance of the State Fund, General Revenue to be available for appropriation during the fiscal year ending June 30, 2017.

And, That the total appropriation for the fiscal year ending June 30, 2017, to fund 0407, fiscal year 2017, organization 0506, be supplemented and amended by increasing existing items of appropriation as follows:

1 TITLE II – APPROPRIATIONS.
 2 **Section 1. Appropriations from general revenue.**

3 **DEPARTMENT OF HEALTH AND HUMAN**
 4 **RESOURCES**

5 *60 – Division of Health*
 6 *Central Office*

7 (WV Code Chapter 16)

8 Fund 0407 FY 2017 Org 0506

9	10	11	12
	Appro-		General
	priation		Revenue
			Fund
12 3 Chief Medical Examiner –			
13 Surplus	04599	\$	499,045
14 10 Early Intervention – Surplus..	22399		2,089,176

1 And, That the total appropriation for the fiscal year
 2 ending June 30, 2017, to fund 0403, fiscal year 2017,
 3 organization 0511, be supplemented and amended by
 4 adding a new item of appropriation as follows:

5 TITLE II – APPROPRIATIONS.

6 **Section 1. Appropriations from general revenue.**

7 **DEPARTMENT OF HEALTH AND HUMAN**
 8 **RESOURCES**

9 *64 – Division of Human Services*

10 (WV Code Chapters 9, 48 and 49)

11	Fund <u>0403</u> FY <u>2017</u> Org <u>0511</u>		
12			General
13		Appro-	Revenue
14		priation	Fund
15	23a Capital Outlay, Repairs,		
16	and Equipment – Surplus (R).....	67700 \$	263,640
17	Any unexpended balance remaining in the		
18	appropriation for Capital Outlay, Repairs, and Equipment –		
19	Surplus (fund 0403, appropriation 67700) at the close of the		
20	fiscal year 2017 is hereby reappropriated for expenditure		
21	during the fiscal year 2018.		

CHAPTER 13

**(Com. Sub. for S. B. 299 - By Senators Carmichael
(Mr. President) and Prezioso)
[By Request of the Executive]**

[Passed April 6, 2017; in effect from passage.]
[Approved by the Governor on April 14, 2017.]

AN ACT supplementing, amending, decreasing and increasing items of the existing appropriations from the State Road Fund to the Department of Transportation, Division of Highways, fund 9017, fiscal year 2017, organization 0803, for the fiscal year ending June 30, 2017.

Whereas, The Governor submitted to the Legislature the Executive Budget Document, dated February 8, 2017, which included a statement of the State Road Fund setting forth therein the cash balances and investments as of July 1, 2016, and further included the estimate of revenues for the fiscal year 2017, less regular appropriations for the fiscal year 2017; 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, 2017; therefore

Be it enacted by the Legislature of West Virginia:

That the items of the total appropriations for the fiscal year ending June 30, 2017, to fund 9017, fiscal year 2017, organization 0803, be supplemented and amended by decreasing existing items of appropriation as follows:

1 TITLE II – APPROPRIATIONS.

2 **Sec. 2. Appropriations from state road fund.**

3 **DEPARTMENT OF TRANSPORTATION**

4 *113 – Division of Highways –*

5 (WV Code Chapters 17 and 17C)

6 Fund 9017 FY 2017 Org 0803

			State
			Road
			Fund
10	2	Maintenance.....23700	\$ 5,000,000
11	8	General Operations27700	10,000,000

12 And, That the items of the total appropriations for the
13 fiscal year ending June 30, 2017, to fund 9017, fiscal year
14 2017, organization 0803, be supplemented and amended by
15 increasing existing items of appropriation as follows:

1 TITLE II – APPROPRIATIONS.

2 **Sec. 2. Appropriations from state road fund.**

3 **DEPARTMENT OF TRANSPORTATION**

4 *113 – Division of Highways –*

5 (WV Code Chapters 17 and 17C)

6 Fund 9017 FY 2017 Org 0803

7			State
8		Appro-	Road
9		priation	Fund
10	5	Bridge Repair and	
11		Replacement.....27300	\$ 5,000,000
12	9	Interstate Construction.....27800	25,000,000
13	12	Nonfederal Aid Construction....28100	2,500,000
14	14	Courtesy Patrol28201	2,000,000

CHAPTER 14

**(Com. Sub. for S. B. 300 - By Senators Carmichael
(Mr. President) and Prezioso)
[By Request of the Executive]**

[Passed April 5, 2017; in effect from passage.]
[Approved by the Governor on April 14, 2017.]

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, 2017, to the Department of Administration, Division of Personnel, fund 2440, fiscal year 2017, organization 0222, by supplementing and amending the appropriations for the fiscal year ending June 30, 2017.

Whereas, The Governor has established that there now remains an unappropriated balance in the Department of Administration, Division of Personnel, fund 2440, fiscal year 2017, organization 0222, that is available for expenditure during the fiscal year ending June 30, 2017, 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, 2017, to fund 2440, fiscal year 2017, organization 0222, 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 ADMINISTRATION		
4	<i>148 – Division of Personnel</i>		
5	(WV Code Chapter 29)		
6	Fund <u>2440</u> FY <u>2017</u> Org <u>0222</u>		
7		Appro-	Other
8		priation	Funds
9	4 Current Expenses	13000	\$ 750,000

CHAPTER 15

**(Com. Sub. for S. B. 301 - By Senators
Carmichael (Mr. President) and Prezioso)
[By Request of the Executive]**

[Passed March 16, 2017; in effect from passage.]
[Approved by the Governor on March 28, 2017.]

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, 2017, to the Department of Education, State Board of Education – School Lunch Program, fund 8713, fiscal year 2017, organization 0402, by supplementing and amending the appropriation for the fiscal year ending June 30, 2017.

Whereas, The Governor has established the availability of federal funds for expenditure in the fiscal year ending June 30, 2017, 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, 2017, to fund 8713, fiscal year 2017, 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		
4	<i>330 – State Board of Education –</i>		
5	<i>School Lunch Program</i>		
6	(WV Code Chapters 18 and 18A)		
7	Fund <u>8713</u> FY <u>2017</u> Org <u>0402</u>		
8		Appro-	Federal
9		priation	Funds
10	4 Current Expenses.....	13000	\$ 15,000,000

CHAPTER 16

**(Com. Sub. for S. B. 302 - By Senators Carmichael
(Mr. President) and Prezioso)
[By Request of the Executive]**

[Passed March 20, 2017; in effect from passage.]
[Approved by the Governor on March 29, 2017.]

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, 2017, to the Department of Health and Human Resources, Division of Human Services, fund 8722, fiscal year 2017, organization 0511, by supplementing and amending the appropriations for the fiscal year ending June 30, 2017.

Whereas, The Governor has established the availability of federal funds for expenditure in the fiscal year ending June 30, 2017, 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, 2017, to fund 8722, fiscal year 2017, organization 0511, be supplemented and amended by increasing existing items of appropriation as follows:

1 TITLE II – APPROPRIATIONS.

2 **Sec. 6. Appropriations of federal funds.**

3 **DEPARTMENT OF HEALTH AND HUMAN**
 4 **RESOURCES**

5 *345 – Division of Human Services*

6 (WV Code Chapters 9, 48 and 49)

7 Fund 8722 FY 2017 Org 0511

8	9	Appro-	Federal
10	11	priation	Funds
4	Current Expenses	13000	\$ 175,760
5	Medical Services	18900	414,000,000

CHAPTER 17

**(Com. Sub. for S. B. 303 - By Senators Carmichael
(Mr. President) and Prezioso)
[By Request of the Executive]**

[Passed April 5, 2017; in effect from passage.]
[Approved by the Governor on April 14, 2017.]

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, 2017, to the Department of Health and Human Resources, Division of Health - Laboratory Services Fund, fund 5163, fiscal year 2017, organization 0506, the Department of Health and Human Resources, Division of Health – West Virginia Birth-to-Three Fund, fund 5214, fiscal year 2017, organization 0506, and the Department of Health and Human Resources, Division of Human Services – Health Care Provider Tax – Medicaid State Share Fund, fund 5090, fiscal year 2017, organization 0511, by supplementing and amending the appropriations for the fiscal year ending June 30, 2017.

Whereas, The Governor has established that there now remains an unappropriated balance in the Department of Health and Human Resources, Division of Health - Laboratory Services Fund, fund 5163, fiscal year 2017, organization 0506, the Department of Health and Human Resources, Division of Health - West Virginia Birth-to-Three Fund, fund 5214, fiscal year 2017, organization 0506, and in the Department of Health and Human Resources, Division of Human Services - Health Care Provider Tax, Medicaid State Share Fund, fund 5090, fiscal year 2017, organization 0511, that is available for expenditure during the fiscal year ending June 30, 2017, 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, 2017, to fund 5163, fiscal year 2017, 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**
4 **RESOURCES**

5 *198 – Division of Health –*
6 *Laboratory Services Fund*

7 (WV Code Chapter 16)

8 Fund 5163 FY 2017 Org 0506

	Appro-		Other
	priation		Funds
11 4	Current Expenses	13000 \$	295,000

12 And, That the total appropriation for the fiscal year
13 ending June 30, 2017, to fund 5214, fiscal year 2017,
14 organization 0506, be supplemented and amended by
15 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**
4 **RESOURCES**

5 *202 – Division of Health –*
6 *West Virginia Birth-to-Three Fund*

7 (WV Code Chapter 16)

8 Fund 5214 FY 2017 Org 0506

9		Appropriation	Other Funds
10			
11	4 Current Expenses.....	13000	\$ 3,325,111

12 And, That the total appropriation for the fiscal year
 13 ending June 30, 2017, to fund 5090, fiscal year 2017,
 14 organization 0511, be supplemented and amended by
 15 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**
 4 **RESOURCES**

5 *206 – Division of Human Services –*
 6 *Health Care Provider Tax –*

7 Medicaid State Share Fund

8 (WV Code Chapter 11)

9 Fund 5090 FY 2017 Org 0511

10		Appropriation	Other Funds
11			
12	1 Medical Services.....	18900	\$ 6,900,000



CHAPTER 18

**(Com. Sub. for S. B. 305 - By Senators Carmichael
 (Mr. President) and Prezioso)
 [By Request of the Executive]**

 [Passed April 5, 2017; in effect from passage.]
 [Approved by the Governor on April 14, 2017.]

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, 2017, to the Department of Military Affairs and Public Safety, Fire Commission – Fire Marshal Fees, fund 6152, fiscal year 2017, organization 0619, by supplementing and amending the appropriations for the fiscal year ending June 30, 2017.

Whereas, The Governor has established that there now remains an unappropriated balance in the Department of Military Affairs and Public Safety, Fire Commission – Fire Marshal Fees, fund 6152, fiscal year 2017, organization 0619, that is available for expenditure during the fiscal year ending June 30, 2017, 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, 2017, to fund 6152, fiscal year 2017, organization 0619, be supplemented and amended by increasing existing items of appropriation as follows:

1 TITLE II – APPROPRIATIONS.

2 **Sec. 3. Appropriations from other funds.**

3 **DEPARTMENT OF MILITARY AFFAIRS AND**
 4 **PUBLIC SAFETY**

5 *226 – Fire Commission –*
 6 *Fire Marshal Fees*

7 (WV Code Chapter 29)

8 Fund 6152 FY 2017 Org 0619

9	Appro-	Other
10	priation	Funds
11 1 Personal Services and		
12 Employee Benefits 00100	\$	185,647
13 6 Equipment..... 07000		105,000

CHAPTER 19

**(Com. Sub. for S. B. 306 - By Senators
Carmichael (Mr. President) and Prezioso)
[By Request of the Executive]**

[Passed March 24, 2017; in effect from passage.]

[Approved by the Governor on April 6, 2017.]

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, 2017, to the Department of Commerce, Workforce West Virginia – Workforce Investment Act, fund 8749, fiscal year 2017, organization 0323, by supplementing and amending the appropriations for the fiscal year ending June 30, 2017.

Whereas, The Governor has established the availability of federal funds for expenditure in the fiscal year ending June 30, 2017, 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, 2017, to fund 8749, fiscal year 2017, organization 0323, be supplemented and amended by increasing an existing item of appropriation as follows:

1 TITLE II – APPROPRIATIONS.

2 **Sec. 7. Appropriations from federal block grants.**

3 **DEPARTMENT OF COMMERCE**

4 365 - *WorkForce West Virginia –*
5 *Workforce Investment Act*

6	Fund <u>8749</u> FY <u>2017</u> Org <u>0323</u>		
7		Appro-	Federal
8		priation	Funds
9	1	Personal Services and Employee	
10	2	Benefits..... 00100	\$ 800,000
11	4	Current Expenses..... 13000	\$ 9,200,000



CHAPTER 20

**(Com. Sub. for S. B. 362 - By Senators
 Carmichael (Mr. President) and Prezioso)
 [By Request of the Executive]**

[Passed April 8, 2017; in effect ninety days from passage.]
 [Approved by the Governor on April 25, 2017.]

AN ACT to amend and reenact §23-2C-3 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §29-22A-10g, all relating to authorizing the redirection of certain amounts to the General Revenue Fund; authorizing the redirection of amounts collected from certain surcharges and assessments on workers’ compensation insurance policies for periods prior to July 1, 2018; and authorizing the redirection of amounts collected from certain deposits of revenues from net terminal income for periods prior to July 1, 2018.

Be it enacted by the Legislature of West Virginia:

That §23-2C-3 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 §29-22A-10g, all to read as follows:

CHAPTER 23. WORKERS’ COMPENSATION.

ARTICLE 2C. EMPLOYERS' MUTUAL INSURANCE COMPANY.

§23-2C-3. Creation of employers' mutual insurance company as successor organization of the West Virginia Workers' Compensation Commission.

1 (a) (1) On or before July 1, 2005, the executive director
2 may take such actions as are necessary to establish an
3 employers' mutual insurance company as a domestic,
4 private, nonstock corporation to:

5 (A) Insure employers against liability for injuries and
6 occupational diseases for which their employees may be
7 entitled to receive compensation pursuant to this chapter
8 and federal Longshore and Harbor Workers' Compensation
9 Act, 33 U. S. C. §901, *et seq.*;

10 (B) Provide employer's liability insurance incidental
11 to, and provided in connection with, the insurance specified
12 in paragraph (A) of this subdivision, including coal
13 workers' pneumoconiosis coverage and employer excess
14 liability coverage as provided in this chapter; and

15 (C) Transact other kinds of property and casualty
16 insurance for which the company is otherwise qualified
17 under the provisions of this code.

18 (2) The company may not sell, assign or transfer
19 substantial assets or ownership of the company.

20 (b) If the executive director establishes a domestic
21 mutual insurance company pursuant to subsection (a) of this
22 section:

23 (1) As soon as practical, the company established
24 pursuant to the provisions of this article shall, through a vote
25 of a majority of its provisional board, file its corporate
26 charter and bylaws with the Insurance Commissioner and
27 apply for a license with the Insurance Commissioner to
28 transact insurance in this state. Notwithstanding any other

29 provision of this code, the Insurance Commissioner shall act
30 on the documents within fifteen days of the filing by the
31 company.

32 (2) In recognition of the workers' compensation
33 insurance liability insurance crisis in this state at the time of
34 enactment of this article and the critical need to expedite the
35 initial operation of the company, the Legislature authorizes
36 the Insurance Commissioner to review the documentation
37 submitted by the company and to determine the initial
38 capital and surplus requirements of the company,
39 notwithstanding the provisions of section five-b, article
40 three, chapter thirty-three of this code. The company shall
41 furnish the Insurance Commissioner with all information
42 and cooperate in all respects necessary for the Insurance
43 Commissioner to perform the duties set forth in this section
44 and in other provisions of this chapter and chapter thirty-
45 three of this code. The Insurance Commissioner shall
46 monitor the economic viability of the company during its
47 initial operation on not less than a monthly basis, until the
48 commissioner, in his or her discretion, determines that
49 monthly reporting is not necessary. In all other respects the
50 company shall comply with the applicable provisions of
51 chapter thirty-three of this code.

52 (3) Subject to the provisions of subdivision (4) of this
53 subsection, the Insurance Commissioner may waive other
54 requirements imposed on mutual insurance companies by
55 the provisions of chapter thirty-three of this code the
56 Insurance Commissioner determines are necessary to enable
57 the company to begin insuring employers in this state at the
58 earliest possible date.

59 (4) Within forty months of the date of the issuance of
60 its license to transact insurance, the company shall comply
61 with the capital and surplus requirements set forth in
62 subsection (a), section five-b, article three, chapter thirty-
63 three of this code in effect on the effective date of this
64 enactment, unless the deadline is extended by the Insurance
65 Commissioner.

66 (c) For the duration of its existence, the company is not
67 a department, unit, agency or instrumentality of the state for
68 any purpose. All debts, claims, obligations and liabilities of
69 the company, whenever incurred, are the debts, claims,
70 obligations and liabilities of the company only and not of
71 the state or of any department, unit, agency, instrumentality,
72 officer or employee of the state.

73 (d) The moneys of the company are not part of the
74 General Revenue Fund of the state. The debts, claims,
75 obligations and liabilities of the company are not a debt of
76 the state or a pledge of the credit of the state.

77 (e) The company is not subject to provisions of article
78 nine-a, chapter six of this code; the provisions of article two,
79 chapter six-c of this code; the provisions of chapter twenty-
80 nine-b of this code; the provisions of article three, chapter
81 five-a of this code; the provisions of article six, chapter
82 twenty-nine of this code; or the provisions of chapter twelve
83 of this code.

84 (f) If the commission has been terminated, effective
85 upon the termination, private carriers, including the
86 company, are not subject to payment of premium taxes,
87 surcharges and credits contained in article three, chapter
88 thirty-three of this code on premiums received for coverage
89 under this chapter. In lieu thereof, the workers'
90 compensation insurance market is subject to the following:

91 (1) (A) Each fiscal year, the Insurance Commissioner
92 shall calculate a percentage surcharge to be collected by
93 each private carrier from its policyholders. The surcharge
94 percentage shall be calculated by dividing the previous
95 fiscal year's total premiums collected plus deductible
96 payments by all employers into the portion of the Insurance
97 Commissioner's budget amount attributable to regulation of
98 the private carrier market. This resulting percentage shall be
99 applied to each policyholder's premium payment and
100 deductible payments as a surcharge and remitted to the

101 Insurance Commissioner. Said surcharge shall be remitted
102 within ninety days of receipt of premium payments;

103 (B) With respect to fiscal years beginning on and after
104 July 1, 2008, in lieu of the surcharge set forth in the
105 preceding paragraph, each private carrier shall collect a
106 surcharge in the amount of five and five-tenths percent of
107 the premium collected plus the total of all premium
108 discounts based on deductible provisions that were applied:
109 *Provided*, That prior to June 30, 2013, and every five years
110 thereafter, the commissioner shall review the percentage
111 surcharge and determine a new percentage as he or she
112 deems necessary;

113 (C) The amounts required to be collected under
114 paragraph (B) of this subdivision shall be remitted to the
115 Insurance Commissioner on or before the twenty-fifth day
116 of the month succeeding the end of the quarter in which they
117 are collected, except for the fourth quarter for which the
118 surcharge shall be remitted on or before March 1 of the
119 succeeding year.

120 (2) Each fiscal year, the Insurance Commissioner shall
121 calculate a percentage surcharge to be remitted on a
122 quarterly basis by self-insured employers and said
123 percentage shall be calculated by dividing previous year's
124 self-insured payroll in the state into the portion of the
125 Insurance Commissioner's budget amount attributable to
126 regulation of the self-insured employer market. This
127 resulting percentage shall be applied to each self-insured
128 employer's payroll and the resulting amount shall be
129 remitted as a regulatory surcharge by each self-insured
130 employer. The Industrial Council may promulgate a rule for
131 implementation of this section. The company, all other
132 private carriers and all self-insured employers shall furnish
133 the Insurance Commissioner with all required information
134 and cooperate in all respects necessary for the Insurance
135 Commissioner to perform the duties set forth in this section
136 and in other provisions of this chapter and chapter thirty-
137 three of this code. The surcharge shall be calculated so as to

138 only defray the costs associated with the administration of
139 this chapter and the funds raised shall not be used for any
140 other purpose except as set forth in subdivision (4) of this
141 subsection.

142 (3) (A) Each private carrier shall collect a premiums
143 surcharge from its policyholders as annually determined, by
144 May 1 of each year, by the Insurance Commissioner to
145 produce \$45 million annually, of each policyholder's
146 periodic premium amount for workers' compensation
147 insurance: *Provided*, That the surcharge rate on policies
148 issued or renewed on or after July 1, 2008, shall be nine
149 percent of the premium collected plus the total of all
150 premium discounts based on deductible provisions that
151 were applied.

152 (B) By May 1 each year, the self-insured employer
153 community shall be assessed a cumulative total of \$9
154 million. The methodology for the assessment shall be fair
155 and equitable and determined by exempt legislative rule
156 issued by the Industrial Council. The amount collected
157 pursuant to this subdivision shall be remitted to the
158 Insurance Commissioner for deposit in the Workers'
159 Compensation Debt Reduction Fund created in section five,
160 article two-d of this chapter: *Provided*, That,
161 notwithstanding any provision of this subdivision or any
162 other provision of this code to the contrary, if the budget
163 shortfall, as determined by the state Budget Office as of
164 December 1, 2015, is greater than \$100 million, then the
165 Governor may, by Executive Order, redirect deposits of the
166 amount collected pursuant to this subdivision, for any
167 period commencing after February 29, 2016, and ending
168 before July 1, 2016, to the General Revenue Fund, instead
169 of to the fund otherwise mandated in this subdivision, in
170 article two-d, chapter twenty-three of this code or in any
171 other provision of this code: *Provided, however*, That,
172 notwithstanding any provision of this subdivision or any
173 other provision of this code to the contrary, the Governor
174 may, by Executive Order, redirect one-half of the deposits

175 of the amount collected pursuant to this subdivision, for any
176 period commencing after June 30, 2016, and ending before
177 July 1, 2017, to the General Revenue Fund, instead of to the
178 funds otherwise mandated in this subdivision, in article two-
179 d, chapter twenty-three of this code or in any other provision
180 of this code, until certification of the Governor to the
181 Legislature that an independent actuary has determined that
182 the unfunded liability of the Old Fund, as defined in chapter
183 twenty-three of this code, has been paid or provided for in
184 its entirety: *Provided further*, That, notwithstanding any
185 provision of this subdivision or any other provision of this
186 code to the contrary, the Governor may, by Executive
187 Order, redirect seventy-five percent of the deposits of the
188 amount collected pursuant to this subdivision, for any
189 period commencing after June 30, 2017, and ending before
190 July 1, 2018, to the General Revenue Fund, instead of to the
191 funds otherwise mandated in this subdivision, in article two-
192 d, chapter twenty-three of this code or in any other provision
193 of this code, until certification of the Governor to the
194 Legislature that an independent actuary has determined that
195 the unfunded liability of the Old Fund, as defined in chapter
196 twenty-three of this code, has been paid or provided for in
197 its entirety.

198 (4) On or before July 1, 2009, the Insurance
199 Commissioner shall make a one-time lump sum transfer of
200 \$40 million generated from the surcharges assessed
201 pursuant to paragraph (B), subdivision (1) of this subsection
202 and subdivision (2) of this subsection to the Bureau of
203 Employment Programs' Commissioner for deposit with the
204 Secretary of the Treasury of the United States as a credit of
205 this state in the Unemployment Trust Fund Account
206 maintained pursuant to section four, article eight, chapter
207 twenty-one-a of this code.

208 (g) The new premiums surcharge imposed by
209 paragraphs (A) and (B), subdivision (3), subsection (f) of
210 this section sunset and are not collectible with respect to
211 workers' compensation insurance premiums paid when the

212 policy is renewed on or after the first day of the month
213 following the month in which the Governor certifies to the
214 Legislature that the revenue bonds issued pursuant to article
215 two-d of this chapter have been retired and that the
216 unfunded liability of the Old Fund has been paid or has been
217 provided for in its entirety, whichever occurs last.

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

ARTICLE 22A. RACETRACK VIDEO LOTTERY.

§29-22A-10g. Redirection of certain amounts from net terminal revenue.

1 (a) The Governor may, by Executive Order, redirect
2 seventy-five percent of the deposits of revenues derived
3 from net terminal income imposed under this article, for any
4 period commencing after June 30, 2017, and ending before
5 July 1, 2018, to the General Revenue Fund, instead of to the
6 funds otherwise mandated in this article, in article two-d,
7 chapter twenty-three of this code or in any other provision
8 of this code, until certification of the Governor to the
9 Legislature that an independent actuary has determined that
10 the unfunded liability of the Old Fund, as defined in chapter
11 twenty-three of this code, has been paid or provided for in
12 its entirety.

13 (b) The Governor is authorized to redirect deposits of
14 revenues, pursuant to subsection (a) of this section,
15 notwithstanding the following provisions of code:

16 (1) Paragraph (B), subdivision (9), subsection (c),
17 section ten of this article;

18 (2) Paragraph (B), subdivision (9), subsection (a),
19 section ten-b of this article;

20 (3) Subdivision (1), subsection (g), section ten-d of this
21 article;

- 22 (4) Subdivision (1), subsection (f), section ten-e of this
23 article; or
- 24 (5) Any other provision of this code to the contrary.



CHAPTER 21

**(S. B. 694 - By Senators Hall, Mullins, Blair, Boley,
Boso, Ferns, Gaunch, Mann, Maroney, Sypolt,
Takubo, Facemire, Palumbo, Plymale, Prezioso,
Stollings and Unger)**

[Passed April 7, 2017; in effect from passage.]
[Approved by the Governor on April 14, 2017.]

AN ACT expiring funds to the unappropriated surplus balance in the State Fund, General Revenue, for the fiscal year ending June 30, 2017, in the amount of \$3,300,000 from the Department of Revenue, Office of the Secretary – Revenue Shortfall Reserve Fund, fund 7005, fiscal year 2017, organization 0701, and making a supplementary appropriation of public moneys out of the Treasury from the balance of moneys remaining as an unappropriated surplus balance in the State Fund, General Revenue, to the Department of Administration, Division of Finance, fund 0203, fiscal year 2017, organization 0209, by supplementing and amending the appropriations for the fiscal year ending June 30, 2017.

Whereas, The Governor submitted to the Legislature the Executive Budget Document, dated February 8, 2017, which included a Statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2016, and further included the estimate of revenues for the fiscal year 2017, less net appropriation balances forwarded and regular appropriations for the fiscal year 2017 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, 2017; 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, 2017, in the Department of Revenue, Office of the Secretary – Revenue Shortfall Reserve Fund, fund 7005, fiscal year 2017, organization 0701, be decreased by expiring the amount of \$3,300,000 to the unappropriated surplus balance of the State Fund, General Revenue to be available for appropriation during the fiscal year ending June 30, 2017.

And, That the total appropriation for the fiscal year ending June 30, 2017, to fund 0203, fiscal year 2017, organization 0209, be supplemented and amended by adding a new item of appropriation as follows:

1	TITLE II – APPROPRIATIONS.		
2	Section 1. Appropriations from general revenue.		
3	DEPARTMENT OF ADMINISTRATION		
4	<i>20 – Division of Finance</i>		
5	(WV Code Chapter 5A)		
6	Fund <u>0203</u> FY <u>2017</u> Org <u>0209</u>		
7			General
8		Appro-	Revenue
9		priation	Fund
10	8a	Enterprise Resource Planning	
11		System – Surplus..... 87200	\$ 3,300,000

CHAPTER 22

(Com. Sub. for H. B. 3093 - By Delegates Hanshaw, Shott, Capito, Byrd, Robinson, Summers, Fluharty, Lane, Zatezalo, N. Foster and Frich)

[Passed April 8, 2017; in effect ninety days from passage.]
[Approved by the Governor on April 26, 2017.]

AN ACT to repeal §31-15C-1, §31-15C-2, §31-15C-3, §31-15C-4, §31-15C-5, §31-15C-6, §31-15C-7, §31-15C-8, §31-15C-9, §31-15C-12 and §31-15C-13 of the Code of West Virginia, 1931, as amended; to amend and reenact §12-6C-11 of said code; to amend and reenact §31-15-8 of said code; and to amend said code by adding thereto a new chapter, designated §31G-1-1, §31G-1-2, §31G-1-3, §31G-1-4, §31G-1-5, §31G-1-6, §31G-1-7, §31G-1-8, §31G-1-9, §31G-1-10, §31G-1-11, §31G-1-12, §31G-1-13, §31G-1-14; §31G-2-1, §31G-2-2, §31G-2-3, §31G-2-4, §31G-2-5, §31G-2-6, §31G-2-7, §31G-2-8, §31G-2-9, §31G-2-10, §31G-2-11, §31G-2-12, §31G-2-13, §31G-2-14, §31G-2-15, §31G-2-16, §31G-2-17, §31G-2-18, §31G-2-19, §31G-2-20, §31G-2-21, §31G-2-22, §31G-2-23, §31G-2-24, §31G-2-25, §31G-2-26, §31G-2-27; §31G-3-1, §31G-3-2; §31G-4-1, §31G-4-2 and §31G-4-3, all relating to broadband services generally; requiring the Board of Treasury Investments make funds available to the West Virginia Economic Development Authority for the purpose of providing loan insurance for commercial loans used for the expansion of broadband service to unserved or underserved areas; establishing limits and conditions on the insuring of loans; establishing interest rates; establishing amortization periods; providing for security interests; providing for responsibilities of the West Virginia Economic Development Authority, the West Virginia Board of Treasury Investments and the Broadband Enhancement Council; providing that the

members of the West Virginia Board of Treasury Investments do not have a fiduciary responsibility with regard to the loans; providing for notice for loan insurance; providing for hearings and appeal; establishing Broadband Enhancement and Expansion Polices; re-establishing and continuing the Broadband Enhancement Council; defining terms; revising council powers and duties; directing council to publish an annual assessment and map of broadband in the state; authorizing council to create an interactive map of broadband services; revising terms for retention of expert consultants; authorizing collection of data by council; authorizing creation of guidelines and recommendations to the Legislature for pilot project for municipalities and counties to form non-profit cooperative associations for internet services; authorizing creation of guidelines and recommendations to the Legislature for voluntary pipeline donation program to facilitate broadband services; authorizing creation of guidelines and recommendations to the Legislature for easement program to facilitate broadband services; authorizing council to seek, utilize and dispense non-state funding and grants; providing for legislative rulemaking authority; authorizing formation of cooperative associations for internet services; providing for who may organize a cooperative association; defining terms; setting forth legislative findings and purpose; establishing the powers of such associations; setting forth all conditions, rights and responsibilities of such cooperative associations; declaring that cooperative association not deemed a restraint in trade; providing for the application of corporation laws; providing for microtrenching; defining terms; providing for make-ready pole access; defining terms; setting forth procedure for attaching items to third-party facilities and poles; and providing for exceptions to make-ready pole access.

Be it enacted by the Legislature of West Virginia:

That §31-15C-1, §31-15C-2, §31-15C-3, §31-15C-4, §31-15C-5, §31-15C-6, §31-15C-7, §31-15C-8, §31-15C-9, §31-15C-12 and §31-15C-13 of the Code of West Virginia, 1931, as

amended, be repealed; that §12-6C-11 of said code be amended and reenacted; that §31-15-8 of said code be amended and reenacted; and that said code be amended by adding thereto a new chapter, designated §31G-1-1, §31G-1-2, §31G-1-3, §31G-1-4, §31G-1-5, §31G-1-6, §31G-1-7, §31G-1-8, §31G-1-9, §31G-1-10, §31G-1-11, §31G-1-12, §31G-1-13, §31G-1-14; §31G-2-1, §31G-2-2, §31G-2-3, §31G-2-4, §31G-2-5, §31G-2-6, §31G-2-7, §31G-2-8, §31G-2-9, §31G-2-10, §31G-2-11, §31G-2-12, §31G-2-13, §31G-2-14, §31G-2-15, §31G-2-16, §31G-2-17, §31G-2-18, §31G-2-19, §31G-2-20, §31G-2-21, §31G-2-22, §31G-2-23, §31G-2-24, §31G-2-25, §31G-2-26, §31G-2-27; §31G-3-1, §31G-3-2; §31G-4-1, §31G-4-2 and §31G-4-3, all to read as follows:

CHAPTER 12. PUBLIC MONEYS AND SECURITIES.

ARTICLE 6C. WEST VIRGINIA BOARD OF TREASURY INVESTMENTS.

§12-6C-11. Legislative findings; loans for industrial development; availability of funds and interest rates.

1 (a) The Legislature finds and declares that the citizens
2 of the state benefit from the creation of jobs and businesses
3 within the state; that business and industrial development
4 loan programs provide for economic growth and stimulation
5 within the state; that loans from pools established in the
6 Consolidated Fund will assist in providing the needed
7 capital to assist business and industrial development; and
8 that time constraints relating to business and industrial
9 development projects prohibit duplicative review by both
10 the Board and West Virginia Economic Development
11 Authority Board. The Legislature further finds and declares
12 that an investment in the West Virginia Enterprise Capital
13 Fund, LLC, of moneys in the Consolidated Fund as
14 hereinafter provided will assist in creating jobs and
15 businesses within the state and provide the needed risk
16 capital to assist business and industrial development. This
17 section is enacted in view of these findings.

18 (b) The West Virginia Board of Treasury Investments
19 shall make available, subject to a liquidity determination, in
20 the form of a revolving loan, up to \$175 million from the
21 Consolidated Fund to loan the West Virginia Economic
22 Development Authority for business or industrial
23 development projects authorized by section seven, article
24 fifteen, chapter thirty-one of this code and to consolidate
25 existing loans authorized to be made to the West Virginia
26 Economic Development Authority pursuant to this section
27 and pursuant to section twenty, article fifteen, chapter
28 thirty-one of this code which authorizes a \$175 million
29 revolving loan and article eighteen-b of said chapter which
30 authorizes a \$50 million investment pool: *Provided*, That
31 the West Virginia Economic Development Authority may
32 not loan more than \$15 million for any one business or
33 industrial development project. The revolving loan
34 authorized by this subsection shall be secured by one note
35 at a variable interest rate equal to the twelve-month average
36 of the board's yield on its cash liquidity pool. The rate shall
37 be set on July 1 and adjusted annually on the same date. The
38 maximum annual adjustment may not exceed one percent.
39 Monthly payments made by the West Virginia Economic
40 Development Authority to the board shall be calculated on
41 a 120-month amortization. The revolving loan is secured by
42 a security interest that pledges and assigns the cash proceeds
43 of collateral from all loans under this revolving loan pool.
44 The West Virginia Economic Development Authority may
45 also pledge as collateral certain revenue streams from other
46 revolving loan pools which source of funds does not
47 originate from federal sources or from the board.

48 (c) The outstanding principal balance of the revolving
49 loan from the board to the West Virginia Economic
50 Development Authority may at no time exceed one hundred
51 three percent of the aggregate outstanding principal balance
52 of the business and industrial loans from the West Virginia
53 Economic Development Authority to economic
54 development projects funded from this revolving loan pool.
55 The independent audit of the West Virginia Economic

56 Development Authority financial records shall annually
57 certify that one hundred three percent requirement.

58 (d) The interest rates and maturity dates on the loans
59 made by the West Virginia Economic Development
60 Authority for business and industrial development projects
61 authorized by section seven, article fifteen, chapter thirty-
62 one of this code shall be at competitive rates and maturities
63 as determined by the West Virginia Economic Development
64 Authority Board.

65 (e) Any and all outstanding loans made by the West
66 Virginia Board of Treasury Investments, or any predecessor
67 entity, to the West Virginia Economic Development
68 Authority are refundable by proceeds of the revolving loan
69 contained in this section and the board shall make no loans
70 to the West Virginia Economic Development Authority
71 pursuant to section twenty, article fifteen, chapter thirty-one
72 of this code or article eighteen-b of said chapter.

73 (f) The directors of the board shall bear no fiduciary
74 responsibility with regard to any of the loans contemplated
75 in this section.

76 (g) Subject to cash availability, the board shall make
77 available to the West Virginia Economic Development
78 Authority, from the Consolidated Fund, a nonrecourse loan
79 in an amount up to \$25 million, for the purpose of the West
80 Virginia Economic Development Authority making a loan
81 or loans from time to time to the West Virginia Enterprise
82 Advancement Corporation, an affiliated nonprofit
83 corporation of the West Virginia Economic Development
84 Authority. The respective loans authorized by this
85 subsection by the board to the West Virginia Economic
86 Development Authority to the West Virginia Enterprise
87 Advancement Corporation shall each be evidenced by one
88 note and shall each bear interest at the rate of three percent
89 per annum. The proceeds of any and all loans made by the
90 West Virginia Economic Development Authority to the
91 West Virginia Enterprise Advancement Corporation

92 pursuant to this subsection shall be invested by the West
93 Virginia Enterprise Corporation in the West Virginia
94 Enterprise Capital Fund, LLC, the manager of which is the
95 West Virginia Enterprise Advancement Corporation. The
96 loan to West Virginia Economic Development Authority
97 authorized by this subsection shall be nonrevolving, and
98 advances under the loan shall be made at times and in
99 amounts requested or directed by the West Virginia
100 Economic Development Authority, upon reasonable notice
101 to the board. The loan authorized by this subsection is not
102 subject to or included in the limitations set forth in
103 subsection (b) of this section with respect to the \$15 million
104 limitation for any one business or industrial development
105 project and limitation of one hundred three percent of
106 outstanding loans, and may not be included in the revolving
107 fund loan principal balance for purposes of calculating the
108 loan amortization in subsection (b) of this section. The loan
109 authorized by this subsection to the West Virginia
110 Economic Development Authority shall be classified by the
111 board as a long-term fixed income investment, shall bear
112 interest on the outstanding principal balance of the loan at
113 the rate of three percent per annum payable annually on or
114 before June 30 of each year, and the principal of which shall
115 be repaid no later than June 30, 2022, in annual installments
116 due on or before June 30 of each year. The annual
117 installments, which need not be equal shall commence no
118 later than June 30, 2005, in annual principal amounts agreed
119 upon between the board and the West Virginia Economic
120 Development Authority. The loan authorized by this
121 subsection shall be nonrecourse and shall be payable by the
122 West Virginia Economic Development Authority solely
123 from amounts or returns received by the West Virginia
124 Economic Development Authority in respect of the loan
125 authorized by this subsection to the West Virginia
126 Enterprise Advancement Corporation, whether in the form
127 of interest, dividends, realized capital gains, return of
128 capital or otherwise, in all of which the board shall have a
129 security interest to secure repayment of the loan to the West
130 Virginia Economic Development Authority authorized by

131 this subsection. Any and all loans from the West Virginia
132 Enterprise Advancement Corporation made pursuant to this
133 subsection shall also bear interest on the outstanding
134 principal balance of the loan at the rate of three percent per
135 annum payable annually on or before June 30 of each year,
136 shall be nonrecourse and shall be payable by the West
137 Virginia Enterprise Advancement Corporation solely from
138 amounts of returns received by the West Virginia Enterprise
139 Advancement Corporation in respect to its investment in the
140 West Virginia Enterprise Capital Fund, LLC, whether in the
141 form of interest, dividends, realized capital gains, return of
142 capital or otherwise, in all of which that board shall have a
143 security interest to secure repayment of the loan to the West
144 Virginia Economic Development Authority authorized by
145 this subsection. In the event the amounts or returns received
146 by the West Virginia Enterprise Corporation in respect to its
147 investment in the West Virginia Enterprise Capital Fund,
148 LLC, are not adequate to pay when due the principal or
149 interest installments, or both, with respect to the loan
150 authorized by this subsection by the board to the West
151 Virginia Economic Development Authority, the principal or
152 interest, or both, as the case may be, due on the loan made
153 to the West Virginia Economic Development Authority
154 pursuant to this subsection shall be deferred and any and all
155 past due principal and interest payments shall promptly be
156 paid to the fullest extent possible upon receipt by the West
157 Virginia Enterprise Advancement Corporation of moneys in
158 respect to its investments in the West Virginia Enterprise
159 Capital Fund, LLC. The directors or the board shall bear no
160 fiduciary responsibility as provided in section thirteen of
161 this article with regard to the loan authorized by this
162 subsection.

163 (h) Notwithstanding any provision in this code to the
164 contrary, subject to a liquidity determination and cash
165 availability, the board shall make available to the West
166 Virginia Economic Development Authority, from the
167 Consolidated Fund, in the form of a nonrecourse revolving
168 loan, \$50 million, for the purpose of insuring the payment

169 or repayment of all or any part of the principal, the
170 redemption or prepayment premiums or penalties on, and
171 interest on any form of debt instrument entered into by an
172 enterprise, public body or authority of the state with a
173 financial institution, including, but not limited to, banks,
174 insurance companies and other institutions in the business
175 of lending money, as authorized and as set forth in section
176 eight, article fifteen, chapter thirty-one of this code, but only
177 for the purpose of providing insurance on such debt
178 instruments relating solely to the deployment of broadband
179 under said section: *Provided*, That the West Virginia
180 Economic Development Authority may not insure more
181 than \$10 million for any one enterprise, public body or
182 authority of the state in any single calendar year. The loan
183 authorized by this subsection may not be included in the
184 revolving fund loan principal balance for purposes of
185 calculating the loan amortization in subsection (b) of this
186 section. The loan authorized by this subsection shall be
187 classified by the board as a long-term fixed income
188 investment, and shall bear interest on the outstanding
189 principal balance of the loan at a variable interest rate equal
190 to the twelve-month average of the board's yield on its cash
191 liquidity pool. The rate shall be set on July 1, 2017, and
192 adjusted quarterly during each year thereafter. The
193 maximum annual adjustment may not exceed one percent.
194 Quarterly, the West Virginia Economic Development
195 Authority shall make a payment sufficient to pay in full all
196 accrued interests on the loan for the prior quarter. The loan
197 authorized by this subsection is nonrecourse and is payable
198 by the West Virginia Economic Development Authority
199 solely from moneys received by the West Virginia
200 Economic Development Authority in respect to insured debt
201 instruments relating to providing broadband service under
202 section eight, article fifteen, chapter thirty-one of this code.
203 Upon payment in full of any said insured debt instruments,
204 the West Virginia Economic Development Authority shall
205 reduce the outstanding balance of the loan by a like amount.
206 Additionally, quarterly, the West Virginia Economic
207 Development Authority shall determine the outstanding

208 balance of all such insured debt instruments and shall
209 accordingly adjust the outstanding balance of the loan to
210 equal the outstanding obligations of the West Virginia
211 Economic Development Authority for all said insured debt
212 instruments. The loan is hereby secured by a security
213 interest that pledges and assigns the cash proceeds of all
214 collateral securing all insurance agreements entered into by
215 the authority respecting debt instruments relating to the
216 deployment of broadband under said section. In the event
217 moneys received by the West Virginia Economic
218 Development Authority respecting any individual insured
219 debt instrument relating to providing broadband service
220 under said section is insufficient to pay when due the
221 principal or interest installments, or both, with respect to the
222 loan authorized by this subsection by the board to the
223 authority, the principal or interest, or both, as the case may
224 be, due on the loan made to the authority pursuant to this
225 subsection shall be deferred and any and all past-due
226 principal and interest payments shall promptly be paid to the
227 fullest extent possible upon receipt by the authority of all
228 moneys respecting said debt instruments. The directors of
229 the board bear no fiduciary responsibility as provided in
230 section thirteen of this article with regard to the loan
231 authorized by this subsection.

CHAPTER 31. CORPORATIONS.

ARTICLE 15. WEST VIRGINIA ECONOMIC DEVELOPMENT AUTHORITY.

§31-15-8. Insurance fund.

1 (a) There is hereby created an insurance fund which
2 shall be a continuing, nonlapsing, revolving fund that
3 consists of:

4 (1) Moneys appropriated by the state to the insurance
5 fund;

6 (2) Premiums, fees and any other amounts received by
7 the authority with respect to financial assistance provided
8 by the authority from the insurance fund;

9 (3) Upon the satisfaction of any indebtedness or other
10 obligation owed on any property held or acquired by the
11 authority, such proceeds as designated by the authority from
12 the sale, lease or other disposition of such property;

13 (4) Income from investments made from moneys in the
14 insurance fund; and

15 (5) Any other moneys transferred to the insurance fund
16 or made available to it for the purposes described under this
17 section, under this article or pursuant to any other provisions
18 of this code.

19 Subject to the provisions of any outstanding insurance
20 agreements entered into by the authority under this section,
21 the authority may enter into covenants or agreements with
22 respect to the insurance fund, and establish accounts within
23 the insurance fund which may be used to implement the
24 purposes of this article. If the authority elects to establish
25 separate accounts within the insurance fund, the authority
26 may allocate its revenues and receipts among the respective
27 accounts in any manner the authority considers appropriate.

28 If the authority at any time finds that more money is
29 needed to keep the reserves of the insurance fund at an
30 adequate level, the authority, with the consent of the
31 chairman, shall send a written request to the Legislature for
32 additional funds.

33 (b) The insurance fund shall be used for the following
34 purposes by the authority to financially assist projects so
35 long as such financial assistance will, as determined by the
36 authority, fulfill the public purposes of this article:

37 (1) To insure the payment or repayment of all or any
38 part of the principal of, redemption or prepayment
39 premiums or penalties on, and interest on bonds or notes

40 whether issued under this article or under the Industrial
41 Development and Commercial Development Bond Act, the
42 West Virginia Hospital Finance Authority Act or, with
43 respect to health care facilities only, article thirty-three,
44 chapter eight of this code;

45 (2) To insure the payment or repayment of all or any
46 part of the principal of, redemption or prepayment
47 premiums or penalties on, and interest on any instrument
48 executed, obtained or delivered in connection with the
49 issuance and sale of bonds or notes whether under this
50 article or under the Industrial Development and
51 Commercial Development Bond Act, the West Virginia
52 Hospital Finance Authority Act or, with respect to health
53 care facilities only, article thirty-three, chapter eight of this
54 code;

55 (3) To insure the payment or repayment of all or any
56 part of the principal of, prepayment premiums or penalties
57 on, and interest on any form of debt instrument entered into
58 by an enterprise, public body or authority of the state with a
59 financial institution, including, but not limited to, banks,
60 insurance companies and other institutions in the business
61 of lending money, which debt instruments shall include, but
62 not be limited to, instruments relating to loans for working
63 capital and to the refinancing of existing debt: *Provided,*
64 That nothing contained in this subsection or any other
65 provision of this article shall be construed as permitting the
66 authority to insure the refinancing of existing debt except
67 when such insurance will result in the expansion of the
68 enterprise whose debt is to be refinanced or in the creation
69 of new jobs;

70 (4) To pay or insure the payment of any fees or
71 premiums necessary to obtain insurance, guarantees, letters
72 of credit or other credit support from any person or financial
73 institution in connection with financial assistance provided
74 by the authority under this section;

75 (5) To pay any and all expenses of the authority,
76 including, but not limited to:

77 (i) Any and all expenses for administrative, legal,
78 actuarial, and other services related to the operation of the
79 insurance fund; and

80 (ii) All costs, charges, fees and expenses of the
81 authority related to the authorizing, preparing, printing,
82 selling, issuing and insuring of bonds or notes (including,
83 by way of example, bonds or notes, the proceeds of which
84 are used to refund outstanding bonds or notes) and the
85 funding of reserves; and

86 (6) To insure, for up to twenty years, the payment or
87 repayment of all or any part of the principal of and interest
88 on any form of debt instrument entered into by an enterprise,
89 public body or authority of the state with a financial
90 institution, including, but not limited to, banks, insurance
91 companies and other institutions in the business of lending
92 money, which debt instruments are to be solely for capital
93 costs relating to:

94 (i) Providing broadband service, as defined in section
95 one, article one, chapter thirty-one-g of this code, to a
96 household or business located in an unserved area, as
97 defined in section two of said article, or in an area with
98 access to Internet service, by wireline or fixed wireless
99 technology, but that fifteen percent or more of households
100 and businesses in the area are served by Internet service
101 with an actual downstream data rate less than ten megabits
102 per second and an upstream data rate less than one megabit
103 per second, and no part of the area has three or more
104 wireline or fixed wireless broadband service providers; or

105 (ii) Building a segment of a telecommunications
106 network that links a network operator's core network to a
107 local network plant that serves either an unserved area, as
108 defined in section two, article one, chapter thirty-one-g of

109 this code, or an area in which no more than two wireline
110 providers are operating.

111 The authority may not insure the payment or repayment
112 of any part of the principal of and interest on any form of
113 debt instrument under this subdivision, unless the
114 participating financial institution provides written
115 certification to the authority that, but for the authority's
116 insuring the debt instrument, the financial institution would
117 not otherwise make the loan based solely on the
118 creditworthiness of the loan applicant: *Provided*, That
119 nothing contained in this subsection or any other provision
120 of this article may be construed as permitting the authority
121 to insure the refinancing of existing debt.

122 Upon the filing of an application for loan insurance
123 under this subsection, the broadband provider shall cause to
124 be published as a Class II legal advertisement in compliance
125 with article three, chapter fifty-nine of this code, notice of
126 the filing of the application and that the authority may
127 approve the same unless within ten business days after
128 completion of publication a written objection is received by
129 the authority from a person or persons challenging that the
130 proposed broadband project does not satisfy the provisions
131 of this subsection. The publication area for such notice is to
132 be the county or counties in which any portion of the
133 proposed broadband project is to be constructed. The notice
134 shall be in such form as the authority shall direct, and shall
135 include a map of the area or areas to be served by the
136 proposed broadband project. The applicant shall also cause
137 to be mailed by first class, on or before the first day of
138 publication of the notice, a copy of the notice to all known
139 current providers of broadband service within the area
140 proposed to be served. If a challenge under this paragraph
141 is timely received by the authority, the authority shall advise
142 the Broadband Enhancement Council, established in article
143 one of chapter thirty-one-g of this code, in writing within
144 five business days. The council shall set the matter for
145 hearing on a date within thirty days of receipt of notice from

146 the authority. The Broadband Enhancement Council shall
147 issue a decision on whether the proposed project satisfies
148 the requirements of this subsection or not within thirty days
149 of completion of such hearing. Any party participating in
150 said hearing may appeal the council's decision within thirty
151 days of the issuance of said decision to the Circuit Court of
152 Kanawha County. This provision shall apply to all
153 applicants except to those broadband providers that plan on
154 providing a downstream data rate of at least one gigabyte
155 per second to the end user.

156 (c) Except as relating to insured portions of debt
157 instruments under subdivision (6), subsection (b) of this
158 section, the total aggregate amount of insurance from the
159 insurance fund with respect to the insured portions of
160 principal of bonds or notes or other instruments may not
161 exceed at any time an amount equal to five times the balance
162 in the insurance fund.

163 (d) The authority may, in its sole and absolute
164 discretion, set the premiums and fees to be paid to it for
165 providing financial assistance under this section. The
166 premiums and fees set by the authority shall be payable in
167 the amounts, at the time, and in the manner that the
168 authority, in its sole and absolute discretion, requires. The
169 premiums and fees need not be uniform among transactions,
170 and may vary in amount: (1) Among transactions; and (2) at
171 different stages during the terms of transactions.

172 (e) The authority may, in its sole and absolute
173 discretion, require the security it believes sufficient in
174 connection with its insuring of the payment or repayment of
175 any bonds, notes, debt or other instruments described in
176 subdivisions (1), (2), (3) and (4), subsection (b) of this
177 section.

178 (f) The authority may itself approve the form of any
179 insurance agreement entered into under this section or may
180 authorize the chairman or his or her designee to approve the
181 form of any such agreement. Any payment by the authority

182 under an agreement entered into by the authority under this
183 section shall be made at the time and in the manner that the
184 authority, in its sole and absolute discretion, determines.

185 (g) The obligations of the authority under any insurance
186 agreement entered into pursuant to this article shall not
187 constitute a debt or a pledge of the faith and credit or taxing
188 powers of this state or of any county, municipality or any
189 political subdivision of this state for the payment of any
190 amount due thereunder or pursuant thereto, but the
191 obligations evidenced by such insurance agreement shall be
192 payable solely from the funds pledged for their payment. All
193 such insurance agreements shall contain on the face thereof
194 a statement to the effect that such agreements and the
195 obligations evidenced thereby are not debts of the state or
196 any county, municipality or political subdivision thereof but
197 are payable solely from funds pledged for their payment.

CHAPTER 31G. BROADBAND ENHANCEMENT AND EXPANSION POLICIES.

ARTICLE 1. BROADBAND ENHANCEMENT COUNCIL.

§31G-1-1. Legislative findings and purpose.

1 The Legislature finds as follows:

2 (1) That it is a primary goal of the Governor, the
3 Legislature and the citizens of this state, by the year 2020,
4 to make every municipality, community, and rural area in
5 this state, border to border, accessible to Internet
6 communications through the expansion, extension and
7 general availability of broadband services and technology.

8 (2) That although broadband access has been extended
9 to many of West Virginia's cities, towns, and other
10 concentrated population areas, some areas of the state,
11 mostly rural, remain unserved.

12 (3) That the issues which have hindered the provision
13 of broadband access to rural areas of the state especially
14 disadvantage the elderly and low-income households.

15 (4) That fair and equitable access to twenty-first
16 century technology is essential to maximize the
17 functionality of educational resources and educational
18 facilities that enable our children to receive the best of
19 future teaching and learning is essential to the future
20 development of this state. A quality educational system of
21 the twenty-first century should have access to the best
22 technology tools and processes. Administrators should have
23 the electronic resources to monitor student performance, to
24 manage data, and to communicate effectively. In the
25 classroom, every teacher in every school should be provided
26 with online access to and the ability to deliver the best
27 available educational technology resources to the students
28 of West Virginia. Schools of the twenty-first century require
29 facilities that accommodate changing technologies.

30 (5) Accordingly, it is the purpose of the Legislature to
31 provide for the development of policies, plans, processes
32 and procedures to be employed and dedicated to extending
33 broadband access to West Virginians, and to their families,
34 by removing restraint on the development of those services
35 and for encouraging and facilitating the construction of the
36 necessary infrastructure to meet their needs and demands.

§31G-1-2. Definitions.

1 For the purposes of this article:

2 (1) “Broadband” or “broadband service” means any
3 service providing advanced telecommunications capability
4 with the same downstream data rate and upstream data rate
5 as is specified by the Federal Communications Commission
6 and that does not require the end-user to dial up a
7 connection, that has the capacity to always be on, and for
8 which the transmission speeds are based on regular
9 available bandwidth rates, not sporadic or burstable rates,

10 with latency suitable for real-time applications and services
11 such as voice-over Internet protocol and video
12 conferencing, and with monthly usage capacity reasonably
13 comparable to that of residential terrestrial fixed broadband
14 offerings in urban areas: *Provided*, That as the Federal
15 Communications Commission updates the downstream data
16 rate and the upstream data rate the council will publish the
17 revised data rates in the State Register within sixty days of
18 the federal update.

19 (2) “Council” means the Broadband Enhancement
20 Council.

21 (3) “Downstream data rate” means the transmission
22 speed from the service provider source to the end-user.

23 (4) “Internet protocol address” or “IP address” means a
24 unique string of numbers separated by periods that identifies
25 each computer using the internet protocol to communicate
26 over a network.

27 (5) “Upstream data rate” means the transmission speed
28 from the end-user to the service provider source.

29 (6) “Unserved area” means a community that has no
30 access to broadband service.

§31G-1-3. Broadband Enhancement Council; members of council; administrative support.

1 (a) The Broadband Enhancement Council is hereby
2 established and continued. The current members, funds, and
3 personnel shall continue in effect and be wholly transferred;
4 except as may be hereinafter provided. With regard to the
5 terms of the public members appointed under subdivision
6 five of subsection (d) of this section, at the next regular
7 meeting of the council following July 1, 2017, the currently
8 serving public members shall draw by lot for the length of
9 their terms, three members to serve for one additional year,
10 three members to serve for two additional years and the last
11 three members to serve for three additional years, with all

12 public members in future to serve for the duration of the
13 term described below.

14 (b) The council is a governmental instrumentality of the
15 state. The exercise by the council of the powers conferred
16 by this article and the carrying out of its purpose and duties
17 are considered and held to be, and are hereby determined to
18 be, essential governmental functions and for a public
19 purpose. The council is created under the Department of
20 Commerce for administrative, personnel and technical
21 support services only.

22 (c) The council shall consist of thirteen voting
23 members, designated as follows:

24 (1) The Secretary of Commerce or his or her designee;

25 (2) The Chief Technology Officer or his or her
26 designee;

27 (3) The Vice Chancellor for Administration of the
28 Higher Education Policy Commission or his or her
29 designee;

30 (4) The State Superintendent of Schools or his or her
31 designee; and

32 (5) Nine public members that shall serve three year
33 terms from the date of their appointment and are appointed
34 by the Governor with the advice and consent of the Senate,
35 as follows:

36 (i) One member representing users of large amounts of
37 broadband services in this state;

38 (ii) One member from each congressional district
39 representing rural business users in this state;

40 (iii) One member from each congressional district
41 representing rural residential users in this state;

42 (iv) One member representing urban business users in
43 this state; and

44 (v) One member representing urban residential users in
45 this state.

46 (6) In addition to the thirteen voting members of the
47 council, the President of the Senate shall name two senators
48 from the West Virginia Senate, one from each party, and the
49 Speaker of the House shall name two delegates from the
50 West Virginia House of Delegates, one from each party,
51 each to serve in the capacity of an *ex officio*, nonvoting
52 advisory member of the council.

53 (d) The Secretary of Commerce shall chair the first
54 meeting at which time a chair and vice chair shall be elected
55 from the members of the council. In the absence of the chair,
56 the vice chair shall serve as chair. The council shall appoint
57 a secretary-treasurer who need not be a member of the
58 council and who, among other tasks or functions designated
59 by the council, shall keep records of its proceedings.

60 (e) The council may appoint committees or
61 subcommittees to investigate and make recommendations to
62 the full council. Members of these committees or
63 subcommittees need not be members of the council.

64 (f) Seven voting members of the council constitute a
65 quorum and the affirmative vote of a simple majority of
66 those members present is necessary for any action taken by
67 vote of the council.

68 (g) The gubernatorial appointed members shall be
69 deemed part-time public officials, and may pursue and
70 engage in another business or occupation or gainful
71 employment. Any person employed by, owning an interest
72 in or otherwise associated with a broadband deployment
73 project, project sponsor or project participant may serve as
74 a council member and is not disqualified from serving as a
75 council member because of a conflict of interest prohibited

76 under section five, article two, chapter six-b of this code and
77 is not subject to prosecution for violation of said section
78 when the violation is created solely as a result of his or her
79 relationship with the broadband deployment project, project
80 sponsor or project participant so long as the member recuses
81 himself or herself from board participation regarding the
82 conflicting issue in the manner set forth in section five,
83 article two, chapter six-b of this code and the legislative
84 rules promulgated by the West Virginia Ethics Commission.

85 (h) No member of the council who serves by virtue of
86 his or her office may receive any compensation or
87 reimbursement of expenses for serving as a member. The
88 public members and members of any committees or
89 subcommittees are entitled to be reimbursed for actual and
90 necessary expenses incurred for each day or portion thereof
91 engaged in the discharge of his or her official duties in a
92 manner consistent with the guidelines of the Travel
93 Management Office of the Department of Administration.

94 (i) No person is subject to antitrust or unfair
95 competition liability based on membership or participation
96 in the council, which provides an essential governmental
97 function and enjoys state action immunity.

§31G-1-4. Powers and duties of the council generally.

1 (a) The council shall:

2 (1) Explore any and all ways to expand access to
3 broadband services, including, but not limited to, middle
4 mile, last mile and wireless applications;

5 (2) Gather data regarding the various speeds provided
6 to consumers in comparison to what is advertised. The
7 council may request the assistance of the Legislative
8 Auditor in gathering this data;

9 (3) Explore the potential for increased use of broadband
10 service for the purposes of education, career readiness,
11 workforce preparation and alternative career training;

12 (4) Explore ways for encouraging state and municipal
13 agencies to expand the development and use of broadband
14 services for the purpose of better serving the public,
15 including audio and video streaming, voice-over Internet
16 protocol, teleconferencing and wireless networking; and

17 (5) Cooperate and assist in the expansion of electronic
18 instruction and distance education services.

19 (b) In addition to the powers set forth elsewhere in this
20 article, the council is hereby granted, has and may exercise
21 the powers necessary or appropriate to carry out and
22 effectuate the purpose and intent of this article, as
23 enumerated herein. The council shall have the power and
24 capacity to:

25 (1) Provide consultation services to project sponsors in
26 connection with the planning, acquisition, improvement,
27 construction or development of any broadband deployment
28 project;

29 (2) Promote awareness of public facilities that have
30 community broadband access that can be used for distance
31 education and workforce development;

32 (3) Advise on deployment of e-government portals such
33 that all public bodies and political subdivisions have
34 homepages, encourage one-stop government access and that
35 all public entities stream audio and video of all public
36 meetings;

37 (4) Make and execute contracts, commitments and
38 other agreements necessary or convenient for the exercise
39 of its powers, including, but not limited to, the hiring of
40 consultants to assist in the mapping of the state and
41 categorization of areas within the state;

42 (5) Acquire by gift or purchase, hold or dispose of real
43 property and personal property in the exercise of its powers
44 and performance of its duties as set forth in this article;

45 (6) Receive and dispense funds appropriated for its use
46 by the Legislature or other funding sources or solicit, apply
47 for and receive any funds, property or services from any
48 person, governmental agency or organization to carry out its
49 statutory duties;

50 (7) To oversee the use of conduit installed pursuant to
51 section two of article three of this chapter; and to

52 (8) Perform any and all other activities in furtherance
53 of its purpose.

54 (c) The council shall exercise its powers and authority
55 to advise and make recommendations to the Legislature on
56 bringing broadband service to unserved and underserved
57 areas, as well as to propose statutory changes that may
58 enhance and expand broadband in the state.

59 (d) The council shall report to the Joint Committee on
60 Government and Finance on or before January 1 of each
61 year. The report shall include the action that was taken by
62 the council during the previous year in carrying out the
63 provisions of this article. The council shall also make any
64 other reports as may be required by the Legislature or the
65 Governor.

§31G-1-5. Creation of the Broadband Enhancement Fund.

1 All moneys collected by the council, which may, in
2 addition to appropriations, include gifts, bequests or
3 donations, shall be deposited in a special revenue account
4 in the State Treasury known as the Broadband Enhancement
5 Fund. The fund shall be administered by and under the
6 control of the Secretary of the Department of Commerce.
7 Expenditures from the fund shall be for the purposes set
8 forth in this article and are not authorized from collections
9 but are to be made only in accordance with appropriation by
10 the Legislature and in accordance with the provisions of
11 article two, chapter eleven-b of this code.

§31G-1-6. Mapping of areas within state.

1 (a) Based on its analysis of data, broadband demand,
2 and other relevant information, the council shall establish a
3 mapping of broadband services in the state. The council
4 shall publish an annual assessment and map of the status of
5 broadband, including specifically designations of unserved
6 and underserved areas of the state.

7 (b) To the extent possible, and subject to limitations
8 contained in subsection (f) of this section, the council may
9 additionally establish an interactive public map reflecting
10 estimated downstream data rate and upstream data rate in a
11 particular region, area, community, street or location. Any
12 such mapping may only specify data rates at a particular
13 street address or physical location, and shall not make
14 public the IP address or the name of the specific individual
15 at such location. Such mapping may also contain data
16 concerning capacity, based upon fiber count.

17 (c) The mapping provided for in this section may be
18 based on information collected or received by the council,
19 including but not limited to, data collected from: (1) State
20 and federal agencies or entities that collect data on
21 broadband services; (2) industry provided information; and
22 (3) consumer data provided to the council pursuant to
23 section nine of this article.

24 (d) Any entity that has received or hereinafter receives
25 state or federal moneys, and which has used those moneys
26 to install infrastructure used for broadband services, shall
27 furnish detailed information concerning the location, type,
28 and extent of such infrastructure to the council for use in
29 mapping.

30 (e) The mapping and designations provided for under
31 this section may be revised on a continuing basis by the
32 council as warranted by the data and information provided.

33 (f) In addition to the provisions of section thirteen of
34 this article, the mapping of broadband services may exclude
35 from public accessibility and availability: (1) The location
36 or identity of any critical infrastructure used by public or
37 private entities in furtherance of their internet services; (2)
38 personal name and personal IP addresses connected with
39 particular data rates; and (3) information designated as
40 confidential for public security reasons by either state or
41 federal homeland security agencies: *Provided*, That it shall
42 be duty of the public and private entities to make the council
43 aware of such confidential designation: *Provided, however*,
44 That unless the council determines good cause exists, the
45 actual or estimated upstream and downstream data rates of
46 an area or region of the state shall not be excluded from
47 public or private availability.

§31G-1-7. Retention of outside expert consultant.

1 (a) In order to assist the council with the highly
2 technical task of categorizing the areas of the state, the
3 council may retain outside expert consultants to assist in the
4 purposes of this article. The experts may assist the Council
5 to map the state on the basis of broadband availability, to
6 evaluate and categorize data, to assist in public outreach and
7 education in order to stimulate demand and to provide other
8 support and assistance as necessary to accomplish the
9 purposes of this article.

10 (b) The retention and contracting of all expert
11 consultants shall be transparent, including specifically,
12 making publicly available any contracts, retention
13 agreements, payments and invoicing for services.

§31G-1-8. Public awareness and education.

1 In order to implement and carry out the intent of this
2 article, the council may take such actions as it deems
3 necessary or advisable in order to increase awareness of
4 issues concerning broadband services and to educate and
5 inform the public.

§31G-1-9. Collection of data.

1 (a) In order to ascertain, categorize, analyze, map, and
2 update the status of broadband in the state, as well as to
3 enable the council to make informed policy and legislative
4 recommendations, the council may establish a voluntary
5 data collection program. The program may include
6 voluntarily submitted data from internet service providers,
7 including any home or region data rate meters utilized by
8 the provider. The program may also utilize and collect
9 voluntarily submitted data rate information submitted by
10 any person reflecting the person's personal data rate at a
11 particular IP address. This personal data rate may be based
12 upon a web-based test or analysis program.

13 (b) Any and all data collected by the Council shall not
14 be deemed public information and is not subject to public
15 release or availability pursuant to chapter twenty-nine-b of
16 this code.

17 (c) Any data collection program established by the
18 council shall:

19 (1) Make clear to those providers or persons submitting
20 information that the data rate speed may become public,
21 including specific reference to the person's physical
22 address;

23 (2) Make clear this is a voluntary data collection
24 program and that submission of information shall be
25 deemed consent to use and make public such data rate
26 information; and

27 (3) Not include any person's personal web history or
28 search information, or otherwise publicly identify the
29 person's name in connection with an IP address or physical
30 address.

31 (d) The council may establish guidelines and additional
32 rules governing a data collection program through the

33 legislative rulemaking process, pursuant to the provisions of
34 article three, chapter twenty-nine-a of this code.

§31G-1-10. Pilot Project for cooperatives by political subdivisions.

1 (a) Notwithstanding any provision in the code to the
2 contrary, the council may create guidelines and recommend
3 to the Legislature a pilot project for no more than three
4 municipalities or counties, either individually or in
5 conjunction with one another, to establish non-profit
6 cooperative associations to provide high-speed internet and
7 broadband services.

8 (b) Nothing herein shall preclude or prohibit the
9 establishment of a cooperative association by non-political
10 subdivisions outside the purview or authority of the council.
11 It is not a requirement that a cooperative association
12 established under article two of this chapter seek approval
13 or guidance from the council, and such cooperative
14 associations established under article two of this chapter
15 shall not be under the authority of, nor subject to, the
16 council.

§31G-1-11. Voluntary donation and easement programs.

1 (a) The council shall create guidelines for, and
2 recommend to the Legislature a means of implementing a
3 voluntary donation program to allow for pipeline, railroad,
4 and other similar structures and rights-of-way in the state to
5 be donated to the state for use by public or private entities
6 to facilitate broadband service and availability through
7 placement of fiber.

8 (b) The council shall create guidelines for, and
9 recommend to the Legislature a means of implementing a
10 program to allow for an easement program to be established
11 to allow public or private entities to facilitate broadband
12 service and availability through placement of fiber.

§31G-1-12. Grants.

1 In furtherance of the purposes of this article, the council
2 is permitted to seek non-state funding and grants. The
3 council may utilize funding and grants to support the
4 responsibilities, initiatives and projects set forth in this
5 article. The council may additionally disburse such monies
6 to fund projects and initiatives in furtherance of the
7 enhancement and expansion of broadband services in this
8 state, and the other purposes of this article.

§31G-1-13. Protection of proprietary business information.

1 (a) Broadband deployment information provided to the
2 council or its consultants and other agents, including, but
3 not limited to, physical plant locations, subscriber levels,
4 and market penetration data, constitutes proprietary
5 business information and, along with any other information
6 that constitutes trade secrets, shall be exempt from
7 disclosure under the provisions of chapter twenty-nine-b of
8 this code: *Provided*, That the information is identified as
9 confidential information when submitted to the council.

10 (b) Trade secrets or proprietary business information
11 obtained by the council from broadband providers and other
12 persons or entities shall be secured and safeguarded by the
13 state. Such information or data shall not be disclosed to the
14 public or to any firm, individual or agency other than
15 officials or authorized employees of the state. Any person
16 who makes any unauthorized disclosure of such
17 confidential information or data is guilty of a misdemeanor
18 and, upon conviction thereof, may be fined not more than
19 \$5,000 or confined in a correctional facility for not more
20 than one year, or both.

21 (c) The official charged with securing and safeguarding
22 trade secrets and proprietary data for the council is the
23 Secretary of Administration, who is authorized to establish
24 and administer appropriate security measures. The council
25 chair shall designate two additional persons to share the

26 responsibility of securing trade secrets or proprietary
27 information. No person will be allowed access to trade
28 secrets or proprietary information without written approval
29 of a minimum of two of the three authorized persons
30 specified above.

§31G-1-14. Legislative rule-making authority.

1 In order to implement and carry out the intent of this
2 article, the Secretary of the Department of Commerce, at the
3 direction and recommendation of the council, may propose
4 rules for legislative approval, pursuant to the provisions of
5 article three, chapter twenty-nine-a of this code.

ARTICLE 2. COOPERATIVE ASSOCIATIONS.

§31G-2-1. Definitions.

1 As used in this article:

2 (1) “Cooperative association” or “association” means
3 any corporation organized under this article. Each
4 association shall also comply with the requisite business
5 corporation provisions of chapter thirty-one-d or thirty-one-
6 f of this code, or the nonprofit corporation provisions of
7 chapter thirty-one-e of this code.

8 (2) “Internet services” means providing access to, and
9 presence on, the internet and other services. Data may be
10 transmitted using several technologies, including dial-up,
11 DSL, cable modem, wireless, or dedicated high-speed
12 interconnects.

13 (3) “Member” means a member of an association
14 without capital stock and a holder of common stock in an
15 association organized with capital stock.

16 (4) “Qualified person” means a person who is engaged
17 in the use of internet services, either in an individual
18 capacity or as a business.

19 (5) “Qualified activity” means using internet services.

§31G-2-2. Who may organize.

1 Notwithstanding any provision of this code to the
2 contrary, twenty or more qualified persons engaged in the
3 use of internet services may form a cooperative association,
4 with or without capital stock, under this article.

§31G-2-3. Legislative findings and purposes.

1 (a) It is the finding of the Legislature that:

2 (1) West Virginia’s cities, towns, and other
3 concentrated population areas, areas of the state, mostly
4 rural, remain unserved or underserved by broadband access;
5 and

6 (2) The lack of affordable, accessible broadband
7 service in the underserved and unserved areas in this state
8 necessitates consideration of alternative means and methods
9 of providing internet services.

10 (b) It is the purpose of this article that individuals and
11 businesses be able to form cooperative associations for the
12 purpose of obtaining internet services within their
13 respective regions and communities.

§31G-2-4. Powers.

1 (a) A cooperative association shall have the following
2 powers:

3 (1) To engage in any qualified activity in connection
4 with any internet service; or any activity in connection with
5 the purchase, providing or use by its members of internet
6 services; or in the financing, directly, through the
7 association of any qualified activities. All transactions with
8 nonmembers shall be on terms fixed by the association and
9 nonmembers shall not otherwise participate in any benefits
10 derived from such transactions;

11 (2) To borrow money without limitation as to amount
12 of corporate indebtedness or liability, and to make advance
13 payments and advances to members; to execute, issue,
14 draw, make, accept, endorse and guarantee, without
15 limitation, promissory notes, bills of exchange, drafts,
16 warrants, certificates, mortgages, and any other form of
17 obligation or negotiable or transferable bills of any kind; to
18 become the surety, guarantor, maker, and/or endorser for
19 accommodation or otherwise of bills, notes, securities and
20 other evidences of debt of any association or person,
21 anything in any other statutes or law of this state to the
22 contrary notwithstanding;

23 (3) To act as the agent or representative of any member
24 or members in any of the above-mentioned activities;

25 (4) To purchase or otherwise acquire, and to hold, own
26 and exercise all rights of ownership in, and to sell, transfer
27 or pledge, or guarantee the payment of dividends or interest
28 on, or the retirement or redemption of, shares of the capital
29 stock or bonds of any corporation or association engaged in
30 any related activity or in the providing and marketing of any
31 of the products handled by the association;

32 (5) To establish reserves and to invest the funds thereof
33 in bonds or in such other property as may be provided in the
34 bylaws;

35 (6) To buy, hold and exercise all privileges of
36 ownership over real or personal property as may be
37 necessary or convenient for the conduct and operation of
38 any of the business of the association, or incidental thereto;

39 (7) To establish, secure, own and develop patents,
40 trademarks and copyrights; and

41 (8) To do each and every thing necessary, suitable, or
42 proper for the accomplishment of any one of the purposes
43 or the attainment of any one or more of the subjects herein
44 enumerated, or conducive to or not contrary to the interest

45 or benefit of the association; and to contract accordingly;
46 and, in addition, to exercise and possess all powers, rights
47 and privileges necessary or incidental to the purposes for
48 which the association is organized or to the activities in
49 which it is engaged, and any other rights, powers, and
50 privileges granted by the laws of this state to ordinary
51 corporations, except such as are inconsistent with the
52 purposes of this article.

§31G-2-5. Members.

1 (a) Under the terms and conditions prescribed in the
2 bylaws adopted by it, a cooperative association may admit
3 as members, or issue common stock to, only qualified
4 persons.

5 (b) If a member of a nonstock association be other than
6 a natural person, the member may be represented by an
7 individual, associate, officer or manager or member thereof,
8 duly authorized in writing.

9 (c) One association organized hereunder may become a
10 member or stockholder of any other association or
11 associations organized under this article or similar laws of
12 any state.

§31G-2-6. Articles of incorporation.

1 Each association formed under this article shall prepare
2 and file articles of incorporation, setting forth:

3 (1) The name of the association, which shall include the
4 words “cooperative,” “co-operative,” or “co-op,” and words
5 or abbreviations designating a corporation;

6 (2) The purposes for which it is formed;

7 (3) The place where its principal business will be
8 transacted;

9 (4) The period, if any prescribed, for the duration of the
10 corporation;

11 (5) The number of incorporators which is not less than
12 twenty, the number of directors which is not less than
13 twenty and any number in excess of those minimums, or it
14 may be set forth that the number of directors will be fixed
15 by the bylaws;

16 (6) If organized without capital stock, whether the
17 property rights and interest of each member are equal or
18 unequal; and if unequal, the general rules applicable to the
19 classes of members whose property rights and interest are
20 determined and fixed; and provision for the admission of
21 new members who may be entitled to share in the property
22 of the association with the old members, in accordance with
23 the general rules. This provision of the articles of
24 incorporation may not be altered, amended or repealed
25 except by the written consent or vote of three fourths of the
26 members;

27 (7) If organized with capital stock and authorized to
28 issue only one class of stock, the total number of shares of
29 stock which the association has authority to issue,
30 including: (A) The par value of each of the shares; or (B) a
31 statement that all the shares are to be without par value;

32 (8) If the association is authorized to issue more than
33 one class of stock, the total number of shares of all classes
34 of stock which the association may issue, including: (A) The
35 number of shares of each class that have a par value and the
36 par value of each share by class; (B) the number of shares
37 that are to be without par value; and (C) a statement of the
38 powers, preferences, rights, qualifications, limitations or
39 restrictions that are permitted by section thirteen of this
40 article in respect to a class of stock fixed by the articles of
41 incorporation or by resolution of the board of directors;

42 (9) The articles shall be signed and filed in accordance
43 with the provisions of the business or nonprofit corporation
44 laws of this state; and

45 (10) The articles may also contain any provisions
46 managing, defining, limiting or regulating the powers and
47 affairs of the association, the directors, the stockholders or
48 members of the association.

§31G-2-7. Amendments to articles of incorporation.

1 The articles of incorporation may be altered or
2 amended at any regular meeting or any special meeting
3 called for that purpose. An amendment must first be
4 approved by two thirds of the directors and then adopted by
5 a vote representing a majority of all the members of the
6 association. Amendments to the articles of incorporation,
7 when so adopted, shall be filed in accordance with the
8 provisions of the general corporation laws of this state.

§31G-2-8. Bylaws.

1 Each association incorporated under this article, must,
2 within thirty days after its incorporation, adopt for its
3 government and management a code of bylaws, not
4 inconsistent with the powers granted by this article. A
5 majority vote of the members or stockholders, or their
6 written assent, is necessary to adopt such bylaws. Each
7 association, under its bylaws, may provide for any or all of
8 the following matters:

9 (1) The time, place and manner of calling and
10 conducting its meetings;

11 (2) The number of stockholders or members
12 constituting a quorum;

13 (3) The right of members or stockholders to vote by
14 proxy or by mail or both; and the conditions, manner, form,
15 and effect of such votes;

16 (4) The number of directors constituting a quorum; and,
17 if authority therefor is given in the articles of incorporation,
18 the total number of directors;

19 (5) The qualifications, compensation, duties and term
20 of office of directors and officers; time of their election and
21 the mode and manner of giving notice thereof;

22 (6) Penalties for violation of the bylaws;

23 (7) The amount of entrance, organization and
24 membership fees, if any; the manner and method of
25 collecting the same; and the purposes for which they may
26 be used;

27 (8) The amount which each member or stockholder
28 shall be required to pay annually or from time to time, if at
29 all, to carry on the business of the association; the charge, if
30 any, to be paid by each member or stockholder for services
31 rendered by the association to him or her and the time of
32 payment and the manner of collection; and the marketing
33 contract between the association and its members or
34 stockholders which every member or stockholder may be
35 required to sign; and

36 (9) The number and qualifications of members or
37 stockholders of the association and the conditions precedent
38 to membership or ownership of common stock; the method,
39 time and manner of permitting members to withdraw or the
40 holders of common stock to transfer their stock; the manner
41 of assignment and transfer of the interest of members and of
42 the shares of common stock; the conditions upon which and
43 time when membership of any member shall cease; the
44 automatic suspension of the rights of a member when he or
45 she ceases to be eligible to membership in the association;
46 the mode, manner and effect of the expulsion of a member;
47 the manner of determining the value of a member's interest,
48 and provision for its purchase by the association, at its
49 option, upon the death or withdrawal of a member or
50 stockholder, or upon the expulsion of a member or forfeiture

51 of his or her membership, or, at the option of the association,
52 the purchase at a price fixed by conclusive appraisal by the
53 board of directors, or at the election of the board, such
54 property interests may be sold at public auction to the
55 association itself, or to any person eligible to membership
56 in such association and the proceeds of such sale paid over
57 to the personal representative of such deceased member, or
58 to the member withdrawing or expelled, as the case may be.

§31G-2-9. General and special meetings.

1 In its bylaws, each association shall provide for one or
2 more regular meetings annually. The board of directors
3 shall have the right to call a special meeting at any time; and
4 ten percent of the members or stockholders may file a
5 petition stating the specific business to be brought before
6 the association and demand a special meeting at any time.
7 Such meeting must thereupon be called by the directors.
8 Notice of all meetings, together with a statement of the
9 purposes thereof, shall be mailed to each member at least
10 ten days prior to the meeting: *Provided*, That the bylaws
11 may require instead that such notice may be given as
12 provided by this section, namely, as a Class I legal
13 advertisement in compliance with the provisions of article
14 three, chapter fifty-nine of this code, and the publication
15 area for such publication shall be the county in which the
16 principal place of business of the association is located.

§31G-2-10. Directors.

1 (a) The affairs of the association shall be managed by a
2 board of not less than three directors, elected by the
3 members or stockholders.

4 (b) The bylaws may provide that the territory in which
5 the association has members shall be divided into districts
6 and that the directors be elected either directly or by district
7 delegates elected by the members in that district. The
8 bylaws shall specify the number of directors to be elected
9 by each district, the manner of reapportioning the directors

10 and the method of redistricting the territory covered by the
11 association. The bylaws may provide that primary elections
12 shall be held in each district to elect the directors
13 apportioned to the districts and that the results of all the
14 primary elections may be ratified during the next regular
15 meeting of the association or may be considered final.

16 (c) The bylaws may provide that one or more directors
17 may be appointed by a public official, commission or by the
18 other directors. These public directors shall represent the
19 interest of the general public in the associations. The public
20 directors need not be members or stockholders of the
21 association, but shall have the same powers and rights as
22 other directors. The directors shall not number more than
23 one fifth of the entire number of directors.

24 (d) An association may provide a fair remuneration for
25 the time actually spent by its officers and directors in its
26 service and for the service of the members of its executive
27 committee. No director, during the term of his or her office,
28 shall be a party to a contract for profit with the association
29 differing from the contractual terms accorded regular
30 members or holders of common stock of the association.

31 (e) The bylaws may provide that no director, except the
32 president and secretary, shall occupy a position in the
33 association on regular salary or substantially full-time pay.

34 (f) The bylaws may provide for an executive committee
35 and may allot to the committee all the functions and powers
36 of the board of directors, subject to the general direction and
37 control of the board.

38 (g) When a vacancy on the board of directors occurs
39 other than by expiration of term, the remaining members of
40 the board, by a majority vote, shall fill the vacancy, unless
41 the bylaws provide for an election of directors by district. In
42 that case the board of directors shall immediately call a
43 special meeting of the members or stockholders in that
44 district to fill the vacancy.

§31G-2-11. Officers.

1 The directors shall elect from their number a president
2 and one or more vice presidents. They shall also elect a
3 secretary and a treasurer, who need not be directors or
4 members of the association; and they may combine the two
5 latter offices and designate the combined office as
6 secretary-treasurer; or unite both functions and titles in one
7 person. The treasurer may be a bank or any depository, and,
8 as such, shall not be considered an officer, but as a function
9 of the board of directors. In such case, the secretary shall
10 perform the usual accounting duties of the treasurer, except
11 that the funds shall be deposited only as and where
12 authorized by the board of directors.

§31G-2-12. Officers, employees and agents to be bonded.

1 Every officer, employee and agent handling funds or
2 negotiable instruments or property of or for any association
3 created hereunder shall be required to execute and deliver
4 adequate bonds for the faithful performance of his or her
5 duties and obligations.

§31G-2-13. Stock; membership certificate; voting; liability; limitations on transfer and ownership.

1 (a) When a member of an association established
2 without capital stock has paid his or her membership fee in
3 full, he or she shall receive a certificate of membership. An
4 association shall have power to issue one or more classes of
5 stock, or one or more series of stock within any class
6 thereof, any or all of which classes may be of stock with par
7 value or stock without par value, with such voting powers,
8 full or limited, or without voting powers and in such series,
9 and with such designations, preferences and relative,
10 participating, optional or other special rights, and
11 qualifications, limitations or restrictions thereof, as shall be
12 stated and expressed in the articles of incorporation, or in
13 any amendment thereto, or in the resolution or resolutions
14 providing for the issue of such stock adopted by the board
15 of directors pursuant to authority expressly vested in it by

16 the provisions of the articles of incorporation or of any
17 amendment thereto.

18 (b) No association shall issue stock to a member until it
19 has been fully paid for. The promissory notes of the
20 members may be accepted by the association as full or
21 partial payment. The association shall hold the stock as
22 security for the payment of the note; but such retention as
23 security shall not affect the member's right to vote.

24 (c) No member shall be liable for the debts of the
25 association to an amount exceeding the sum remaining
26 unpaid on his or her membership fee or his or her
27 subscription to the capital stock, including any unpaid
28 balance on any promissory notes given in payment thereof.

29 (d) An association in its bylaws may limit the amount
30 of common stock which one member may own. No member
31 or stockholder shall be entitled to more than one vote,
32 regardless of the number of shares of common stock owned
33 by him or her.

34 (e) Any association organized with stock under this
35 article may issue preferred stock, with or without the right
36 to vote. Such stock may be sold to any person, member or
37 nonmember, and may be redeemable or retireable by the
38 association on such terms and conditions as may be
39 provided for by the articles of incorporation and printed on
40 the face of the certificate. The bylaws shall prohibit the
41 transfer of the common stock of the association to persons
42 who are not qualified persons, or organizations that are not
43 engaged in qualified activities handled by the association,
44 or to persons or organizations that are not members of credit
45 associations financing such products; and such restrictions
46 shall be printed upon every certificate of stock subject
47 thereto.

48 (f) Other kinds and classes of stock may be issued in
49 compliance with the provisions of the articles of
50 incorporation, the terms of the bylaws, or special resolutions
51 of the board of directors.

52 (g) The association may, at any time, as specified in the
53 bylaws, except when the debts of the association exceed
54 fifty percent of the assets thereof, buy in or purchase its
55 common stock at the book value thereof, as conclusively
56 determined by the board of directors, and pay for it in cash
57 within one year thereafter.

§31G-2-14. Removal of officer or director.

1 (a) Any member may bring charges against an officer
2 or director by filing them in writing with the secretary of the
3 association, together with a petition signed by five percent
4 of the members, requesting the removal of the officer or
5 director in question. The removal shall be voted upon at the
6 next regular or special meeting of the association and, by a
7 vote of a majority of the members, the association may
8 remove the officer or director and fill the vacancy. The
9 director or officer against whom such charges have been
10 brought shall be informed in writing of the charges previous
11 to the meeting and shall have an opportunity at the meeting
12 to be heard in person or by counsel and to present witnesses;
13 and the person or persons bringing the charges against him
14 or her shall have the same opportunity.

15 (b) In case the bylaws provide for election of directors
16 by districts with primary elections in each district, then the
17 petition for removal of a director must be signed by twenty
18 percent of the members residing in the district from which
19 he or she was elected. The board of directors must call a
20 special meeting of the members residing in that district to
21 consider the removal of the director; and by a vote of the
22 majority of the members of that district the director in
23 question shall be removed from office.

§31G-2-15. Referendum.

1 Upon demand of one third of the entire board of
2 directors, made immediately and so recorded, at the same
3 meeting at which the original motion was passed, any matter
4 of policy that has been approved or passed by the board
5 must be referred to the entire membership or the
6 stockholders for decision at the next special or regular

7 meeting; and a special meeting may be called for the
8 purpose.

§31G-2-16. Marketing contract.

1 The association and its members may take and execute
2 marketing contracts, requiring the members, for any period
3 of time not over five years, to use, receive or provide all or
4 any specified part of an internet service exclusively to or
5 through the association, or any facilities to be created by the
6 association. If they contract a sale to the association, it shall
7 be conclusively held that title to the products, goods and
8 services passes absolutely and unreservedly, except for
9 recorded liens, to the association upon delivery, or at any
10 other specified time if expressly and definitely agreed in
11 such contract. The contract may provide, among other
12 things, that the association may sell or resell the products,
13 goods and services delivered by its members, with or
14 without taking title thereto, and pay over to its members the
15 resale price, after deducting all necessary selling, overhead
16 and other costs and expenses, including interest or
17 dividends on stock, not exceeding eight percent per annum,
18 and reserves for retiring the stock, if any; and any other
19 proper reserves; or any other deductions.

§31G-2-17. Remedies for breach of contract.

1 The bylaws or the marketing contract may fix, as
2 liquidated damages, specific sums to be paid by the member
3 or stockholder to the association upon the breach by him or
4 her of any provision of the marketing contract regarding the
5 sale or delivery or withholding of internet services, and may
6 further provide that the member will pay all costs, premiums
7 for bonds, expenses and fees, in case the association shall
8 prevail in any action brought by it upon the contract; and
9 any such provisions shall be valid and enforceable in the
10 courts of this state; and such clauses providing for
11 liquidated damages shall be enforceable as such and shall
12 not be regarded as penalties.

13 In the event of any such breach or threatened breach of
14 such marketing contract by a member, the association shall
15 be entitled to an injunction to prevent the further breach of
16 the contract and to a decree of specific performance thereof.
17 Pending the adjudication of such an action and upon filing
18 a verified complaint showing the breach or threatened
19 breach, and upon filing a sufficient bond, the association
20 may be entitled to a temporary restraining order and
21 preliminary injunction against the member.

22 In an action upon such marketing agreement, it shall
23 be presumed as between the parties that the landowner,
24 landlord or lessor claiming therein so to be is able to control
25 the delivery of internet services produced on his or her land
26 by tenants or others, whose tenancy or possession or work
27 on such land or the terms of whose tenancy or possession or
28 labor thereon were created or changed after execution by the
29 landowner, landlord or lessor of such marketing agreement;
30 and in such actions the foregoing remedies for nondelivery
31 or breach shall lie and be enforceable against such
32 landowner, landlord or lessor.

**§31G-2-18. Purchasing property of other associations,
persons, firms or corporations.**

1 Whenever an association, organized under this article
2 with preferred capital stock, shall purchase the stock of any
3 property, or any interest in any property, or any person, firm
4 or corporation or association, it may discharge the
5 obligations so incurred, wholly or in part, by exchanging for
6 the acquired interest shares of its preferred capital stock to
7 an amount which at par value would equal the fair market
8 value of the stock or interest so purchased, as determined by
9 the board of directors. In that case the transfer to the
10 association of the stock or interest purchased shall be
11 equivalent to payment in cash for the shares of stock issued.

§31G-2-19. Annual reports.

1 Each association formed under this article shall prepare
2 an annual report on forms provided by and filed with the

3 Secretary of State pursuant to the requirements of section
4 two-a, article one, chapter fifty-nine of this code.

§31G-2-20. Conflicting laws not to apply.

1 Any provisions of law which are in conflict with this
2 article shall be construed as not applying to the association
3 herein provided for.

§31G-2-21. Interest in other corporations or associations.

1 An association may organize, form, operate, own,
2 control, have an interest in, own stock of, or be a member
3 of any other corporation or corporations, with or without
4 capital stock, and engaged in qualified activities regarding
5 internet services.

§31G-2-22. Contracts and agreements with other associations.

1 Any association may, upon resolution adopted by its
2 board of directors, enter into all necessary and proper
3 contracts and agreements and make all necessary and proper
4 stipulations, agreements and contracts and arrangements
5 with any other cooperative corporation, association or
6 associations, formed in this or in any other state, for the
7 cooperative and more economical carrying on of its
8 business or any part or parts thereof. Any two or more
9 associations may, by agreement between them, unite in
10 employing and using, or may separately employ and use, the
11 same personnel, methods, means and agencies for carrying
12 on and conducting their respective business.

§31G-2-23. Rights and remedies apply to similar associations of other states.

1 Any corporation or association heretofore or hereafter
2 organized under generally similar laws of another state shall
3 be allowed to carry on any proper activities, operations and
4 functions in this state upon compliance with the general
5 regulations applicable to foreign corporations desiring to do
6 business in this state, and all contracts made by or with such

7 associations, which could be made by any association
8 incorporated hereunder, shall be legal and valid and
9 enforceable in this state with all of the remedies set forth in
10 this article.

§31G-2-24. Associations heretofore organized may adopt provisions of article.

1 Any corporation or association organized in this state
2 under previously existing statutes may, by a majority vote
3 of its stockholders or members, be brought under the
4 provisions of this article by limiting its membership and
5 adopting the other restrictions as provided herein. It shall
6 make out in duplicate a statement signed and sworn to by its
7 directors to the effect that the corporation or association has,
8 by a majority vote of the stockholders or members, decided
9 to accept the benefits and be bound by the provisions of this
10 article and has authorized all changes accordingly. Articles
11 of incorporation shall be filed as required in section six of
12 this article, except that they shall be signed by the members
13 of the then board of directors. The filing fee shall be the
14 same as for filing an amendment to articles of incorporation.

15 Where any association may be incorporated under this
16 article, all contracts made prior to the date of incorporation,
17 by or on behalf of such association by the promoters thereof
18 in anticipation of its becoming incorporated under the laws
19 of this state, whether or not such contracts be made by or in
20 the name of some corporation organized elsewhere, and
21 when they would have been valid if entered into subsequent
22 to such date, shall be held valid as if made after such date.

§31G-2-25. Liability as to delivery of products in violation of marketing agreements.

1 Any person who solicits, persuades or permits any
2 member of any association organized hereunder to breach
3 his or her marketing contract with the association or one
4 association with another, by accepting or receiving such
5 member's products for sale or for auction or for display for

6 sale, contrary to the terms of any marketing agreement of
7 which such person has knowledge or notice, shall be liable
8 to the association aggrieved in a civil suit for damages
9 therefor. Courts of equity shall have jurisdiction to enjoin
10 further breaches of such contract.

§31G-2-26. Associations to be deemed not in restraint of trade.

1 No association organized under this article and
2 complying with the terms thereof shall be deemed to be a
3 conspiracy or a combination in restraint of trade or an illegal
4 monopoly or an attempt to lessen competition or to fix
5 prices arbitrarily; nor shall the marketing contract and
6 agreements between the association and its members or any
7 agreements authorized in this article be considered illegal as
8 such or in unlawful restraint of trade or as part of a
9 conspiracy or combination to accomplish an improper or
10 illegal purpose.

**§31G-2-27. Application of business corporation laws;
nonprofit corporation laws.**

1 The provisions of the business corporation laws in
2 chapter thirty-one-d or the nonprofit corporation laws in
3 chapter thirty-one-e of this code and all powers and rights
4 thereunder shall apply to the associations organized under
5 this article and may be used by them, except when the
6 provisions are in conflict with or inconsistent with the
7 express provisions of this article.

ARTICLE 3. CONDUIT INSTALLATION; MICROTRENCHING.

§31G-3-1. Definitions.

1 “Microtrenching” means a technique of deploying
2 cables, including specifically for broadband networks, using
3 a cutting wheel to cut a trench with smaller dimensions than
4 can be achieved with conventional trench digging
5 equipment; with the trench dimensions being no greater
6 than three inches in width, and a depth between one and two
7 feet.

§31G-3-2. Microtrenching permitted; notification.

1 (a) A person may perform microtrenching, where such
2 is feasible, to the extent allowed by a permit issued by the
3 appropriate municipality, county or state agency. All
4 microtrenching work performed must be in accordance with
5 the National Electrical Safety Code and other generally
6 accepted safety codes.

7 (b) A person must install conduit in a way that will
8 readily permit another owner to add length to the
9 microtrenching by connecting its own conduit to the first
10 owner's conduit. Where an owner connects its own conduit
11 to another owner's previously installed conduit, the owner
12 must install conduit that has the same number of pathways
13 or pipes as the previous owner's conduit.

14 (c) A person must install a vacant conduit of the same
15 size as its own conduit when performing microtrenching
16 operations. Other persons desiring use of conduit in the
17 same area may make use of this vacant conduit upon
18 application to the Broadband Enhancement Council.

19 (d) When applying for a permit a person must notify the
20 appropriate permitting entity of the intended dates of the
21 start and completion of microtrenching construction.
22 Notification must be made on a form and in a format
23 prescribed by the appropriate permitting entity. No fee shall
24 be charged for such application, as the installation of
25 additional vacant conduit under the provisions of this
26 section shall function in lieu of a fee. The person shall
27 submit the following documents to the appropriate
28 permitting entity:

29 (1) Proof of insurance; or

30 (2) An indemnification agreement.

31 (e) Promptly after completion of microtrenching
32 construction, but no longer than forty calendar days after
33 issuance of the permit for microtrenching, the entity must

34 file a document with the appropriate permitting entity
35 containing the following information:

36 (1) An “as-built” drawing of the conduit installed. The
37 “as-built” drawing will be treated as proprietary and
38 confidential, to the extent permitted by law.

39 (2) A map showing the street location of the conduit
40 including the side of the street the conduit is on, the
41 beginning and ending points of the conduit, the number of
42 ducts in the conduit, and the number of ducts of excess
43 capacity in the conduit. The map must accurately reflect the
44 addresses of buildings that are passed by the conduit.

ARTICLE 4. MAKE-READY POLE ACCESS.

§31G-4-1. Definitions.

1 As used in this article, the following terms are defined
2 as follows:

3 (1) “Attacher” means any person, corporation, or other
4 entity, or the agents or contractors of such seeking to
5 permanently or temporarily fasten or affix any type of
6 equipment, antenna, line or facility of any kind to a utility
7 pole in the right of way or its adjacent ground space.

8 (2) “Attachment Application” means the application
9 made by an Attacher to a Pole Owner for attachment of
10 equipment, antenna, line or facility of any kind to a utility
11 pole. It shall include:

12 (A) Proof of insurance; or

13 (B) An indemnification agreement prepared by the Pole
14 Owner.

15 (3) “Make Ready Costs” means the costs incurred by
16 an Attacher associated with the transfer of the facilities,
17 antenna, lines or equipment of a Pre-Existing Third Party
18 User, undertaken by an Attacher to enable attachment to the
19 utility pole or similar structure. Make-Ready Costs that are
20 to be paid by an Attacher include, without limitation, all

21 costs and expenses to relocate or alter the attachments or
22 facilities of any Pre-Existing Third Party User as may be
23 necessary to accommodate an Attacher's attachment.

24 (4) "Pole Owner" means a person, corporation or entity
25 having ownership of a pole or similar structure in the right
26 of way to which utilities, including without limitation,
27 electric and communications facilities, are located or may
28 be located whether such ownership is in fee simple or by
29 franchise.

30 (5) "Pre-Existing Third Party User" means the owner
31 of any currently operating facilities, antenna, lines or
32 equipment on a pole or its adjacent ground space in the right
33 of way.

§31G-4-2. Attachment to third party facilities.

1 (a) Upon approval of an Attachment Application, an
2 Attacher may relocate or alter the attachments or facilities
3 of any Pre-Existing Third Party User as may be necessary
4 to accommodate an Attacher's attachment using Pole
5 Owner approved contractors; *provided, however*, that an
6 Attacher will not effectuate a relocation or alteration of a
7 Pre-Existing Third Party User's facilities that causes or
8 would reasonably be expected to cause a customer outage
9 without first providing forty-five days prior written notice
10 to the Pre-Existing Third Party User, in order to permit the
11 Pre-Existing Third Party User to relocate its facilities on its
12 own.

13 (b) In the event the Pre-Existing Third Party Users of
14 such other facilities fail to transfer or rearrange their
15 facilities within forty-five days from receipt of notice of
16 relocation or alteration of a Pre-Existing Third Party User's
17 facilities that causes or would reasonably be expected to
18 cause a customer outage, an Attacher may undertake such
19 work.

20 (c) Within thirty days of the completion of any
21 relocation or alteration, an Attacher shall send notice of the
22 move and as-built reports to the Pre-Existing Third Party

23 User and the owner of all poles or other structures on which
24 such relocations or alterations were made. The as-built
25 reports shall include a unique field label identifier, and an
26 address or coordinates.

27 (d) Upon receipt of the as-built reports, the Pre-Existing
28 Third Party User and pole or structure owner(s) may
29 conduct an inspection within fourteen days at an Attacher's
30 expense. An Attacher shall pay the actual, reasonable, and
31 documented expenses incurred by the Pre-Existing Third
32 Party User and pole or structure owner for the inspection. If
33 any such relocation or alteration results in the facilities of
34 the Pre-Existing Third Party User on the pole or other
35 structure failing to conform with the applicable safety Pole
36 Owner's standards, the Pre-Existing Third Party User shall,
37 within seven days of the inspection, notify an Attacher of
38 such failure to conform.

39 (e) In a notice, the Pre-Existing Third Party User may
40 elect to either:

41 (1) Perform the correction itself and bill the Attacher
42 for the actual, reasonable and documented costs of the
43 correction; or

44 (2) Instruct the Attacher to correct such conditions at
45 Attacher's expense. Any post-inspection corrections
46 performed by the Attacher must be completed within thirty
47 days of such notification.

48 (f) As a condition of exercising the ability to relocate,
49 rearrange, or alter a Pre-Existing Third Party User's
50 facilities pursuant to this section, an Attacher shall
51 indemnify, defend and hold harmless the owner or owners
52 of all poles or other structures on which such relocation,
53 rearrangement or alteration takes place, the affiliates of such
54 owner or owners, and the officers, directors and employees
55 of such owner or owners and their affiliates, each being
56 deemed an Indemnitee, from and against all third party
57 damage, loss, claim, demand, suit, liability, penalty or
58 forfeiture of every kind and nature, including, but not
59 limited to, costs and expenses of defending against the

60 same, payment of any settlement or judgment therefor and
61 reasonable attorney's fees, that are actually and reasonably
62 incurred by an Indemnitee, by reason of any claim by an
63 affected Pre-Existing Third Party User or any person or
64 entity claiming through such Pre-Existing Third Party User
65 arising from such relocation, rearrangement or alteration.

66 (g) All work performed must be in accordance with the
67 National Electrical Safety Code and other generally
68 accepted safety codes.

§31G-4-3. Exceptions.

1 (a) Notwithstanding any provision of this code to the
2 contrary, the provisions of this article shall not apply to:

3 (1) Facilities located above the "Communication
4 Worker Safety Zone" as such term is defined in the National
5 Electrical Safety Code; or

6 (2) Any electric supply facilities wherever located.

7 (b) This article does not authorize any activity requiring
8 an electric supply outage.

CHAPTER 23

**(S. B. 608 - By Senators Trump, Woelfel, Weld,
Gaunch and Plymale)**

[Passed April 6, 2017; in effect from passage.]
[Approved by the Governor on April 24, 2017.]

AN ACT to amend and reenact §2-2-10 of the Code of West Virginia, 1931, as amended, relating to clarifying that regulatory, noncriminal legislative enactments prohibiting a type or types of businesses, or business structures are inapplicable to lawful businesses and business structures

operating in this state prior to the effective date of the prohibiting enactment; and updating provisions.

Be it enacted by the Legislature of West Virginia:

That §2-2-10 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2. LEGAL HOLIDAYS; SPECIAL MEMORIAL DAYS; CONSTRUCTION OF STATUTES; DEFINITIONS.

§2-2-10. Rules for construction of statutes.

1 The following rules shall be observed in the
2 construction of statutes, unless a different intent on the part
3 of the Legislature is apparent from the context:

4 (a) A word importing the singular number only may be
5 applied to several persons or things, as well as to one person
6 or thing; a word importing the plural number only may be
7 applied to one person or thing as well as to several; and a
8 word importing the masculine gender only may be applied
9 to females as well as males;

10 (b) Words purporting to give a joint authority to three
11 or more persons confer the authority upon a majority of
12 them, and not upon any less number;

13 (c) The words “written” or “in writing” include any
14 representation of words, letters or figures, whether by
15 printing, engraving, writing or otherwise. But when the
16 signature of any person is required, it must be in his or her
17 own proper handwriting, or his or her mark, attested, proved
18 or acknowledged: *Provided*, That unless a provision of this
19 code specifically provides otherwise, an electronic
20 signature satisfies this signature requirement if the
21 electronic signature meets the requirements of section two,
22 article one, chapter thirty-nine-a of this code;

23 (d) The words “preceding”, “succeeding” or
24 “following” used in reference to any section or sections of

25 a chapter or statute, mean next preceding, next succeeding
26 or next following that in which the reference is made, unless
27 a different interpretation be required by the context;

28 (e) An officer has qualified when he or she has done all
29 that is required by law to be done before proceeding to
30 exercise the authority and discharge the duties of his or her
31 office;

32 (f) The words “the Governor” are equivalent to “the
33 executive of the state” or “the person having the executive
34 power”;

35 (g) “Justice” or “justices” as used in article one, chapter
36 fifty-one of this code and in other references to a member
37 or members of the Supreme Court of Appeals means and
38 applies to a judge or the judges of that court as provided in
39 the Constitution of West Virginia. The word “justice” in
40 most any other context is equivalent to the word
41 “magistrate”, except when used as an historical reference to
42 the words “justice of the peace”. The word “notary” is
43 equivalent to “notary public”;

44 (h) The word “state”, when applied to a part of the
45 United States and not restricted by the context, includes the
46 District of Columbia and the several territories, and the
47 words “United States” also include the said district and
48 territories;

49 (i) The word “person” or “whoever” includes
50 corporations, societies, associations and partnerships, and
51 other similar legal business organizations authorized by the
52 Legislature, if not restricted by the context;

53 (j) The words “personal representative” include the
54 executor of a will, the administrator of the estate of a
55 deceased person, the administrator of such estate with the
56 will annexed, the administrator de bonis non of such estate,
57 whether there be a will or not, the sheriff or other officer
58 lawfully charged with the administration of the estate of a
59 deceased person, and every other curator or committee of a

60 decedent's estate for or against whom suits may be brought
61 for causes of action which accrued to or against such
62 decedent;

63 (k) The word "will" embraces a testament, a codicil, an
64 appointment by will or writing in the nature of a will in
65 exercise of a power, also any other testamentary disposition;

66 (l) The word "judgment" includes decrees and orders
67 for the payment of money or the conveyance or delivery of
68 land or personal property, or some interest therein, or any
69 undertaking, bond or recognizance which has the legal
70 effect of a judgment;

71 (m) The words "under disability" include persons under
72 the age of eighteen years, insane persons and convicts while
73 confined in a correctional facility;

74 (n) The words "insane person" include everyone who
75 has mental illness as defined in section two, article one,
76 chapter twenty-seven of this code;

77 (o) The word "convict" means a person confined in a
78 penitentiary or correctional facility of this or any other state,
79 or of the United States;

80 (p) The word "land" or "lands" and the words "real
81 estate" or "real property" include lands, tenements and
82 hereditaments, all rights thereto and interests therein except
83 chattel interests;

84 (q) The words "personal estate" or "personal property"
85 include goods, chattels, real and personal, money, credits,
86 investments and the evidences thereof;

87 (r) The word "property" or "estate" embraces both real
88 and personal estate;

89 (s) The word "offense" includes every act or omission
90 for which a fine, forfeiture or punishment is imposed by
91 law;

92 (t) The expression “laws of the state” includes the
93 Constitution of West Virginia and the Constitution of the
94 United States, and treaties and laws made in pursuance
95 thereof;

96 (u) The word “town” includes a city, village or town,
97 and the word “council”, any body or board, whether
98 composed of one or more branches, who are authorized to
99 make ordinances for the government of a city, town or
100 village;

101 (v) When a council of a town, city or village, or any
102 board, number of persons or corporations, are authorized to
103 make ordinances, bylaws, rules, regulations or orders, the
104 same must be consistent with the laws of this state;

105 (w) The words “county court” include any existing
106 tribunal created in lieu of a county commission; the words
107 “commissioner of the county court” and “county
108 commissioner” mean, and have reference to, the
109 commissioners, or one of them, composing a county
110 commission in pursuance of section nine, article IX of the
111 Constitution, as amended, or any existing tribunal created
112 in lieu of a county commission;

113 (x) The word “horse” embraces a stallion, a mare and a
114 gelding;

115 (y) The words “railroad” and “railway” mean the same
116 thing in law; and, in any proceeding in which a railroad
117 company or a railway company is a party, it is not an error
118 to call a railroad company a railway company or vice versa;
119 nor may any demurrer, plea or any other defense be set up
120 to a motion, pleading or indictment in consequence of the
121 misdescription;

122 (z) The sectional headings or headlines of the several
123 sections of this code printed in black-faced type are
124 intended as mere catchwords to indicate the contents of the
125 section and are not titles of the sections, or any part of the
126 statute, and, unless expressly so provided, they are not part

127 of the statute when the sections, including the headlines, are
128 amended or reenacted;

129 (aa) The words “infant” and “minor” mean persons
130 under the age of eighteen years as used in this code or in
131 rules promulgated by the Supreme Court of Appeals;

132 (bb) A statute is presumed to be prospective in its
133 operation unless expressly made retrospective;

134 (cc) Unless there is a provision in a section, article or
135 chapter of this code specifying that its provisions are not
136 severable, the provisions of every section, article or chapter
137 of this code, whether enacted before or subsequent to the
138 effective date of this subdivision, are severable so that if any
139 provision of any section, article or chapter is held to be
140 unconstitutional or void, the remaining provisions of the
141 section, article or chapter remain valid, unless the court
142 finds the valid provisions are so essentially and inseparably
143 connected with, and so dependent upon, the
144 unconstitutional or void provision that the court cannot
145 presume the Legislature would have enacted the remaining
146 valid provisions without the unconstitutional or void one, or
147 unless the court finds the remaining valid provisions,
148 standing alone, are incomplete and are incapable of being
149 executed in accordance with the legislative intent: *Provided,*
150 That if any section, article or chapter of this code has its own
151 severability clause, then that severability clause governs and
152 controls with respect to that section, article or chapter in lieu
153 of the provisions of this subdivision. The provisions of this
154 subdivision are fully applicable to all future amendments or
155 additions to this code, with like effect as if the provisions of
156 this subdivision were set forth in extenso in every
157 amendment or addition and were reenacted as a part thereof,
158 unless the amendment or addition contains its own
159 severability clause;

160 (dd) A reference to any section, article or chapter of this
161 code applies to all reenactments, revisions or amendments
162 thereof;

163 (ee) If a statute refers to a series of numbers or letters,
164 the first and the last numbers or letters in the series are
165 considered to be included;

166 (ff) The words “board of regents”, wherever they
167 appear in the code, mean the Higher Education Policy
168 Commission created in article one-b, chapter eighteen-b of
169 this code or the West Virginia Council for Community and
170 Technical College Education created in article two-b of said
171 chapter unless the term is used in relation to activities
172 conducted solely by an institution or institutions governed
173 by article two-a of said chapter in which case it only means
174 the board of governors of the specific institution or
175 institutions; and

176 (gg) No legislative enactment of a regulatory,
177 noncriminal nature may be construed to prohibit a lawful
178 business or business structure in existence and operating in
179 this state prior to the effective date of the enactment of
180 legislation prohibiting the operation of such business or
181 business structure absent an express legislative declaration
182 in the enactment that the existing business or business
183 structure is prohibited from continuing after the effective
184 date of the enactment.

CHAPTER 24

**(Com. Sub. for S. B. 445 - By Senators
Trump and Miller)**

[Passed April 3, 2017; in effect ninety days from passage.]
[Approved by the Governor on April 11, 2017.]

AN ACT to amend and reenact §49-1-201 of the Code of West Virginia, 1931, as amended, relating to amending the definition of “abused child” to include a child conceived as a result of sexual assault; and providing that no victim of sexual

assault may be determined to be an abusive parent based upon being a victim of sexual assault.

Be it enacted by the Legislature of West Virginia:

That §49-1-201 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.

***§49-1-201. Definitions related, but not limited, to child abuse and neglect.**

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

7 “Abandonment” means any conduct that demonstrates
8 the settled purpose to forego the duties and parental
9 responsibilities to the child;

10 “Abused child” means:

11 (1) A child whose health or welfare is being harmed or
12 threatened by:

13 (A) A parent, guardian or custodian who knowingly or
14 intentionally inflicts, attempts to inflict or knowingly allows
15 another person to inflict, physical injury or mental or
16 emotional injury, upon the child or another child in the
17 home. Physical injury may include an injury to the child as
18 a result of excessive corporal punishment;

19 (B) Sexual abuse or sexual exploitation;

*NOTE: This section was also amended by H. B. 2318 (Chapter 129), which passed prior to this act.

20 (C) The sale or attempted sale of a child by a parent,
21 guardian or custodian in violation of section fourteen-h,
22 article two, chapter sixty-one of this code; or

23 (D) Domestic violence as defined in section two
24 hundred two, article twenty-seven, chapter forty-eight of
25 this code.

26 (2) A child conceived as a result of sexual assault, as
27 that term is defined in this section, or as a result of the
28 violation of a criminal law of another jurisdiction which has
29 the same essential elements: *Provided*, That no victim of
30 sexual assault may be determined to be an abusive parent,
31 as that term is defined in this section, based upon being a
32 victim of sexual assault.

33 “Abusing parent” means a parent, guardian or other
34 custodian, regardless of his or her age, whose conduct has
35 been adjudicated by the court to constitute child abuse or
36 neglect as alleged in the petition charging child abuse or
37 neglect.

38 “Battered parent”, for the purposes of part six, article
39 four of this chapter, means a respondent parent, guardian or
40 other custodian who has been adjudicated by the court to
41 have not condoned the abuse or neglect and has not been
42 able to stop the abuse or neglect of the child or children due
43 to being the victim of domestic violence as defined by
44 section two hundred two, article twenty-seven, chapter
45 forty-eight of this code which was perpetrated by the same
46 person or persons determined to have abused or neglected
47 the child or children.

48 “Child abuse and neglect services” means social
49 services which are directed toward:

50 (A) Protecting and promoting the welfare of children
51 who are abused or neglected;

52 (B) Identifying, preventing and remedying conditions
53 which cause child abuse and neglect;

54 (C) Preventing the unnecessary removal of children
55 from their families by identifying family problems and
56 assisting families in resolving problems which could lead to
57 a removal of children and a breakup of the family;

58 (D) In cases where children have been removed from
59 their families, providing time-limited reunification services
60 to the children and the families so as to reunify those
61 children with their families, or some portion thereof;

62 (E) Placing children in suitable adoptive homes when
63 reunifying the children with their families, or some portion
64 thereof, is not possible or appropriate; and

65 (F) Assuring the adequate care of children or juveniles
66 who have been placed in the custody of the department or
67 third parties.

68 “Condition requiring emergency medical treatment”
69 means a condition which, if left untreated for a period of a
70 few hours, may result in permanent physical damage; that
71 condition includes, but is not limited to, profuse or arterial
72 bleeding, dislocation or fracture, unconsciousness and
73 evidence of ingestion of significant amounts of a poisonous
74 substance.

75 “Imminent danger to the physical well-being of the
76 child” means an emergency situation in which the welfare
77 or the life of the child is threatened. These conditions may
78 include an emergency situation when there is reasonable
79 cause to believe that any child in the home is or has been
80 sexually abused or sexually exploited, or reasonable cause
81 to believe that the following conditions threaten the health,
82 life or safety of any child in the home:

83 (A) Nonaccidental trauma inflicted by a parent,
84 guardian, custodian, sibling or a babysitter or other
85 caretaker;

86 (B) A combination of physical and other signs
87 indicating a pattern of abuse which may be medically
88 diagnosed as battered child syndrome;

89 (C) Nutritional deprivation;

90 (D) Abandonment by the parent, guardian or custodian;

91 (E) Inadequate treatment of serious illness or disease;

92 (F) Substantial emotional injury inflicted by a parent,
93 guardian or custodian;

94 (G) Sale or attempted sale of the child by the parent,
95 guardian or custodian;

96 (H) The parent, guardian or custodian's abuse of
97 alcohol or drugs or other controlled substance as defined in
98 section one hundred one, article one, chapter sixty-a of this
99 code, has impaired his or her parenting skills to a degree as
100 to pose an imminent risk to a child's health or safety; or

101 (I) Any other condition that threatens the health, life or
102 safety of any child in the home.

103 "Neglected child" means a child:

104 (A) Whose physical or mental health is harmed or
105 threatened by a present refusal, failure or inability of the
106 child's parent, guardian or custodian to supply the child
107 with necessary food, clothing, shelter, supervision, medical
108 care or education, when that refusal, failure or inability is
109 not due primarily to a lack of financial means on the part of
110 the parent, guardian or custodian; or

111 (B) Who is presently without necessary food, clothing,
112 shelter, medical care, education or supervision because of
113 the disappearance or absence of the child's parent or
114 custodian;

115 (C) "Neglected child" does not mean a child whose
116 education is conducted within the provisions of section one,
117 article eight, chapter eighteen of this code.

118 "Petitioner or copetitioner" means the department or
119 any reputable person who files a child abuse or neglect
120 petition pursuant to section six hundred one, article four, of
121 this chapter.

122 “Permanency plan” means the part of the case plan
123 which is designed to achieve a permanent home for the child
124 in the least restrictive setting available.

125 “Respondent” means all parents, guardians and
126 custodians identified in the child abuse and neglect petition
127 who are not petitioners or copetitioners.

128 “Sexual abuse” means:

129 (A) Sexual intercourse, sexual intrusion, sexual
130 contact or conduct proscribed by section three, article eight-
131 c, chapter sixty-one, which a parent, guardian or custodian
132 engages in, attempts to engage in, or knowingly procures
133 another person to engage in with a child notwithstanding the
134 fact that for a child who is less than sixteen years of age the
135 child may have willingly participated in that conduct or the
136 child may have suffered no apparent physical injury or
137 mental or emotional injury as a result of that conduct or, for
138 a child sixteen years of age or older the child may have
139 consented to that conduct or the child may have suffered no
140 apparent physical injury or mental or emotional injury as a
141 result of that conduct;

142 (B) Any conduct where a parent, guardian or custodian
143 displays his or her sex organs to a child, or procures another
144 person to display his or her sex organs to a child, for the
145 purpose of gratifying the sexual desire of the parent,
146 guardian or custodian, of the person making that display, or
147 of the child, or for the purpose of affronting or alarming the
148 child; or

149 (C) Any of the offenses proscribed in section seven,
150 eight or nine, article eight-b, chapter sixty-one of this code.

151 “Sexual assault” means any of the offenses proscribed
152 in section three, four or five, article eight-b, chapter sixty-
153 one of this code.

154 “Sexual contact” means sexual contact as that term is
155 defined in section one, article eight-b, chapter sixty-one of
156 this code.

157 “Sexual exploitation” means an act where:

158 (A) A parent, custodian or guardian, whether for
159 financial gain or not, persuades, induces, entices or coerces
160 a child to engage in sexually explicit conduct as that term is
161 defined in section one, article eight-c, chapter sixty-one of
162 this code; or

163 (B) A parent, guardian or custodian persuades,
164 induces, entices or coerces a child to display his or her sex
165 organs for the sexual gratification of the parent, guardian,
166 custodian or a third person, or to display his or her sex
167 organs under circumstances in which the parent, guardian
168 or custodian knows that the display is likely to be observed
169 by others who would be affronted or alarmed.

170 “Sexual intercourse” means sexual intercourse as that
171 term is defined in section one, article eight-b, chapter sixty-
172 one of this code.

173 “Sexual intrusion” means sexual intrusion as that term
174 is defined in section one, article eight-b, chapter sixty-one
175 of this code.

176 “Serious physical abuse” means bodily injury which
177 creates a substantial risk of death, which causes serious or
178 prolonged disfigurement, prolonged impairment of health
179 or prolonged loss or impairment of the function of any
180 bodily organ.



CHAPTER 25

**(Com. Sub. for S. B. 456 - By Senators Trump,
Weld, Miller and Gauch)**

[Passed April 1, 2017; in effect from passage.]
[Approved by the Governor on April 11, 2017.]

AN ACT to amend and reenact §49-4-605 of the Code of West Virginia, 1931, as amended, relating to standards for

termination of parental rights in child abuse and neglect cases; and clarifying applicability of section when certain crimes are committed by one parent against another.

Be it enacted by the Legislature of West Virginia:

That §49-4-605 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 4. COURT ACTIONS.

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

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

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

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

12 (3) If a court has determined the parent has committed
13 murder or voluntary manslaughter of another of his or her
14 children, another child in the household, or the other parent
15 of his or her children; has attempted or conspired to commit
16 murder or voluntary manslaughter or has been an accessory
17 before or after the fact of either crime; has committed
18 unlawful or malicious wounding resulting in serious bodily
19 injury to the child or to another of his or her children,
20 another child in the household or to the other parent of his
21 or her children; has committed sexual assault or sexual
22 abuse of the child, the child's other parent, guardian or
23 custodian, another child of the parent or any other child
24 residing in the same household or under the temporary or

25 permanent custody of the parent; or the parental rights of
26 the parent to another child have been terminated
27 involuntarily.

28 (b) The department may determine not to file a petition
29 to terminate parental rights when:

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

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

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

CHAPTER 26

**(Com. Sub. for H. B. 2805 - By Delegates Nelson,
Boggs, Ambler, Anderson, Frich, Hamilton, C.
Miller, Walters, Longstreth, Pethtel and
Sponaule)**

[Passed April 8, 2017; in effect from passage.]
[Approved by the Governor on April 24, 2017.]

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, Office of Technology; Division of Corrections; Division of Highways; Division of Rehabilitation Services; Division of Labor; Division of Motor Vehicles; Department of Health and Human Resources, Bureau for Behavioral Health and Health Facilities; and Department of Health and Human Resources; and Regional Jail Authority to be moral obligations of the state and directing payment thereof.

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

13 (a) *Claims against the Department of Administration,*
14 *Office of Technology:*

15 (TO BE PAID FROM SPECIAL REVENUE FUND)

16	(1) Pomeroy IT Solutions Sales	
17	Company Inc.....	\$13,292.33
18	(2) RICOH USA	\$40,763.04
19	(3) Verizon Business.....	\$399,900.00
20	(4) WEX Bank	\$1,704.36

21 (b) *Claims against the Division of Corrections:*

22 (TO BE PAID FROM GENERAL REVENUE FUND)

23	(1) Robert Cummings	\$7.00
24	(2) Miguel Delgado.....	\$200.95
25	(3) Mark Gillman	\$480.00
26	(4) Donald Good	\$25.00
27	(5) Elliott Gwynn	\$71.00
28	(6) Smitty Harding	\$918.85
29	(7) Warren Hester	\$64.21
30	(8) Robert B. Joseph	\$116.00
31	(9) Adrian F. King Jr.....	\$22.89
32	(10) Norment Security Group Inc.	\$308,986.73
33	(11) Harry M. Phillips.....	\$133.28
34	(12) Harry Reynolds	\$146.00
35	(13) Barry Glen Thompson.....	\$800.00
36	(14) Max J. Woodson.....	\$69.97
37	(15) Edwin L. Wright II.....	\$4.72

38 (c) *Claims against the Division of Highways:*

39 (TO BE PAID FROM STATE ROAD FUND)

40	(1) Christy Adams.....	\$660.86
41	(2) Frederick Steve Adams	\$651.91
42	(3) Leon E. Adams Jr.....	\$6,000.00
43	(4) Janet Ferguson and Marie Adkins.....	\$293.50

44	(5) Parnian Adkins	\$159.00
45	(6) Rickie D. Adkins and Cara E. Adkins.....	\$453.02
46	(7) Rose Lita Adkins and Jerry Adkins.....	\$17,500.00
47	(8) Loay AlAsadi	\$1,000.00
48	(9) Jackie Aliff and Susan Aliff.....	\$250.00
49	(10) Clara R. Allen.....	\$114.64
50	(11) Michael L. Allen	\$616.55
51	(12) Ronnie Allen	\$500.00
52	(13) Wendy Allman and Zachary Allman	\$500.00
53	(14) Dolores John and Joseph Ambrusico	\$163.09
54	(15) Randolph K. Ammons.....	\$2,985.73
55	(16) Isaac Daniel Anderson Sr.....	\$177.57
56	(17) Richard David Angelo and	
57	Stacy D. Angelo	\$250.00
58	(18) Tanja Antill and Brian Antill	\$500.00
59	(19) Patricia J. Armentrout	\$498.79
60	(20) Sherri Armstrong.....	\$566.72
61	(21) Mark D. Ash.....	\$520.38
62	(22) Brandy Ballard	\$143.10
63	(23) Michael C. Barber	\$541.91
64	(24) Betty Barker and Richard Barker.....	\$358.99
65	(25) Carol Barker and Alvie Barker	\$725.04
66	(26) Cathy Barker	\$500.00

67	(27) Jesse L. Barker	\$237.60
68	(28) William C. Barker and	
69	Jennifer Barker.....	\$500.00
70	(29) Sharon Barnett.....	\$242.64
71	(30) Evan Bays	\$500.00
72	(31) Sheryl L. Beard	\$346.16
73	(32) Jason C. Beaty and Belinda J. Beaty.....	\$96.58
74	(33) Louie Belcastro	\$98.70
75	(34) Jeffery E. Belcher.....	\$1,515.76
76	(35) Mick A. Bell.....	\$500.00
77	(36) Steven Bellman dba	
78	Steve's Auto Sales	\$817.50
79	(37) Galetta Bender.....	\$207.89
80	(38) Louisa Bennett	\$500.00
81	(39) Terri Bennett	\$620.53
82	(40) Nicole Berdar and Noah Berdar.....	\$154.00
83	(41) Linda Berkhouse and	
84	Donald Berkhouse.....	\$290.68
85	(42) Brandi M. Short and	
86	Roger D. Besco	\$587.70
87	(43) Nina M. Bess.....	\$500.00
88	(44) Rebecca Black and William Black.....	\$297.46
89	(45) Stephen L. Blake and	
90	Gwen A. Blake.....	\$450.64
91	(46) James A. Blakeley	\$222.71

140	CLAIMS AGAINST THE STATE	[Ch. 26
92	(47) Jeffrey Bland	\$500.00
93	(48) Belinda J. Blauvelt and	
94	Scott Blauvelt.....	\$321.00
95	(49) Samantha M. Blevins	\$500.00
96	(50) Glen A. Blon Jr. and	
97	Kathleen S. Blon	\$500.00
98	(51) Raymond D. Blust.....	\$500.00
99	(52) Mary Ann Bocek	\$500.00
100	(53) Neil V. Boden.....	\$222.76
101	(54) Marilyn S. Bogard.....	\$220.00
102	(55) Jeffrey A. Boggess	\$617.32
103	(56) W. Fred Boggs, dba	
104	Boggs Roofing Inc.	\$1,000.00
105	(57) Wendy Bolling	\$189.00
106	(58) Jeffrey Bolyard.....	\$500.00
107	(59) Robin Bonner	\$275.34
108	(60) Jonathan P. Booth.....	\$415.30
109	(61) Frank Alexander Bowders.....	\$250.00
110	(62) Loretta M. Bowles and	
111	Mary Bowles	\$500.00
112	(63) Margaret Bowman.....	\$500.00
113	(64) Stanford Bowsman.....	\$204.96
114	(65) Kaylee D. Bradley.....	\$122.00
115	(66) Lynia Gail Brady.....	\$50.00

116	(67) Kelly Bratton.....	\$1,179.00
117	(68) Anthony Brittingham Jr.	\$281.53
118	(69) Tara A. Brooks.....	\$250.00
119	(70) Tracey Brooks	\$180.18
120	(71) Alex Brooks Jr.	\$130.00
121	(72) Ben Brown	\$191.53
122	(73) Connie J. Brown.....	\$250.00
123	(74) Virginia Brown and Stephen Brown.....	\$90.95
124	(75) Willard Brown.....	\$298.36
125	(76) Tracy L. Browning and	
126	Steven Browning.....	\$212.04
127	(77) Sarah L. Brunty	\$250.00
128	(78) Crystal Bryant	\$953.29
129	(79) Ronald G. Bryant	\$84.78
130	(80) Titus Bryant.....	\$90.00
131	(81) Holli Faith Burford and	
132	Jason Burford.....	\$126.25
133	(82) James V. Burgess	\$227.82
134	(83) Louise Burks	\$81.57
135	(84) Mark Burnside and Lois Burnside	\$303.40
136	(85) Chad Burrall.....	\$500.00
137	(86) Ron Burton.....	\$250.00
138	(87) Chelsea Buseman, Cori Buseman and	
139	Dave Buseman	\$107.21

142		CLAIMS AGAINST THE STATE	[Ch. 26
140	(88)	Todd Buterbaugh and	
141		Julie Buterbaugh	\$500.00
142	(89)	Charles C. Butler.....	\$388.25
143	(90)	Danny E. Byers Sr. and	
144		Tangi L. Byers	\$300.00
145	(91)	Austin Campbell and	
146		Karrie D. Campbell.....	\$300.00
147	(92)	Elisha S. Canter.....	\$189.83
148	(93)	Lucinda Canterbury and	
149		Tennis Canterbury.....	\$500.00
150	(94)	Jefferson David Cantrell	\$500.00
151	(95)	Caroline Carlot and	
152		John David Carlot	\$687.99
153	(96)	Bryan H. Carpenter and	
154		Darla K. Carpenter	\$250.00
155	(97)	Gregory Carpenter.....	\$602.46
156	(98)	Norma Carroll	\$250.00
157	(99)	Brenda McMillion and Bonnie Carte	
158		(B&J Thrift Store).....	\$1,664.44
159	(100)	Jessica Carver and Travis Carver.....	\$218.47
160	(101)	Gregory A. Cassio.....	\$706.75
161	(102)	Anna Marie Catalano	\$3,899.42
162	(103)	Mary L. Cazad and	
163		Raymond Cazad	\$250.00
164	(104)	Delford Chaffin	\$89.00
165	(105)	Scott Avery Chandler.....	\$500.00

166	(106)	Odana Chaney	\$72.50
167	(107)	Chelsea Chapman.....	\$179.00
168	(108)	Daniel Chapman.....	\$1,000.00
169	(109)	Michael Chapman	\$249.77
170	(110)	Michelle Chapman and	
171		Landy Chapman	\$108.62
172	(111)	Charleston Cut Flower Company.....	\$382.29
173	(112)	Anand K. Chaturvedi and	
174		Madhu Chaturvedi	\$500.00
175	(113)	Scott William Chervenick.....	\$304.22
176	(114)	Linda L. Childress and	
177		Timothy Childress.....	\$120.38
178	(115)	Thejo K. Chipinapi.....	\$258.22
179	(116)	Jamie Christy.....	\$288.90
180	(117)	Ronald R. Clark.....	\$250.00
181	(118)	Timothy L. Clemens	\$250.00
182	(119)	Douglas E. Clemons.....	\$495.92
183	(120)	Tammi R. Cline.....	\$427.03
184	(121)	Mickey Coalson	\$1,000.00
185	(122)	Blair Elizabeth Coen and	
186		Deborah Eileen Coen	\$500.00
187	(123)	Brenda J. Coleman	\$404.91
188	(124)	Rhonda Coleman and	
189		Herbert T. Coleman	\$179.09
190	(125)	Inez Collins	\$143.10

191	(126) Ronald M. Combs	\$1,145.17
192	(127) Doris Comer.....	\$102.72
193	(128) Wayne E. Conaway.....	\$69.50
194	(129) Frank Conforti and Judith Conforti.....	\$500.00
195	(130) Homer Conley	\$500.00
196	(131) Teddy Conley.....	\$575.00
197	(132) Beverly Clark Conley and	
198	Frederick A. Conley I.....	\$214.69
199	(133) Laraya Conrad.....	\$189.00
200	(134) Kevin L. Cook.....	\$324.33
201	(135) Sandra J. Cook	\$74.15
202	(136) Walter R. Cook Jr.....	\$74.19
203	(137) Earl Cooper and Barbara Cooper	\$500.00
204	(138) Mose E. Cooper.....	\$2,013.47
205	(139) Ronald E. Copley	\$1,000.00
206	(140) Herman Cost	\$95.37
207	(141) John A. Cox.....	\$99.11
208	(142) Carol C. Craig	\$188.68
209	(143) Mary Craig	\$261.47
210	(144) Amy S. Crawford	\$500.00
211	(145) Mary Ann Crawford.....	\$148.40
212	(146) Fabio Crichigno and	
213	Sarah Crichigno.....	\$334.43

214	(147)	Roger Crook.....	\$220.77
215	(148)	Virginia Crow and Jack Crow.....	\$70.98
216	(149)	Christie D. Crum and	
217		Dannie Crum.....	\$188.32
218	(150)	Suzanne Cryan	\$500.00
219	(151)	Jason S. Cullers and	
220		Shelly R. Cullers	\$250.00
221	(152)	Avenelle Cummings.....	\$3,982.38
222	(153)	Kimberly L. Curl.....	\$101.22
223	(154)	Andrew T. Currence.....	\$467.44
224	(155)	Casey Curtiss.....	\$556.38
225	(156)	Robert W. Cutlip.....	\$250.00
226	(157)	Noah R. Dailey.....	\$500.00
227	(158)	Joseph C. Daniel and	
228		Michelle Daniel.....	\$390.40
229	(159)	Jane K. Darby.....	\$268.98
230	(160)	Jerry Daugherty.....	\$49.00
231	(161)	Bruce E. Davis	\$336.12
232	(162)	Joseph C. Davis.....	\$192.18
233	(163)	Leilani J. Davis and	
234		Homer C. Davis	\$250.00
235	(164)	Virgil Davis.....	\$491.01
236	(165)	Melissa Dawson	\$685.82
237	(166)	Robert B. Dawson II	\$198.75

238	(167) Deborah Dean	\$102.16
239	(168) Nicole Debolt	\$137.67
240	(169) Beth A. Demasi	\$500.00
241	(170) Kiran S. Devaraj.....	\$500.00
242	(171) Donna Diehl	\$457.21
243	(172) Carrie Digman.....	\$577.90
244	(173) Mark E. Strickland and	
245	Denise Anderson Dillon.....	\$136.00
246	(174) Polly J. Dillon	\$551.00
247	(175) Nicholas Diniaco and Anna Diniaco.....	\$133.72
248	(176) David G. Dix	\$336.31
249	(177) Jeff Dorsey	\$220.43
250	(178) Courtney Dove	\$500.00
251	(179) Viola S. Downs	\$163.95
252	(180) Kristie Dugan and Scott Dugan.....	\$1,000.00
253	(181) Ronald E. Dulaney Jr.	\$143.88
254	(182) James A. Dunlap	\$1,539.31
255	(183) Rebecca Dunmire	\$79.95
256	(184) Louis J. Durst	\$196.00
257	(185) Heather Cook Ebbecke.....	\$241.08
258	(186) Rebecca I. Edwards.....	\$250.00
259	(187) Derrick Ehrhardt	\$119.76
260	(188) James D. Elkins Jr.....	\$500.00

261	(189)	Homer E. Eller and Mildred A. Eller	\$900.00
262	(190)	Susan M. Elliott.....	\$2,443.82
263	(191)	Jodie Elswick and Larry A. Elswick II	\$500.00
264	(192)	Joseph Enright.....	\$816.53
265	(193)	Eddy M. Ensminger	\$100.00
266	(194)	Charles Erb.....	\$455.74
267	(195)	Etta M. Ewing	\$82.77
268	(196)	Rachel Cantley and Jason Ewing	\$500.00
269	(197)	Guy Howard Fair and Pamela Fair.....	\$182.64
270	(198)	Cy John Faris	\$200.00
271	(199)	Dawn Renee Farley and	
272		Douglas Ray Farley.....	\$500.00
273	(200)	Seantea Farmer.....	\$250.00
274	(201)	Carrie Goodwin Fenwick and	
275		John Fenwick	\$468.66
276	(202)	Michael L. Ferrebee	\$500.00
277	(203)	Ed Ferrell.....	\$74.01
278	(204)	Stephanie R. Ferrell.....	\$500.00
279	(205)	Anthony W. Fields	\$607.30
280	(206)	James L. Fields.....	\$228.97
281	(207)	Synthia Figlar	\$322.95
282	(208)	Bethany Fisher	\$500.00
283	(209)	Peggy Sue Fitch and Kenny Fitch.....	\$221.88

284	(210) Lucinda K. Flaherty	\$148.93
285	(211) James Fletcher and Christina Fletcher	\$347.96
286	(212) Joseph A. Folio	\$582.89
287	(213) Sean Forney.....	\$1,000.00
288	(214) Joseph V. Forte and Ellen June Forte.....	\$156.91
289	(215) Terry L. Foster, Stephanie Foster and	
290	Chase Foster.....	\$348.74
291	(216) Thomas A. Foster.....	\$135.00
292	(217) Kenn Fowler and Holly Fowler	\$258.41
293	(218) David K. Fox.....	\$404.54
294	(219) Richard A. Fox.....	\$114.48
295	(220) Jackie Wasserman and Roger Foxx	\$108.00
296	(221) Michael A. Francis.....	\$289.92
297	(222) David Francisco Jr. and Crystal Francisco....	\$250.00
298	(223) Christy Frazier and Robert Frazier.....	\$245.00
299	(224) Tracy L. Friend and Bradley Friend.....	\$439.26
300	(225) Derek Frizzi.....	\$3,000.00
301	(226) Michael E. Frum	\$300.92
302	(227) F. David Fullerton and	
303	Penny Kay Fullerton	\$259.39
304	(228) Jack Gales and Gladys Gales	\$200.00
305	(229) Joseph E. Galford.....	\$131.39
306	(230) Michael Gandee and Barbara Gandee.....	\$453.68

307	(231)	John R. Ganz.....	\$500.00
308	(232)	Beth Gardner.....	\$123.95
309	(233)	Larry K. Garretson.....	\$336.90
310	(234)	Jeffrey Garrett.....	\$347.73
311	(235)	Becca Garrison and Bradley Garrison.....	\$320.12
312	(236)	Mary R. Gavin.....	\$310.13
313	(237)	Charles E. Gearheart.....	\$500.00
314	(238)	Andrew J. Gibb.....	\$124.86
315	(239)	Shannon Gibbs.....	\$337.55
316	(240)	Freddie L. Gibson.....	\$316.05
317	(241)	Megan Gibson.....	\$250.00
318	(242)	Patricia Gibson.....	\$160.00
319	(243)	Steven Giessler and Lisa Giessler.....	\$500.00
320	(244)	Emma L. Giffin.....	\$113.96
321	(245)	Gale Given.....	\$396.98
322	(246)	Erica Gobel.....	\$84.29
323	(247)	Shelby Goins.....	\$500.00
324	(248)	Brenda Gorman and Robert Gorman.....	\$164.83
325	(249)	Rebecca Gossan.....	\$422.94
326	(250)	Julie Gower and David Gower.....	\$211.47
327	(251)	Erika Gowin and Gregory E. Gowin.....	\$500.00
328	(252)	Sarah L. Graham and William Z. Graham....	\$500.00

329	(253) John R. Gray and Jeffrey T. Gray	\$242.74
330	(254) William W. Green	\$59.50
331	(255) Michael Greene	\$91.99
332	(256) Barbara Griffin	\$38.16
333	(257) Bryan T. Griffith	\$500.00
334	(258) Chelsi Griffith	\$50.00
335	(259) David Grisso and Katherine Grisso.....	\$629.59
336	(260) Robert H. Groves	\$150.00
337	(261) Johnny L. Gue Jr.	\$68.95
338	(262) Ashton Guinn	\$127.20
339	(263) William J. Gwilliam and	
340	Nancy K. Gwilliam	\$250.00
341	(264) David Haas	\$232.12
342	(265) Tommy Lee Haddox	\$58.49
343	(266) Dorothy Haddy.....	\$500.00
344	(267) Garrett Hadley and Mindy Hadley	\$500.00
345	(268) Sandra J. Haines	\$621.48
346	(269) Donnie R. Hale.....	\$579.99
347	(270) David L. Hall.....	\$409.34
348	(271) Dwight L. Hall and Betty J. Hall	\$213.06
349	(272) Kevin Hall and Melody Hall	\$500.00
350	(273) Robert M. Hall	\$124.00
351	(274) Dean A. Hancox.....	\$500.00

352	(275)	John C. Hankins	\$195.81
353	(276)	Ryan Tyler Hansen.....	\$314.82
354	(277)	Lisa D. Harding.....	\$294.67
355	(278)	Nadia H. Hardy and David J. Hardy	\$228.21
356	(279)	Robert M. Harler and Mary Jo Harler	\$269.71
357	(280)	Betty Harless	\$322.60
358	(281)	John C. Harless Jr.....	\$500.00
359	(282)	Ian J. Harned	\$1,636.64
360	(283)	Dale R. Harper	\$500.00
361	(284)	Paula Harris and James Harris	\$411.91
362	(285)	Regina A. Harris	\$250.00
363	(286)	Samantha Harrison and James Harrison	\$71.65
364	(287)	Michael B. Hart and Lisa E. Hart.....	\$812.36
365	(288)	Sheila Harvey.....	\$362.81
366	(289)	David Hashimoto	\$1,789.11
367	(290)	Alice Hatcher and Alan Hatcher	\$300.00
368	(291)	Christopher Hatfield and Natalie Hatfield	\$200.34
369	(292)	Eric M. Hayhurst.....	\$559.39
370	(293)	Kathleen Hazen and Kirk A. Hazen.....	\$127.20
371	(294)	Sandra Heard.....	\$68.50
372	(295)	Heather Heaster.....	\$1,000.00
373	(296)	Philip W. Heater.....	\$250.00

374	(297) Michael and Melanie Heckert	\$250.00
375	(298) Ashley N. Heindl and Justin Heindl.....	\$177.02
376	(299) Erika Helmick	\$357.88
377	(300) Deidre Henck	\$500.00
378	(301) John C. Hendricks	\$434.70
379	(302) Randy Hennen.....	\$215.16
380	(303) Robert Daryl Hennen	\$201.40
381	(304) Deborah Herget	\$384.72
382	(305) Sheila Herod.....	\$187.45
383	(306) Eric Herter and Shelly L. Herter	\$307.88
384	(307) Kyle Hess	\$124.66
385	(308) Deborah Hewitt.....	\$202.23
386	(309) Jack L. Hewitt	\$309.99
387	(310) James M. Hewitt and Konni E. Hewitt	\$384.98
388	(311) Jennifer Hickman and Boyce A. Hickman....	\$250.00
389	(312) Craig Hill and Melinda Hill	\$1,000.00
390	(313) Don Hines	\$651.03
391	(314) Scott Hinkle.....	\$500.00
392	(315) Christopher A. Hinzman	\$148.35
393	(316) Sharon Hobbs.....	\$1,300.00
394	(317) Richard Scott Hodge	\$1,009.46
395	(318) Paul R. Hodgekiss	\$127.15

396	(319)	Michael Hoefler	\$265.16
397	(320)	Carl D. Hoffman and Gladys M. Hoffman ...	\$742.08
398	(321)	John W. Holden.....	\$1,000.00
399	(322)	Daniel Hollandsworth and	
400		Sue Hollandsworth.....	\$313.68
401	(323)	Guy S. Holliday.....	\$661.21
402	(324)	Tammy L. Holston and	
403		Ronald K. Holston	\$500.00
404	(325)	James Horner.....	\$500.00
405	(326)	James B. Hornsby	\$863.73
406	(327)	Michael Horton	\$500.00
407	(328)	Eric D. Householder and	
408		Donna L. Householder	\$535.29
409	(329)	James R. Huber	\$1,500.00
410	(330)	Wolfgang K. Huber.....	\$1,561.03
411	(331)	Barbara J. Hudkins and John Hudkins	\$379.65
412	(332)	Brandy M. Hudson.....	\$302.40
413	(333)	Kari Anne Huffman and	
414		Jason Derek Huffman	\$700.40
415	(334)	Ashley Huggett	\$221.21
416	(335)	David W. Hummel Jr. and	
417		Melanie A. Hummel.....	\$500.00
418	(336)	Melanie Hummel.....	\$467.00
419	(337)	William Hunt.....	\$183.76
420	(338)	Candance Hurd and Michael Hurd.....	\$98.53

421	(339)	Shaun Huseman.....	\$439.95
422	(340)	Sara F. Hylbert	\$500.00
423	(341)	Donna J. Ice.....	\$417.52
424	(342)	Rachel Ann Ice.....	\$277.01
425	(343)	Richard F. Ice Jr. and Karen Ice.....	\$500.00
426	(344)	David Ingraham.....	\$617.28
427	(345)	Lynda L. Irons and H. G. Irons	\$104.45
428	(346)	Kevin L. Irvine and Pamela Irvine.....	\$465.71
429	(347)	Kenneth Jack and Evelyn Jack.....	\$500.00
430	(348)	Bonnie J. Jackson.....	\$264.92
431	(349)	Kathleen J. Jackson.....	\$131.44
432	(350)	Tiffany Jackson.....	\$3,000.00
433	(351)	Tamara Ward and Deloris Jarrell	\$237.19
434	(352)	Travis M. Jarrell.....	\$94.16
435	(353)	Jama L. Jarrett	\$120.00
436	(354)	John Howard Motors.....	\$1,000.00
437	(355)	Brandon Johnson.....	\$278.69
438	(356)	Carl D. Johnson and Sherry L. Johnson.....	\$104.94
439	(357)	Juli M. Johnson	\$403.40
440	(358)	Marsha G. Johnson.....	\$500.00
441	(359)	Melinda Johnson	\$53.80
442	(360)	Susanna Johnson and Jared Johnson.....	\$471.23

443	(361)	Billie Johnston and Robert Johnston.....	\$500.00
444	(362)	James M. Jones	\$144.58
445	(363)	Tylerann M. Jones.....	\$500.00
446	(364)	William Jopson and Margaret Jopson.....	\$394.85
447	(365)	Alice A. Jordan	\$116.00
448	(366)	Jerry W. Jordan	\$136.15
449	(367)	Hillary M. Justice.....	\$500.00
450	(368)	Jerry J. Justice and Wanda Justice	\$35,000.00
451	(369)	Dana Kalinski.....	\$250.00
452	(370)	James A. Kaplan	\$163.77
453	(371)	Michael Keeney	\$500.00
454	(372)	Derek Keith.....	\$145.22
455	(373)	Michael Kell and Loretta Kell.....	\$500.00
456	(374)	Cecila Kennedy	\$267.91
457	(375)	Tammy Keough.....	\$168.40
458	(376)	Stephney Kincaid.....	\$500.00
459	(377)	Douglas King and Ruby C. King	\$250.00
460	(378)	Nancy King	\$100.00
461	(379)	Neil L. King	\$143.54
462	(380)	Sherry P. King.....	\$250.00
463	(381)	Athel R. Kinsolving	\$151.94
464	(382)	Linda Kirk.....	\$500.00

465	(383)	Malcolm W. Kirk Jr. and Chase Kirk	\$131.08
466	(384)	Karman Klug.....	\$344.00
467	(385)	Susan Knauss	\$296.80
468	(386)	KNP Inc.....	\$500.00
469	(387)	Belinda Koast.....	\$87.00
470	(388)	Prudence Kollar.....	\$185.50
471	(389)	Melinda S. Korsh and Paul Korsh.....	\$143.10
472	(390)	Alexander Koutsunis and	
473		Sandra Koutsunis	\$89.95
474	(391)	Carol Koval/ Koval Rentals	\$991.22
475	(392)	James E. Kubanick and	
476		Lois M. Kubanick	\$1,000.00
477	(393)	Joseph H. Kuzma	\$231.61
478	(394)	Joshua Craig Laker and Melissa Laker	\$180.20
479	(395)	Richard W. Lalonde and	
480		Janet White Lalonde	\$720.50
481	(396)	Amy B. Lambert and David Lambert	\$485.00
482	(397)	John Lancaster.....	\$189.50
483	(398)	Crystal Lane and Wesley Lane	\$538.25
484	(399)	Jayson M. Laroche	\$30,000.00
485	(400)	Lavalette Carpet Center Inc. and	
486		Chandra Tomblin	\$250.00
487	(401)	Robert B. Lawrence and	
488		Martha Jane Lawrence	\$193.88
489	(402)	David Lawson	\$120.99

490	(403)	Richard H. Wilson and Clarence Leasure	\$58.29
491	(404)	Judy Lewallen and Luther Lewallen	\$338.64
492	(405)	Hollie Lewis	\$500.00
493	(406)	Emily Lilly	\$466.48
494	(407)	Charles M. Linder and Linda M. Linder	\$500.00
495	(408)	Carrie E. Linn	\$500.00
496	(409)	Jennifer Linville	\$235.92
497	(410)	Fawn Lively and Ronald Lively	\$250.00
498	(411)	Paula Lovejoy and Cecil P. Lovejoy Jr.	\$918.20
499	(412)	Michael B. Lowry	\$300.00
500	(413)	Michael D. Mables	\$200.72
501	(414)	Rosemary Mackall	\$300.04
502	(415)	Brenda R. Malfregeot	\$559.04
503	(416)	Nadeem Malik	\$575.00
504	(417)	Frances M. Maloney	\$436.70
505	(418)	Charles Manigan	\$1,000.00
506	(419)	Robin Y. Marion	\$138.04
507	(420)	Claude Marra and Sherry Marra	\$704.68
508	(421)	Denise S. Martin and Samuel J. Martin	\$500.00
509	(422)	Jonathan Martin	\$250.00
510	(423)	Linda Martin	\$178.00
511	(424)	David F. Martino Jr.	\$500.00

512	(425)	Linda Mason and Jack E. Mason	\$500.00
513	(426)	Patty Massie	\$500.00
514	(427)	Christopher Brian Matko	\$580.90
515	(428)	Carla May.....	\$500.00
516	(429)	Brian Mayfield	\$221.33
517	(430)	Karen Mayhorn	\$100.00
518	(431)	Connie E. Mayle	\$500.00
519	(432)	Bradley Maynard.....	\$214.24
520	(433)	Sidney Maynard and Naomi Maynard	\$153.45
521	(434)	Jeremy McClung	\$451.53
522	(435)	Joseph C. McComas II	\$500.00
523	(436)	Lisa McCoy.....	\$849.30
524	(437)	Parker L.B. McCray	\$500.00
525	(438)	Clarence J. McCullogh and	
526		Pamela R. McCullogh.....	\$100.00
527	(439)	Carrie McCumbers.....	\$100.00
528	(440)	Cathy S. McDaniels	\$250.00
529	(441)	Amy McDonough and James McDonough.....	\$80.00
530	(442)	Chad McFee	\$500.00
531	(443)	Dawn Robin McFerrin and	
532		April Dawn McFerrin	\$500.00
533	(444)	Tara McGregor.....	\$356.02
534	(445)	Wesley E. McIntyre and	
535		Michelle McIntyre	\$299.98

536	(446)	Holly B. McKinley.....	\$500.00
537	(447)	Crystal McLaughlin	\$741.39
538	(448)	Thomas D. McLean and Kristie McLean.....	\$500.00
539	(449)	MCM Business Systems	\$500.00
540	(450)	Denver J. McMillion and	
541		Shirley McMillion.....	\$80.25
542	(451)	Michael W. McNulty and	
543		Victoria McNulty	\$268.18
544	(452)	Ethel J. Meador	\$438.42
545	(453)	Richard E. Meadows	\$226.68
546	(454)	Nimish Mehta.....	\$1,000.00
547	(455)	Ronald L. Gamble and	
548		Betty L. Merrifield	\$500.00
549	(456)	Sharon Mersing	\$174.85
550	(457)	Justin Michael	\$476.79
551	(458)	Patricia L. Milam	\$352.70
552	(459)	Timothy Miller.....	\$714.27
553	(460)	William Miller.....	\$300.00
554	(461)	Rockelle L. Mills.....	\$305.17
555	(462)	David K. Minturn and Sandra Minturn	\$333.90
556	(463)	Tamera Sue Miranda.....	\$206.13
557	(464)	Surinder Mohan.....	\$300.00
558	(465)	Patricia Molisee.....	\$445.20
559	(466)	Lisa Monday	\$487.70

560	(467) Michael A. Montgomery	\$1,042.48
561	(468) Amy E. Moore.....	\$331.75
562	(469) David W. Moore	\$672.10
563	(470) Heather Moore and Ben Moore	\$389.82
564	471) Laura Moore and Donald Moore.....	\$72.06
565	(472) Lisa G. Moore	\$1,000.00
566	(473) Russell Moore	\$178.08
567	(474) Beverly Morris and William Morris	\$229.00
568	(475) William J. Morris and Regina Morris	\$250.00
569	(476) Elmer D. Morrison and	
570	Helen M. Morrison.....	\$414.07
571	(477) Mary Beth Mounts	\$250.00
572	(478) Tammy N. Muffley and Tim Muffley.....	\$449.07
573	(479) Alicia R. Mullins.....	\$256.53
574	(480) Gabbrielle K. Mullins	\$82.68
575	(481) Pamela R. Murray	\$207.28
576	(482) William H. Murray.....	\$319.42
577	(483) Barbara Starcher-Myers and	
578	John D. Myers.....	\$188.00
579	(484) Lawrence H. Myers Jr. and	
580	Brenda L. Myers	\$8,611.34
581	(485) Penny N. Myers.....	\$250.00
582	(486) Brian M. Neal and Harold R. Neal.....	\$500.00
583	(487) Steve Neff	\$181.79

584	(488)	Maxwell Neubauer.....	\$196.43
585	(489)	Robert S. Nichols.....	\$170.45
586	(490)	Roy L. Nuckles and Linda S. Nuckles.....	\$500.00
587	(491)	Wesley D. Nutter and Marilyn J. Nutter.....	\$500.00
588	(492)	Carl A. Nuzum II and Melodie K. Nuzum....	\$572.40
589	(493)	Melissa Ortiz.....	\$209.61
590	(494)	John W. Orum III and Roxana Orum.....	\$250.00
591	(495)	Phyllis Owens.....	\$100.00
592	(496)	Rebecca Pack.....	\$250.00
593	(497)	Renata Padon.....	\$175.48
594	(498)	Tracy Pahl and David W. Pahl.....	\$500.00
595	(499)	Eric Palmer.....	\$1,000.00
596	(500)	Alicia Parker.....	\$193.29
597	(501)	Megan Parker.....	\$86.67
598	(502)	Amanda F. Parsons and	
599		Timothy L. Parsons.....	\$500.00
600	(503)	Cynthia Parsons and Roscoe Parsons.....	\$235.84
601	(504)	Daniel A. Parsons.....	\$203.30
602	(505)	Nancy L. Parsons and William E. Parsons....	\$500.00
603	(506)	Drema Patterson.....	\$674.35
604	(507)	Gregory Pauley and Gina Pauley.....	\$500.00
605	(508)	Jett A. Pauley and Orla M. Pauley.....	\$409.98
606	(509)	Orval K. Paxton III.....	\$168.80

607	(510)	Kelly S. Payne and Wayne L. Payne Jr.....	\$239.33
608	(511)	Hal M. Pendell Jr.	\$385.15
609	(512)	Timothy Perkins and Twila Perkins.....	\$500.00
610	(513)	Kalah O. Perry.....	\$399.92
611	(514)	Peggy Peters and Darrell Peters	\$193.67
612	(515)	Shirley Piercy.....	\$250.00
613	(516)	Johnathan A. Pinson and Amy Pinson	\$500.00
614	(517)	Curtis E. Pitcock	\$500.00
615	(518)	Michael Pittman	\$500.00
616	(519)	Christine Pollard and Robert E. Pollard.....	\$322.28
617	(520)	Jeremy A. Posey.....	\$500.00
618	(521)	Karen L. Potchak.....	\$250.00
619	(522)	Marcia Powell	\$200.00
620	(523)	Lewis Primm and Shelly Primm	\$132.00
621	(524)	John Probst and Sarah Probst.....	\$235.32
622	(525)	Donna Pugh and Wayne Pugh	\$148.40
623	(526)	Robert R. Purdue.....	\$104.41
624	(527)	Pamela E. Pushkin.....	\$500.00
625	(528)	Charles A. Quick and Deloris M. Quick.....	\$301.64
626	(529)	Lisa Raber	\$344.20
627	(530)	Debbie Raines	\$1,450.00
628	(531)	Nora Ramsey.....	\$471.24

629	(532)	Lonnie Randall and Erin Marie Randall	\$538.95
630	(533)	Chanda Ratcliff	\$500.00
631	(534)	Alex W. Rayburn and Kathy Rayburn	\$500.00
632	(535)	Brittany M. Raynes	\$250.16
633	(536)	Lynann Reckart	\$1,000.00
634	(537)	Miranda Reed and Dewey Reed.....	\$233.57
635	(538)	Shannon Reed	\$146.27
636	(539)	Samantha Walters and Jennifer Richards.....	\$250.00
637	(540)	Nora M. Richmond	\$1,184.00
638	(541)	Jason Ridgeway.....	\$500.00
639	(542)	Heather B. Rine and Derrick K. Rine	\$100.70
640	(543)	Thomas Risko	\$722.15
641	(544)	Daniel Rizk	\$203.84
642	(545)	Christina L. Roach	\$280.00
643	(546)	Jennifer J. Roberts.....	\$214.50
644	(547)	Mary Roberts.....	\$71.85
645	(548)	Mary Robinson.....	\$250.00
646	(549)	Mark A. Rodriguez and Terri Rodriguez	\$500.00
647	(550)	Jeannie Rogers and Pete W. Rogers.....	\$1,000.00
648	(551)	Jeffrey M. Rogers.....	\$246.10
649	(552)	Patrick Rollins and Christine Rollins.....	\$251.15
650	(553)	Christopher M. Ross	\$250.00

651	(554) James G. Rowsey	\$267.23
652	(555) Nicholas J. Runion and Jessica Runion	\$500.00
653	(556) Nathan Todd Runner	\$250.31
654	(557) Derrick Salter and Courtney Salter	\$706.89
655	(558) Beverly Sanders	\$159.00
656	(559) Russell W. Sandy	\$500.00
657	(560) Tammy L. Sandy	\$361.98
658	(561) Lisa R. Sanson.....	\$500.00
659	(562) Rosemarie S. Scheuer and	
660	James Scheuer Sr.	\$330.15
661	(563) Josh Schramm	\$410.00
662	(564) Philip F. Schultz.....	\$500.00
663	(565) Kimberly Scott and Thomas E. Scott.....	\$272.22
664	(566) James A. Seargeant and	
665	Susan A. Seargeant	\$500.00
666	(567) Daimler Trust c/o Ina J. Secret and	
667	Pete Secret.....	\$210.87
668	(568) Darin Seevers and Sharon Seevers.....	\$250.70
669	(569) Craig L. Selby	\$570.52
670	(570) Charles Justin Shamblin.....	\$209.70
671	(571) Charlotte A. Shamblin.....	\$132.52
672	(572) Sherrie Shatley	\$72.93
673	(573) Kyle Ann Watson Sheets	\$500.00
674	(574) Debra L. Shine and Larry E. Shine	\$420.28

675	(575)	Jack L. Shriver	\$384.99
676	(576)	Stachia Shriver	\$431.60
677	(577)	William B. Shriver	\$250.00
678	(578)	Gloria A. Sidebottom and	
679		Larry E. Sidebottom.....	\$500.00
680	(579)	Burton Sims and Debora Sims	\$500.00
681	(580)	Phyllis Singer	\$253.94
682	(581)	John E. Sinsel and Mary A. Sinsel.....	\$448.02
683	(582)	Phillip Skeen	\$481.14
684	(583)	Joshua M. Slater and	
685		Stephannie M. Slater.....	\$381.60
686	(584)	Theresa A. Smarr and Carl S. Smarr.....	\$216.77
687	(585)	Bonnie L. Smith and Harold G. Smith.....	\$250.00
688	(586)	Cheryl Smith	\$98.04
689	(587)	Gary L. Smith.....	\$275.60
690	(588)	Jeffrey Smith	\$250.00
691	(589)	Mark Spence and David Smith	\$265.43
692	(590)	Sandra S. Smith.....	\$182.00
693	(591)	Tena H. Smith	\$324.24
694	(592)	Travis A. Smith	\$2,500.00
695	(593)	Keith Smith, dba Smith's Automotive	
696		and Hauling.....	\$912.69
697	(594)	Hank Snow	\$80,000.00
698	(595)	Jessica Lynn Keener, Matthew D.	

699	Solomon and Terri R. Solomon	\$165.90
700	(596) Southeastern Equipment Company Inc.	\$73,995.70
701	(597) Lyle E. Sowards Jr.	\$294.03
702	(598) Tonya M. Sowder.....	\$154.76
703	(599) Janet Martin-Day and Roger Spaulding.....	\$231.12
704	(600) Richard A. Spaur.....	\$400.04
705	(601) Steven R. Spears	\$761.11
706	(602) Suzanne Sproles	\$76.32
707	(603) Mary Ann Squires	\$179.12
708	(604) Samuel Statler	\$481.45
709	(605) Tennille L. Statler	\$693.08
710	(606) Latalsha Lace Stealey Allen.....	\$670.65
711	(607) Duane F. Stein.....	\$500.00
712	(608) Viri R. Stemple Jr.....	\$1,391.24
713	(609) Jonathon E. Stephens	\$373.36
714	(610) Jeannie L. Stevens.....	\$327.50
715	(611) Roger R. Stevens.....	\$500.00
716	(612) Elizabeth A. Stewart	\$4,523.18
717	(613) Shannon B. Stewart and	
718	James O. Stewart.....	\$2,880.00
719	(614) Michael Stoldt.....	\$286.96
720	(615) Robert B. Stollings.....	\$279.31
721	(616) Michael A. Stoneberger and	

722	Lillian D. Stoneberger.....	\$250.00
723	(617) Carla N. Stoner.....	\$250.00
724	(618) Linda Stotelmyer.....	\$236.61
725	(619) Wade B. Stoughton	\$776.98
726	(620) Nancy Stout.....	\$419.66
727	(621) Billy Stroub and Lori A. Stroub.....	\$244.84
728	(622) Matthew Stuart and Cheryl Stuart.....	\$598.16
729	(623) Clayton Stunkard.....	\$419.41
730	(624) Tom Sturdivant	\$426.31
731	(625) Roger D. Summerfield, Isaiah D.	
732	Summerfield and Amanda Summerfield.....	\$500.00
733	(626) Jerry A. Summers.....	\$500.00
734	(627) Jordan Swaton	\$148.73
735	(628) Pamela A. Swiger.....	\$250.00
736	(629) Zandra Talkington.....	\$81.97
737	(630) Frances Tate	\$2,042.48
738	(631) Ashley Taylor.....	\$42.66
739	(632) Eva L. Taylor	\$1,000.00
740	(633) Gary W. Taylor	\$291.48
741	(634) Glenn M. Taylor.....	\$3,125.91
742	(635) Robert Taylor and Susan Taylor	\$500.00
743	(636) Stephanie Taylor and Randall Taylor	\$448.31
744	(637) Andrew K. Teeter and	

745	Margaret H. Teeter.....	\$1,000.00
746	(638) Paula Tenney.....	\$428.03
747	(639) Earline D. Thomas and Charles Thomas.....	\$124.66
748	(640) George D. Thomas Jr. and	
749	Barbara E. Thomas.....	\$260.56
750	(641) Judy Ellen Thompson.....	\$500.00
751	(642) Thomas W. Thompson.....	\$339.19
752	(643) Ronald C. Thorn.....	\$266.59
753	(644) Edward R. Thrasher	\$500.00
754	(645) Desiree Tichnell and Harold Tichnell	\$500.00
755	(646) Sarah Tignor and Ashleigh Tignor.....	\$99.95
756	(647) Shirley A. Tiller	\$583.46
757	(648) Marilyn Tilley	\$355.10
758	(649) Samuel A. Tipton II and April Tipton.....	\$71.42
759	(650) Karen B. Trenary.....	\$500.00
760	(651) Ernest Tronco.....	\$168.73
761	(652) Amanda Tucker.....	\$388.90
762	(653) Matthew Turner.....	\$256.87
763	(654) Keith Tyler and Amanda Tyler	\$103.38
764	(655) Justin A. Vance and Karen L. Vance	\$2,500.00
765	(656) Lisa H. Vandall and Michael G. Vandall	\$500.00
766	(657) Jack C. VanHoose	\$1,000.00
767	(658) Sandra K. Vanin.....	\$250.00

768	(659)	Ted L. VanScoy	\$112.36
769	(660)	Danielle Vasbinder.....	\$96.30
770	(661)	Betty Venson.....	\$136.72
771	(662)	Darcel Vermillion and	
772		James A. Vermillion	\$259.10
773	(663)	Michele Vidulich and Richard Vidulich	\$1,000.00
774	(664)	Jonathan Villanueva.....	\$500.00
775	(665)	Chris Vincent	\$411.85
776	(666)	Darrell L. Wade and Barbara A. Wade	\$460.99
777	(667)	Robert Wade Jr. and Alice Wade.....	\$1,000.00
778	(668)	Michael Walker.....	\$100.00
779	(669)	Melissa J. Wallace.....	\$164.30
780	(670)	Harry A. Wallace III	\$409.31
781	(671)	Jessica Anne Bell and Arlie J. Walsh.....	\$857.70
782	(672)	Vincent Wardell and Kari Wardell	\$237.40
783	(673)	Thomas Watson.....	\$256.74
784	(674)	William L. Watson.....	\$500.00
785	(675)	Chuck Waybright	\$886.49
786	(676)	Steve Wayman	\$206.69
787	(677)	Pamela Weaver and Gary L. Weaver	\$1,000.00
788	(678)	Jessica Webber.....	\$152.48
789	(679)	Michael Weber.....	\$500.00
790	(680)	Rada Ann Weekley	\$500.00

791	(681) Emma Kay Weimer.....	\$316.62
792	(682) Kirk Wells and Jeramie Wells.....	\$500.00
793	(683) David C. White	\$250.00
794	(684) James Crawford and Amanda White.....	\$85.05
795	(685) Lynne Whitescarver	\$158.00
796	(686) Patricia A. Sheline and	
797	Donald E. Whitlock	\$250.00
798	(687) Shane Wilburn and Kelly Wilburn.....	\$286.79
799	(688) Carolyn Wilfong and William R. Wilfong....	\$500.00
800	(689) Elizabeth Wilkes	\$596.91
801	(690) Perry D. Williams	\$128.26
802	(691) Linda Williamson.....	\$500.00
803	(692) Earnest A. Simons and	
804	Cherrie Kay Williston	\$500.00
805	(693) Gary E. Wilson.....	\$631.28
806	(694) Glenn R. Wilson and Kathy D. Wilson.....	\$500.00
807	(695) Jason M. Wilson.....	\$500.00
808	(696) Karol M. Wilson and John S. Wilson	\$500.00
809	(697) Ruth Morris and Randy Wilson	\$425.72
810	(698) Marlene Winger	\$278.97
811	(699) David Withers and Barbara Withers	\$500.00
812	(700) Sara E. Withrow	\$486.85
813	(701) Amy Sue Wolfe.....	\$786.35

814	(702) Sarah Wood and Nathan Wood.....	\$582.45
815	(703) Richard Woods.....	\$250.00
816	(704) Justin Woody.....	\$2,089.47
817	(705) Linda S. Woody	\$250.00
818	(706) Misti Judd and Shante` Wright	\$209.88
819	(707) Shelly D. Wright	\$1,535.40
820	(708) Mark Wrisborne and Vena Wrisborne	\$250.00
821	(709) Johnny Wriston	\$500.00
822	(710) Lorie Wyant	\$500.00
823	(711) Amber Lea Wyrick.....	\$136.96
824	(712) Charles Yeager and Margaret Yeager	\$2,442.22
825	<i>(d) Claim against the Division of Rehabilitation Services:</i>	
826	(TO BE PAID FROM GENERAL REVENUE FUND)	
827	Russell Nesbitt Services, Inc.	\$9,586.79
828	<i>(e) Claim against the Division of Labor:</i>	
829	(TO BE PAID FROM GENERAL REVENUE FUND)	
830	Unifirst Corporation.....	\$34.41
831	<i>(f) Claims against the Division of Motor Vehicles</i>	
832	(TO BE PAID FROM STATE ROAD FUND)	
833	(1) Rhonda Odell	\$120.00
834	(2) Jeffrey A. and Ginny A. Poe	\$919.75
835	<i>(g) Claims against the Regional Jail Authority:</i>	
836	(TO BE PAID FROM SPECIAL REVENUE FUND)	

837	(1) Billy Ray Ayers Jr.....	\$200.00
838	(2) Lois Baker, POA for Denver Baker	\$60.07
839	(3) James Timothy Cobb	\$75.00
840	(4) David Farias	\$342.00
841	(5) Irvin J. Baker and Kelli M. Fordyce	\$591.73
842	(6) Susan Gandy	\$1,055.00
843	(7) Arron D. Hudgins.....	\$400.00
844	(8) Robert W. Moats	\$200.00
845	(9) Drew Nutter.....	\$100.00
846	(10) Joshua Charles Storey	\$50.00
847	<i>(h) Claims against the Department of Health and Human</i>	
848	<i>Resources, Bureau for Behavioral Health and Health</i>	
849	<i>Facilities:</i>	
850	(TO BE PAID FROM GENERAL REVENUE FUND)	
851	(1) Ressie Thomas Phillips, Jim Phillips and	
852	Summer Mullens.....	\$2,124.66
853	(2) NTT Data Inc.	\$236,233.00
854	(3) Cecil I. Walker Machinery Company	\$14,000.00
855	<i>(i) Claims against the Department of Health and Human</i>	
856	<i>Resources:</i>	
857	(TO BE PAID FROM GENERAL REVENUE FUND)	
858	(1) Arkadin Inc.	\$7,541.57
859	(2) CIMCO Inc.	\$30,261.69
860	(3) Michael Andrew Milam, dba	
861	Nighthawk Security	\$12,560.00

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

CHAPTER 27

(S. B. 566 - By Senators Hall, Facemire and Stollings)

[Passed April 4, 2017; in effect from passage.]
[Approved by the Governor on April 18, 2017.]

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, the Division of Juvenile Services and the Division of Motor Vehicles to be moral obligations of the state and directing payments thereof.

1 The Legislature has heretofore made findings of fact
2 that the state has received the benefit of the commodities
3 received and/or services rendered by certain claimants
4 herein and has considered these claims against the state, and

5 agency thereof, which have arisen due to over-expenditures
6 of the departmental appropriations by officers of the state
7 spending units, the claims having been previously
8 considered by the Court of Claims which also found that the
9 state has received the benefit of the commodities received
10 and/or services rendered by the claimants, but were denied
11 by the Court of Claims on the purely statutory grounds that
12 to allow the claims would be condoning illegal acts contrary
13 to the laws of the state. The Legislature, pursuant to its
14 findings of fact and also by the adoption of the findings of
15 fact by the Court of Claims as its own, while not condoning
16 such illegal acts, hereby declares it to be the moral
17 obligation of the state to pay these claims in the amounts
18 specified below and directs the Auditor to issue warrants
19 upon receipt of properly executed requisitions supported by
20 itemized invoices, statements or other satisfactory
21 documents as required by section ten, article three, chapter
22 twelve of the Code of West Virginia, 1931, as amended, for
23 the payments thereof out of any fund appropriated and
24 available for the purpose.

25 (a) *Claims against the Department of Health and Human*
26 *Resources:*

27 (TO BE PAID FROM GENERAL REVENUE FUND)

28	(1) Cunningham-Parker-Johnson	
29	Funeral Home Inc.....	\$7,000.00
30	(2) Fogelsong-Casto Funeral Home	\$1,250.00
31	(3) Heritage Cremation Provider.....	\$1,250.00
32	(4) Honaker Funeral Home Inc.	\$2,500.00
33	(5) Johnson Tiller Funeral Home	\$5,000.00
34	(6) Melton Mortuary Inc.	\$22,500.00
35	(7) Tankersly Funeral Home	\$1,250.00

36 (b) *Claim against the Division of Juvenile Services:*
 37 (TO BE PAID FROM GENERAL REVENUE FUND)
 38 WV DHHR, Bureau for Medical Services ...\$265,005.24
 39 (c) *Claim against the Division of Motor Vehicles:*
 40 (TO BE PAID FROM STATE ROAD FUND)
 41 William F. Cox\$650.00



CHAPTER 28

**(Com. Sub. for H. B. 2475 - By Delegates Storch,
 Westfall, Moore, White, Frich and Ward)**

[Passed April 5, 2017; in effect ninety days from passage.]
 [Approved by the Governor on April 25, 2017.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §14-1A-1, §14-1A-2 and §14-1A-3, all relating to authorizing the establishment of a Debt Resolution Services Division within the Auditor’s office; providing for administration of division and the offset of a payment due to a vendor, contractor or taxpayer from the state to satisfy an outstanding obligation owed by them to the state; authorizing the administration of the United States Treasury Offset Program; providing for responsibilities of the State Tax Commissioner and spending units of the state; providing for the adoption of procedures, forms, and agreements; and directing the deposit of moneys offset.

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 §14-1A-1, §14-1A-2 and §14-1A-3, all to read as follows:

ARTICLE 1A. DEBT RESOLUTION SERVICES.

§14-1A-1. Purpose.

1 The purpose of this article is to provide for a timely and
2 efficient mechanism for the offset of delinquent debt owed
3 the state from payments made by the state.

§14-1A-2. Definitions.

1 For purposes of this article, the term:

2 “Auditor” means the State Auditor;

3 “Debt” means the obligations, other than income tax
4 obligations or local government obligations, owed to the
5 state which a spending unit has not been able to collect
6 within a minimum of one hundred eighty days of the date
7 on which the obligation was created;

8 “Division” means the Debt Resolution Services
9 Division, created by this article;

10 “Offset” means the capture and diversion of a payment
11 due to a vendor, contractor or taxpayer from the state to
12 satisfy an outstanding obligation owed by them to the state;
13 and

14 “United States Treasury Offset Program” means the
15 reciprocal debt collection offset program between the
16 federal government and the State of West Virginia
17 authorized by section thirty-seven, article one of this
18 chapter.

§14-1A-3. Division Established.

1 (a) The Auditor may establish a “Debt Resolution
2 Services Division” to be administered by the employees of

3 his or her office, which may identify and offset state
4 payments due to vendors, contractors, or taxpayers that owe
5 delinquent debts to the state.

6 (b) The division may also administer the United States
7 Treasury Offset Program established pursuant to section
8 thirty-seven, article one, of this chapter, except for the
9 portion of the program set forth in subdivision (2),
10 subsection (j), section eleven, article ten, chapter eleven of
11 this code, that is administered by the State Tax
12 Commissioner: *Provided*, That an offset exercised against a
13 vendor, contractor, or taxpayer pursuant to the United States
14 Treasury Offset Program shall be made subsequent to any
15 offset authorized pursuant to subsection (a) of this section.

16 (c) The division shall adopt such procedures, forms, and
17 agreements as the Auditor considers necessary to effectuate
18 the purposes of this article. All spending units of the state,
19 except for the State Tax Commissioner and any other entity
20 otherwise exempted by law, may refer delinquent debt to the
21 division for consideration for offset and shall certify to the
22 Auditor that all applicable due process requirements have
23 been met. All spending units, upon request by the Auditor,
24 shall provide the division with information related to debts
25 owed to the state, unless such disclosure is prohibited by
26 law. The Auditor is not required to accept the transfer of any
27 debt from any spending unit which the Auditor finds is not
28 qualified for offset.

29 (d) The Auditor shall deposit any moneys offset
30 pursuant to this article to the account or fund of the spending
31 unit to which the debt, if otherwise paid, would be
32 deposited.

CHAPTER 29

(Com. Sub. for H. B. 2447 - By Mr. Speaker (Mr. Armstead) , Delegates Shott, Summers, Overington, G. Foster, Hollen, Sobonya and O'Neal)

[Passed April 8, 2017; in effect ninety days from passage.]

[Approved by the Governor on April 25, 2017.]

AN ACT to repeal §14-2-6 and §14-2-18 of the Code of West Virginia, 1931, as amended; to repeal §14-2A-7 of said code; to amend and reenact §14-2-3, §14-2-4, §14-2-4a, §14-2-5, §14-2-7, §14-2-8, §14-2-9, §14-2-10, §14-2-11, §14-2-12, §14-2-13, §14-2-14, §14-2-15, §14-2-16, §14-2-17, §14-2-19, §14-2-20, §14-2-21, §14-2-22, §14-2-23, §14-2-24, §14-2-25, §14-2-26, §14-2-27 and §14-2-28 of said code; to amend said code by adding thereto a new section, designated §14-2-17a; and to amend and reenact §14-2A-5, §14-2A-6, §14-2A-9, §14-2A-10, §14-2A-11, §14-2A-12, §14-2A-13, §14-2A-14, §14-2A-15, §14-2A-16, §14-2A-17, §14-2A-18, §14-2A-19, §14-2A-19a, §14-2A-19b, §14-2A-20, §14-2A-21, §14-2A-25, §14-2A-26 and §14-2A-28 of said code, all relating to certain claims against the state generally; renaming the West Virginia Court of Claims the West Virginia Legislative Claims Commission; renaming judges commissioners; clarifying the length of the existing terms for the current commissioners; clarifying that commissioners are not judicial officers; modifying definitions; providing explicit power of removal of commissioners to the President of the Senate and the Speaker of the House of Delegates; providing authority to the President of the Senate and the Speaker of the House of Delegates for the hiring of a clerk, chief deputy clerk, deputy clerks, claim investigators, and support staff and setting salaries for said positions; authorizing the President of the Senate and Speaker of the House to permit commissioners serve more than one hundred twenty days in any fiscal year;

increasing the monetary limit for agency agreed to claims from \$1,000 to \$3,000; and updating and modifying and clarifying procedures and practices of the commission.

Be it enacted by the Legislature of West Virginia:

That §14-2-6 and §14-2-18 of the Code of West Virginia, 1931, as amended, be repealed; that §14-2A-7 of said code be repealed; that §14-2-3, §14-2-4, §14-2-4a, §14-2-5, §14-2-7, §14-2-8, §14-2-9, §14-2-10, §14-2-11, §14-2-12, §14-2-13, §14-2-14, §14-2-15, §14-2-16, §14-2-17, §14-2-19, §14-2-20, §14-2-21, §14-2-22, §14-2-23, §14-2-24, §14-2-25, §14-2-26, §14-2-27 and §14-2-28 of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §14-2-17a; and that §14-2A-5, §14-2A-6, §14-2A-9, §14-2A-10, §14-2A-11, §14-2A-12, §14-2A-13, §14-2A-14, §14-2A-15, §14-2A-16, §14-2A-17, §14-2A-18, §14-2A-19, §14-2A-19a, §14-2A-19b, §14-2A-20, §14-2A-21, §14-2A-25, §14-2A-26 and §14-2A-28 of said code be amended and reenacted all to read as follows:

ARTICLE 2. CLAIMS AGAINST THE STATE.

§14-2-3. Definitions.

1 For the purpose of this article:

2 “Commission” means the West Virginia Legislative
3 Claims Commission established by section four of this
4 article.

5 “Claim” means a claim authorized to be heard by the
6 commission in accordance with this article.

7 “Approved claim” means a claim found by the
8 commission to be one that should be paid under the
9 provisions of this article.

10 “Award” means the amount recommended by the
11 commission to be paid in satisfaction of an approved claim.

12 “Clerk” means the clerk of the West Virginia
13 Legislative Claims Commission.

14 “State agency” means a state department, board,
15 commission, institution, or other administrative agency of
16 state government: *Provided*, That a “state agency” shall not
17 be considered to include county commissions, county
18 boards of education, municipalities, or any other political or
19 local subdivision of the state regardless of any state aid that
20 might be provided.

§14-2-4. Court of Claims to be continued and renamed the West Virginia Legislative Claims Commission; appointment and terms of commissioners; vacancies.

1 The “Court of Claims” is hereby renamed the West
2 Virginia Legislative Claims Commission. It shall consist of
3 three commissioners, to be appointed by the President of the
4 Senate and the Speaker of the House of Delegates, one of
5 whom shall be appointed presiding commissioner. The
6 judges of the Court of Claims sitting on the effective date of
7 the amendments to this article enacted during the 2017
8 Regular Session of the Legislature will continue their
9 existing terms as commissioners. Each appointment to the
10 commission shall be made from a list of three qualified
11 nominees furnished by the Board of Governors of the West
12 Virginia State Bar. The President of the Senate and the
13 Speaker of the House of Delegates may jointly terminate the
14 appointment of any commissioner appointed under this
15 section at any time.

16 The terms of the commissioners shall be six years. Not
17 more than two of the commissioners shall be of the same
18 political party. An appointment to fill a vacancy shall be for
19 the unexpired term.

§14-2-4a. Interim commissioners.

1 (a) If at any time two or more of the commissioners
2 appointed under section four of this article are temporarily
3 unable, due to illness or other incapacity, to perform their
4 responsibilities the President of the Senate and the Speaker
5 of the House of Delegates may appoint one or two interim

6 commissioners to serve under the conditions specified in
7 this section.

8 (b) Appointments made under this section are
9 temporary. An interim commissioner serves under this
10 section until the commissioner for whom the interim
11 commissioner is temporarily replacing can resume his or her
12 duties. In no event may the interim commissioner serve for
13 more than three months unless reappointed.

14 (c) Appointments made under this section shall be made
15 from a list furnished to the President of the Senate and the
16 Speaker of the House of Delegates by the Board of
17 Governors of the West Virginia State Bar. The Board of
18 Governors of the West Virginia State Bar shall annually, on
19 or before January 15, submit a list of twenty qualified
20 nominees.

21 (d) An interim commissioner:

22 (1) Is entitled to the same compensation and expense
23 reimbursement a commissioner is entitled to under the
24 provisions of section eight of this article;

25 (2) Shall take the oath of office as required in section
26 nine of this article;

27 (3) Has all the authority given to a commissioner under
28 this article; and

29 (4) Is required to possess the qualifications required of
30 a commissioner in section ten of this article.

31 (e) The President of the Senate and the Speaker of the
32 House of Delegates may jointly terminate the appointment
33 of any interim commissioner appointed under this section at
34 any time.

§14-2-5. Commission clerk and other personnel.

1 The President of the Senate and the Speaker of the
2 House of Delegates may appoint a clerk, chief deputy clerk

3 and deputy clerks. The salaries of the clerk, the chief deputy
4 clerk and the deputy clerks shall be fixed by the Joint
5 Committee on Government and Finance, and shall be paid
6 out of the regular appropriation for the commission. The
7 clerk shall have custody of and maintain all records and
8 proceedings of the commission, shall attend meetings and
9 hearings of the commission, shall administer oaths and
10 affirmations and shall issue all official summonses,
11 subpoenas, orders, statements and awards. The chief deputy
12 clerk or another deputy clerk shall act in the place and stead
13 of the clerk in the clerk's absence.

14 The President of the Senate and the Speaker of the
15 House of Delegates may employ other persons whose
16 services are necessary to the orderly transaction of the
17 business of the commission and fix their compensation.

§14-2-7. Meeting place of the commission.

1 The regular meeting place of the commission shall be at
2 the State Capitol, and the Joint Committee on Government
3 and Finance shall provide adequate quarters therefor. In
4 order to facilitate the full hearing of claims arising
5 elsewhere in the state, the commission may convene at any
6 county seat or other location in the state, including a
7 correctional institution: *Provided*, That the commission will
8 make reasonable efforts to meet in appropriate public or
9 private buildings in keeping with the dignity and decorum
10 of the State.

§14-2-8. Compensation of commissioners; expenses.

1 Each commissioner shall receive \$210 for each day
2 actually served and expenses incurred in the performance of
3 his or her duties paid at the same per diem rate as members
4 of the Legislature: *Provided*, That the presiding
5 commissioner shall receive an additional \$50 for each day
6 actually served. In addition to the expense per diem, each
7 commissioner may, when using his or her own vehicle, be
8 reimbursed for mileage. The number of days served by each

9 commissioner shall not exceed one hundred twenty in any
10 fiscal year, except by authority of the President of the Senate
11 and the Speaker of the House of Delegates: *Provided*, That
12 in computing the number of days served, days utilized
13 solely for the exercise of duties assigned to commissioners
14 by this article and the provisions of article two-a of this
15 chapter shall be disregarded. For the purpose of this section,
16 time served shall include time spent in the hearing of claims,
17 in the consideration of the record, in the preparation of
18 opinions and in necessary travel.

§14-2-9. Oath of office.

1 Each commissioner shall before entering upon the
2 duties of his or her office, take and subscribe to the oath
3 prescribed by section 5, article IV of the Constitution of the
4 State. The oath shall be filed with the clerk.

§14-2-10. Qualifications of commissioners.

1 Each commissioner appointed to the West Virginia
2 Legislative Claims Commission shall be an attorney at law,
3 licensed to practice in this state, and shall have been so
4 licensed to practice law for a period of not less than ten years
5 prior to his or her appointment as commissioner. A
6 commissioner shall not be an officer or an employee of any
7 branch of state government, except in his or her capacity as
8 a member of the commission and shall receive no other
9 compensation from the state or any of its political
10 subdivisions. A commissioner shall not hear or participate
11 in the consideration of any claim in which he or she is
12 interested personally, either directly or indirectly.

§14-2-11. Attorney General to represent state.

1 Unless expressly exempted in the code, the Attorney
2 General shall represent the interests of the State in all claims
3 coming before the commission.

§14-2-12. General powers of the commission.

1 The commission shall, in accordance with this article,
2 consider claims which, but for the Constitutional immunity
3 of the state from suit, or for some statutory restrictions,
4 inhibitions or limitations, could be maintained in the regular
5 courts of the state. No liability shall be imposed upon the
6 state or any state agency by a determination of the
7 commission approving a claim and recommending an
8 award, unless the claim is: (1) Made under an existing
9 appropriation, in accordance with section nineteen of this
10 article; or (2) a claim under a special appropriation, as
11 provided in section twenty of this article. The commission
12 shall consider claims in accordance with the provisions of
13 this article.

14 Except as is otherwise provided in this article, a claim
15 shall be instituted by the filing of notice with the clerk. In
16 accordance with rules promulgated by the commission, each
17 claim shall be considered by the commission as a whole, or
18 by a commissioner sitting individually, and if, after
19 consideration, the commission finds that a claim is just and
20 proper, it shall so determine and shall file with the clerk a
21 brief statement of its reasons. A claim so filed shall be an
22 approved claim. The commission shall also determine the
23 amount that should be paid to the claimant, and shall itemize
24 this amount as an award, with the reasons therefor, in its
25 statement filed with the clerk. In determining the amount of
26 a claim, interest shall not be allowed unless the claim is
27 based upon a contract which specifically provides for the
28 payment of interest.

§14-2-13. Jurisdiction of the commission.

1 The jurisdiction of the commission, except for the
2 claims excluded by section fourteen, shall extend to the
3 following matters:

4 (1) Claims and demands, liquidated and unliquidated,
5 ex contractu and ex delicto, against the state or any of its
6 agencies, which the state as a sovereign commonwealth

7 should in equity and good conscience discharge and pay;
8 and

9 (2) Claims and demands, liquidated and unliquidated,
10 ex contractu and ex delicto, which may be asserted in the
11 nature of set-off or counterclaim on the part of the state or
12 any state agency.

§14-2-14. Claims excluded.

1 The jurisdiction of the commission shall not extend to
2 any claim:

3 1. For loss, damage, or destruction of property or for
4 injury or death incurred by a member of the militia or
5 National Guard when in the service of the state.

6 2. For a disability or death benefit under chapter twenty-
7 three of this code.

8 3. For unemployment compensation under chapter
9 twenty-one-a of this code.

10 4. For relief or public assistance under chapter nine of
11 this code.

12 5. With respect to which a proceeding may be
13 maintained against the state, by or on behalf of the claimant
14 in the courts of the state.

§14-2-15. Rules of practice and procedure.

1 The commission shall adopt and may from time to time
2 amend rules of procedure, in accordance with the provisions
3 of this article, governing proceedings before the
4 commission. Rules shall be designed to assure a simple,
5 expeditious and inexpensive consideration of claims. Rules
6 shall permit a claimant to appear in his or her own behalf or
7 be represented by counsel.

8 Discovery may be used in a case pending before the
9 commission in the same manner that discovery is conducted

10 pursuant to the Rules of Civil Procedure for trial courts of
11 record, Rules 26 through 36. The commission may compel
12 discovery and impose sanctions for a failure to make
13 discovery, in the same manner as a court is authorized to do
14 under the provisions of Rule 37 of the Rules of Civil
15 Procedure for trial courts of record: *Provided*, That the
16 commission shall not find a person in contempt for failure
17 to comply with an order compelling discovery.

18 The commission, upon its own motion or upon motion
19 of a party, may strike a pleading, motion or other paper
20 which: (1) Is not well-grounded in fact; (2) is not warranted
21 by existing law, or is not based on a good faith argument for
22 the extension, modification, or reversal of existing law; or
23 (3) is interposed for any improper purpose, such as to harass
24 or to cause unnecessary delay or needless increase in costs.
25 An order striking a pleading, motion, or paper may include
26 an order to pay to the other party or parties the amount of
27 the reasonable expenses incurred because of the filing of the
28 pleading, motion, or other paper, including a reasonable
29 attorney's fee.

30 Under its rules, the commission shall not be bound by
31 the usual common law or statutory rules of evidence. The
32 commission may accept and weigh, in accordance with its
33 evidential value, any information that will assist the
34 commission in determining the factual basis of a claim.

§14-2-16. Regular procedure.

1 The regular procedure for the consideration of claims
2 shall be substantially as follows:

3 (1) The claimant shall give notice to the clerk that he or
4 she desires to maintain a claim. Notice shall be in writing
5 and shall be in sufficient detail to identify the claimant, the
6 circumstances giving rise to the claim, and the state agency
7 concerned, if any. The claimant shall not otherwise be held
8 to any formal requirement of notice.

9 (2) The clerk shall transmit a copy of the notice to the
10 state agency concerned. The state agency may deny the
11 claim, or may request a postponement of proceedings to
12 permit negotiations with the claimant. If the commission
13 finds that a claim is prima facie within its jurisdiction, it
14 shall order the claim to be placed upon its regular docket for
15 hearing.

16 (3) During the period of negotiations and pending
17 hearing, the state agency, represented by the Attorney
18 General, shall, if possible, reach an agreement with the
19 claimant regarding the facts upon which the claim is based
20 so as to avoid the necessity for the introduction of evidence
21 at the hearing. If the parties are unable to agree upon the
22 facts an attempt shall be made to stipulate the questions of
23 fact in issue.

24 (4) The commission shall so conduct the hearing as to
25 disclose all material facts and issues of liability and may
26 examine or cross-examine witnesses. The commission may
27 call witnesses or require evidence not produced by the
28 parties; the commission may call expert witnesses and
29 compensate those experts for their services in an amount not
30 to exceed \$3,500 per expert; the commission may stipulate
31 the questions to be argued by the parties; and the
32 commission may continue the hearing until some
33 subsequent time to permit a more complete presentation of
34 the claim.

35 (5) After the close of the hearing the commission shall
36 consider the claim and shall conclude its determination, if
37 possible, within sixty days.

§14-2-17. Shortened procedure.

1 The shortened procedure authorized by this section shall
2 apply only to a claim possessing all of the following
3 characteristics:

4 1. The claim does not arise under an appropriation for
5 the current fiscal year.

6 2. The state agency concerned concurs in the claim.

7 3. The amount claimed does not exceed \$3,000.

8 4. The claim has been approved by the Attorney General
9 as one that, in view of the purposes of this article, should be
10 paid.

11 The state agency concerned shall prepare the record of
12 the claim consisting of all papers, stipulations and evidential
13 documents required by the rules of the commission and file
14 the same with the clerk. The commission shall consider the
15 claim informally upon the record submitted. If the
16 commission determines that the claim should be entered as
17 an approved claim and an award made, it shall so order and
18 shall file its statement with the clerk. If the commission
19 finds that the record is inadequate, or that the claim should
20 not be paid, it shall reject the claim. The rejection of a claim
21 under this section shall not bar its resubmission under the
22 regular procedure.

§14-2-17a. Shortened procedure for road condition claims.

1 Notwithstanding the regular and shortened procedures
2 provided for in sections sixteen and seventeen of this article,
3 there shall be a shortened procedure for road condition
4 claims. The shortened procedure authorized by this section
5 shall apply only to a claim possessing all of the following
6 characteristics:

7 (1) The claim does not arise under an appropriation for
8 the current fiscal year.

9 (2) The claim alleges that a condition on the state's
10 highways or roads caused property damage.

11 (3) The Division of Highways concurs in the claim.

12 (4) The amount claimed does not exceed \$1,000.

13 The Division of Highways shall prepare a stipulation
14 concerning the claim and file it with the clerk. The
15 commission shall order the claim approved and shall file its
16 statement with the clerk.

§14-2-19. Claims under existing appropriations.

1 A claim arising under an appropriation made by the
2 Legislature during the fiscal year to which the appropriation
3 applies, and falling within the jurisdiction of the
4 commission, may be submitted by:

5 1. A claimant whose claim has been rejected by the state
6 agency concerned or by the State Auditor.

7 2. The head of the state agency concerned in order to
8 obtain a determination of the matters in issue.

9 3. The State Auditor in order to obtain a full hearing and
10 consideration of the merits.

11 When such submittal is made, the clerk shall give a copy
12 of the submittal to the Joint Committee on Government and
13 Finance. If the Joint Committee on Government and
14 Finance shall so direct, the clerk shall place such claim on
15 its docket. Upon its placement on the docket, the regular
16 procedure, so far as applicable, shall govern the
17 consideration of the claim by the commission. If the
18 commission finds that the claimant should be paid, it shall
19 certify the approved claim and award to the head of the
20 appropriate state agency, the State Auditor and to the
21 Governor. The Governor may thereupon instruct the
22 Auditor to issue his or her warrant in payment of the award
23 and to charge the amount thereof to the proper
24 appropriation. The Auditor shall forthwith notify the state
25 agency that the claim has been paid. Such an expenditure
26 shall not be subject to further review by the Auditor upon
27 any matter determined and certified by the commission.

§14-2-20. Claims under special appropriations.

1 Whenever the Legislature makes an appropriation for
2 the payment of claims against the state, then accrued or
3 arising during the ensuing fiscal year, the determination of
4 claims and the payment thereof may be made in accordance
5 with this section. However, this section shall apply only if
6 the Legislature in making its appropriation specifically so
7 provides and only after specific direction to hear the claim
8 is given by the Joint Committee on Government and
9 Finance.

10 The claim shall be considered and determined by the
11 regular or shortened procedure, as the case may be, and the
12 amount of the award shall be fixed by the commission. The
13 clerk shall certify each approved claim and award, and
14 requisition relating thereto, to the Auditor. The Auditor
15 thereupon shall issue his or her warrant to the Treasurer in
16 favor of the claimant. The Auditor shall issue his or her
17 warrant without further examination or review of the claim
18 except for the question of a sufficient unexpended balance
19 in the appropriation.

§14-2-21. Periods of limitation made applicable.

1 The commission shall not take jurisdiction of any claim,
2 whether accruing before or after the effective date of this
3 article (July 1, 1967), unless notice of such claim be filed
4 with the clerk within such period of limitation as would be
5 applicable under the pertinent provisions of the Code of
6 West Virginia, 1931, as amended, if the claim were against
7 a private person, firm or corporation and the Constitutional
8 immunity of the state from suit were not involved and such
9 period of limitation may not be waived or extended. The
10 foregoing provision shall not be held to limit or restrict the
11 right of any person, firm or corporation who or which had a
12 claim against the state or any state agency, pending before
13 the Attorney General on the effective date of this article
14 (July 1, 1967), from presenting such claim to the West
15 Virginia Legislative Claims Commission, nor shall it limit
16 or restrict the right to file such a claim which was, on the
17 effective date of this article (July 1, 1967), pending in any

18 court of record as a legal claim and which, after such date
19 was or may be adjudicated in such court to be invalid as a
20 claim against the state because of the Constitutional
21 immunity of the state from suit.

§14-2-22. Compulsory process.

1 In all hearings and proceedings before the commission,
2 the evidence and testimony of witnesses and the production
3 of documentary evidence may be required. Subpoenas may
4 be issued by the commission for appearance at any
5 designated place of hearing. In case of disobedience to a
6 subpoena or other process, the commission may invoke the
7 aid of any circuit court in requiring the evidence and
8 testimony of witnesses, and the production of books, papers
9 and documents. Upon proper showing, the circuit court shall
10 issue an order requiring witnesses to appear before the West
11 Virginia Legislative Claims Commission; produce books,
12 papers and other evidence; and give testimony touching the
13 matter in question. A person failing to obey the order may
14 be punished by the circuit court as for contempt.

§14-2-23. Inclusion of awards in budget.

1 The clerk shall certify to the department of finance and
2 administration, on or before November 20, of each year, a
3 list of all awards recommended by the commission to the
4 Legislature for appropriation. The clerk may certify
5 supplementary lists to the Governor to include subsequent
6 awards made by the commission. The Governor shall
7 include all awards so certified in his or her proposed budget
8 bill transmitted to the Legislature. Any other provision of
9 this article or of law to the contrary notwithstanding, the
10 clerk shall not certify any award which has been previously
11 certified.

§14-2-24. Records to be preserved.

1 The record of each claim considered by the commission,
2 including all documents, papers, briefs, transcripts of
3 testimony and other materials, shall be preserved by the

4 clerk for a period of ten years from the date of entry of the
5 commission's last order and shall be made available to the
6 Legislature or any committee thereof for the reexamination
7 of the claim. When any such documents, papers, briefs,
8 transcripts and other materials have been so preserved by
9 the clerk for such ten-year period, the same shall be
10 transferred to the state records administrator for
11 preservation or disposition in accordance with the
12 provisions of article eight, chapter five-a of this code
13 without cost, either to the commission or the Legislature.

§14-2-25. Reports of the commission.

1 The clerk shall be the official reporter of the
2 commission. He or she shall collect and edit the approved
3 claims, awards and statements, shall prepare them for
4 submission to the Legislature in the form of an annual report
5 and shall prepare them for publication.

6 Claims and awards shall be separately classified as
7 follows:

8 (1) Approved claims and awards not satisfied but
9 referred to the Legislature for final consideration and
10 appropriation.

11 (2) Approved claims and awards satisfied by payments
12 out of regular appropriations.

13 (3) Approved claims and awards satisfied by payment
14 out of a special appropriation made by the Legislature to pay
15 claims arising during the fiscal year.

16 (4) Claims rejected by the commission with the reasons
17 therefor.

18 The commission may include any other information or
19 recommendations pertaining to the performance of its
20 duties.

21 The commission shall transmit its annual report to the
22 presiding officer of each house of the Legislature, and a
23 copy shall be made available to any member of the
24 Legislature upon request therefor. The reports of the
25 commission shall be published biennially by the clerk as a
26 public document. The biennial report shall be filed with the
27 clerk of each house of the Legislature, the Governor and the
28 Attorney General.

§14-2-26. Fraudulent claims.

1 A person who knowingly and willfully presents or
2 attempts to present a false or fraudulent claim, or a state
3 officer or employee who knowingly and willfully
4 participates or assists in the preparation or presentation of a
5 false or fraudulent claim, shall be guilty of a misdemeanor.
6 A person convicted, in a court of competent jurisdiction, of
7 violation of this section shall be fined not more than \$1,000
8 or confined for not more than one year, or both, in the
9 discretion of such court. If the convicted person is a state
10 officer or employee, he or she shall, in addition, forfeit his
11 or her office or position of employment, as the case may be.

§14-2-27. Conclusiveness of determination.

1 Any final determination against the claimant on any
2 claim presented as provided in this article shall forever bar
3 any further claim in the commission arising out of the
4 rejected claim.

§14-2-28. Award as condition precedent to appropriation.

1 (a) It is the policy of the Legislature to make no
2 appropriation to pay any claims against the state, cognizable
3 by the commission, unless the claim has first been passed
4 upon by the commission.

5 (b) Because a decision of the commission is a
6 recommendation to the Legislature based upon a finding of
7 moral obligation, and the enactment process of passage of
8 legislation authorizing payments of claims recommended

9 by the commission is at legislative discretion, no right of
10 appeal exists to findings and award recommendations of the
11 West Virginia Legislative Claims Commission and they are
12 not subject to judicial review.

ARTICLE 2A. COMPENSATION AWARDS TO VICTIMS OF CRIMES.

§14-2A-5. Jurisdiction.

1 Any commissioner of the West Virginia Legislative
2 Claims Commission individually, or the West Virginia
3 Legislative Claims Commission en banc, shall have
4 jurisdiction to approve awards of compensation arising from
5 criminally injurious conduct, in accordance with the
6 provisions of this article, if satisfied by a preponderance of
7 the evidence that the requirements for an award of
8 compensation have been met.

§14-2A-6. Compensation of commissioners serving under this article.

1 Compensation of commissioners for services performed
2 under this article, and actual expenses incurred in the
3 performance of duties as commissioners under this article,
4 shall be paid out of the crime victims compensation fund.

§14-2A-9. Claim investigators; compensation and expenses; paralegals and support staff.

1 The West Virginia Legislative Claims Commission,
2 with the approval of the President of the Senate and the
3 Speaker of the House of Delegates, is hereby authorized to
4 hire not more than four claim investigators to be employed
5 within the West Virginia Legislative Claims Commission,
6 who shall carry out the functions and duties set forth in
7 section twelve of this article. Claim investigators shall serve
8 at the pleasure of the President of the Senate and the Speaker
9 of the House of Delegates and under the administrative
10 supervision of the clerk of the West Virginia Legislative
11 Claims Commission. The compensation of claim

12 investigators shall be fixed by the President of the Senate
13 and the Speaker of the House of Delegates, and such
14 compensation, together with travel, clerical and other
15 expenses of the clerk of the West Virginia Legislative
16 Claims Commission relating to a claim investigator carrying
17 out his or her duties under this article, including the cost of
18 obtaining reports required by the investigator in
19 investigating a claim, shall be payable from the crime
20 victims compensation fund as appropriated for such purpose
21 by the Legislature.

22 The West Virginia Legislative Claims Commission,
23 with the approval of the President of the Senate and the
24 Speaker of the House of Delegates, is hereby authorized to
25 hire as support staff such paralegal or paralegals and
26 secretary or secretaries to be employed within the West
27 Virginia Legislative Claims Commission, necessary to carry
28 out the functions and duties of this article. Such support staff
29 shall serve at the will and pleasure of the West Virginia
30 Legislative Claims Commission and under the
31 administrative supervision of the clerk of the West Virginia
32 Legislative Claims Commission.

**§14-2A-10. Filing of application for compensation award;
contents.**

1 (a) A claim for an award of compensation shall be
2 commenced by filing an application for an award of
3 compensation with the clerk of the West Virginia
4 Legislative Claims Commission. The application shall be in
5 a form prescribed by the clerk of the West Virginia
6 Legislative Claims Commission and shall contain the
7 information specified in subdivisions (1) through (6) of this
8 subsection and, to the extent possible, the information in
9 subdivisions (7) through (10) of this subsection:

10 (1) The name and address of the victim of the criminally
11 injurious conduct, the name and address of the claimant and
12 the relationship of the claimant to the victim;

13 (2) The nature of the criminally injurious conduct that is
14 the basis for the claim and the date on which the conduct
15 occurred;

16 (3) The law-enforcement agency or officer to whom the
17 criminally injurious conduct was reported and the date on
18 which it was reported;

19 (4) Whether the claimant is the spouse, parent, child,
20 brother or sister of the offender, or is similarly related to an
21 accomplice of the offender who committed the criminally
22 injurious conduct;

23 (5) A release authorizing the West Virginia Legislative
24 Claims Commission and the claim investigator to obtain any
25 report, document or information that relates to the
26 determination of the claim for an award of compensation;

27 (6) If the victim is deceased, the name and address of
28 each dependent of the victim and the extent to which each
29 is dependent upon the victim for care and support;

30 (7) The nature and extent of the injuries that the victim
31 sustained from the criminally injurious conduct for which
32 compensation is sought, the name and address of any person
33 who gave medical treatment to the victim for the injuries,
34 the name and address of any hospital or similar institution
35 where the victim received medical treatment for the injuries,
36 and whether the victim died as a result of the injuries;

37 (8) The total amount of the economic loss that the
38 victim, a dependent or the claimant sustained or will sustain
39 as a result of the criminally injurious conduct, without
40 regard to the financial limitation set forth in subsection (g),
41 section fourteen of this article;

42 (9) The amount of benefits or advantages that the
43 victim, a dependent or other claimant has received or is
44 entitled to receive from any collateral source for economic
45 loss that resulted from the criminally injurious conduct, and
46 the name of each collateral source;

47 (10) Any additional relevant information that the West
48 Virginia Legislative Claims Commission may require. The
49 West Virginia Legislative Claims Commission may require
50 the claimant to submit, with the application, materials to
51 substantiate the facts that are stated in the application.

52 (b) All applications for an award of compensation shall
53 be filed within two years after the occurrence of the
54 criminally injurious conduct that is the basis of the
55 application. Any application so filed which contains the
56 information specified in subdivisions (1) through (6),
57 subsection (a) of this section may not be excluded from
58 consideration on the basis of incomplete information
59 specified in subdivisions (7) through (10) of said subsection
60 if such information is completed after reasonable assistance
61 in the completion thereof is provided under procedures
62 established by the West Virginia Legislative Claims
63 Commission.

64 (c) A person who knowingly and willfully presents or
65 attempts to present a false or fraudulent application, or who
66 knowingly and willfully participates, or assists in the
67 preparation or presentation of a false or fraudulent
68 application, shall be guilty of a misdemeanor. A person
69 convicted, in a court of competent jurisdiction, of a violation
70 of this section shall be fined not more than \$1,000 or
71 imprisoned for not more than one year, or both, in the
72 discretion of such court. If the convicted person is a state
73 officer or employee, he or she shall, in addition, forfeit his
74 or her office or position of employment, as the case may be.

§14-2A-11. Procedure for filing of application.

1 The clerk of the West Virginia Legislative Claims
2 Commission shall establish a procedure for the filing,
3 recording and processing of applications for an award of
4 compensation.

§14-2A-12. Investigation and recommendations by claim investigator.

1 (a) The clerk of the West Virginia Legislative Claims
2 Commission shall transmit a copy of the application to the
3 claim investigator within seven days after the filing of the
4 application.

5 (b) The claim investigator, upon receipt of an
6 application for an award of compensation from the clerk of
7 the West Virginia Legislative Claims Commission, shall
8 investigate the claim. After completing the investigation,
9 the claim investigator shall make a written finding of fact
10 and recommendation concerning an award of compensation.
11 He or she shall file with the clerk the finding of fact and
12 recommendation and all information or documents that he
13 or she used in his or her investigation: *Provided*, That the
14 claim investigator shall not file information or documents
15 which have been the subject of a protective order entered
16 under the provisions of subsection (c) of this section.

17 (c) The claim investigator, while investigating the
18 claim, may require the claimant to supplement the
19 application for an award of compensation with any further
20 information or documentary materials, including any
21 medical report readily available, which may lead to any
22 relevant facts aiding in the determination of whether, and
23 the extent to which, a claimant qualifies for an award of
24 compensation.

25 The claim investigator, while investigating the claim,
26 may also require law-enforcement officers and prosecuting
27 attorneys employed by the state or any political subdivision
28 thereof, to provide him or her with reports, information,
29 witness statements or other data gathered in the
30 investigation of the criminally injurious conduct that is the
31 basis of any claim to enable him or her to determine
32 whether, and the extent to which, a claimant qualifies for an
33 award of compensation. The prosecuting attorney and any
34 officer or employee of the prosecuting attorney or of the
35 law-enforcement agency shall be immune from any civil
36 liability that might otherwise be incurred as the result of
37 providing such reports, information, witness statements or

38 other data relating to the criminally injurious conduct to the
39 claim investigator.

40 The claim investigator, while investigating the claim,
41 may obtain autopsy reports including results from the Office
42 of the State Medical Examiner to be used solely for
43 determining eligibility for compensation awards.

44 Upon motion of any party, court or agency from whom
45 such reports, information, witness statements or other data
46 is sought, and for good cause shown, the court may make
47 any order which justice requires to protect a witness or other
48 person, including, but not limited to, the following: (1) That
49 the reports, information, witness statements or other data
50 not be made available; (2) that the reports, information,
51 witness statements or other data may be made available only
52 on specified terms and conditions, including a designation
53 of time and place; (3) that the reports, information, witness
54 statements or other data be made available only by a
55 different method than that selected by the claim
56 investigator; (4) that certain matters not be inquired into, or
57 that the scope of the claim investigator's request be limited
58 to certain matters; (5) that the reports, information, witness
59 statements or other data be examined only by certain
60 persons designated by the court; (6) that the reports,
61 information, witness statements or other data, after being
62 sealed, be opened only by order of the court; and (7) that
63 confidential information or the identity of confidential
64 witnesses or informers not be disclosed, or disclosed only in
65 a designated manner.

66 However, in any case wherein the claim investigator has
67 reason to believe that his or her investigation may interfere
68 with or jeopardize the investigation of a crime by law-
69 enforcement officers, or the prosecution of a case by
70 prosecuting attorneys, he or she shall apply to the West
71 Virginia Legislative Claims Commission, or a
72 commissioner thereof, for an order granting leave to
73 discontinue his or her investigation for a reasonable time in
74 order to avoid such interference or jeopardization. When it

75 appears to the satisfaction of the commission, or
76 commissioner, upon application by the claim investigator or
77 in its own discretion, that the investigation of a case by the
78 claim investigator will interfere with or jeopardize the
79 investigation or prosecution of a crime, the commission, or
80 commissioner, shall issue an order granting the claim
81 investigator leave to discontinue his or her investigation for
82 such time as the commission, or commissioner, deems
83 reasonable to avoid such interference or jeopardization.

84 (d) The finding of fact that is issued by the claim
85 investigator pursuant to subsection (b) of this section shall
86 contain the following:

87 (1) Whether the criminally injurious conduct that is the
88 basis for the application did occur, the date on which the
89 conduct occurred and the exact nature of the conduct;

90 (2) If the criminally injurious conduct was reported to a
91 law-enforcement officer or agency, the date on which the
92 conduct was reported and the name of the person who
93 reported the conduct; or the reasons why the conduct was
94 not reported to a law-enforcement officer or agency; or the
95 reasons why the conduct was not reported to a law-
96 enforcement officer or agency within seventy-two hours
97 after the conduct occurred;

98 (3) The exact nature of the injuries that the victim
99 sustained as a result of the criminally injurious conduct;

100 (4) If the claim investigator is recommending that an
101 award be made, a specific itemization of the economic loss
102 that was sustained by the victim, the claimant or a dependent
103 as a result of the criminally injurious conduct;

104 (5) If the claim investigator is recommending that an
105 award be made, a specific itemization of any benefits or
106 advantages that the victim, the claimant or a dependent has
107 received or is entitled to receive from any collateral source
108 for economic loss that resulted from the conduct;

109 (6) Whether the claimant is the spouse, parent, child,
110 brother or sister of the offender, or is similarly related to an
111 accomplice of the offender who committed the criminally
112 injurious conduct;

113 (7) Any information which might be a basis for a
114 reasonable reduction or denial of a claim because of
115 contributory misconduct of the claimant or of a victim
116 through whom he or she claims;

117 (8) Any additional information that the claim
118 investigator deems to be relevant to the evaluation of the
119 claim.

120 (e) The recommendation that is issued by the claim
121 investigator pursuant to subsection (b) of this section shall
122 contain the following:

123 (1) Whether an award of compensation should be made
124 to the claimant and the amount of the award;

125 (2) If the claim investigator recommends that an award
126 not be made to the claimant, the reason for his or her
127 decision.

128 (f) The claim investigator shall file his or her finding of
129 fact and recommendation with the clerk within six months
130 after the filing of the application: *Provided*, That where
131 there is active criminal investigation or prosecution of the
132 person or persons alleged to have committed the criminally
133 injurious conduct which is the basis for the claimant's
134 claim, the claim investigator shall file his or her finding of
135 fact and recommendation within six months after the first of
136 any final convictions or other final determinations as to
137 innocence or guilt, or any other final disposition of criminal
138 proceedings. In any case, an additional time period may be
139 provided by order of any commissioner upon good cause
140 shown.

**§14-2A-13. Notice to claimant of claim investigator's
recommendation; evaluation of claim by commissioner.**

1 (a) The clerk of the West Virginia Legislative Claims
2 Commission, upon receipt of the claim investigator's
3 finding of fact and recommendation, shall forward a copy
4 of the finding of fact and recommendation to the claimant
5 with a notice informing the claimant that any response, in
6 the form of objections or comments directed to the finding
7 of fact and recommendation, must be filed with the clerk
8 within thirty days of the date of the notice. After the
9 expiration of such thirty-day period, the clerk shall assign
10 the claim to a commissioner.

11 (b) The commissioner to whom the claim is assigned
12 shall review the finding of fact and recommendation and
13 any response submitted by the claimant and, if deemed
14 appropriate, may request the claim investigator to comment
15 in writing on the claimant's response. The commissioner
16 shall, within forty-five days after assignment by the clerk,
17 evaluate the claim without a hearing and either deny the
18 claim or approve an award of compensation to the claimant.

§14-2A-14. Grounds for denial of claim or reduction of awards; maximum awards.

1 (a) Except as provided in subsection (b), section ten of
2 this article, the commissioner may not approve an award of
3 compensation to a claimant who did not file his or her
4 application for an award of compensation within two years
5 after the date of the occurrence of the criminally injurious
6 conduct that caused the injury or death for which he or she
7 is seeking an award of compensation.

8 (b) The commissioner may not approve an award of
9 compensation if the criminally injurious conduct upon
10 which the claim is based was not reported to a law-
11 enforcement officer or agency or, in the case of sexual
12 offense, the claimant did not undergo a forensic medical
13 examination, within ninety-six hours after the occurrence of
14 the conduct, unless it is determined that good cause existed
15 for the failure to report the conduct or undergo a forensic
16 medical examination within the 96-hour period: *Provided,*

17 That no reporting to a law-enforcement officer or agency or
18 a forensic medical examination is required if the claimant is
19 a juvenile in order for a commissioner to approve an award
20 of compensation.

21 (c) The commissioner may not approve an award of
22 compensation to a claimant who is the offender or an
23 accomplice of the offender who committed the criminally
24 injurious conduct, nor to any claimant if the award would
25 unjustly benefit the offender or his or her accomplice.

26 (d) A commissioner, upon a finding that the claimant or
27 victim has not fully cooperated with appropriate law-
28 enforcement agencies or the claim investigator, may deny a
29 claim, reduce an award of compensation or reconsider a
30 claim already approved.

31 (e) A commissioner may not approve an award of
32 compensation if the injury occurred while the victim was
33 confined in any state, county or regional jail, prison, private
34 prison or correctional facility.

35 (f) After reaching a decision to approve an award of
36 compensation, but prior to announcing the approval, the
37 commissioner shall require the claimant to submit current
38 information as to collateral sources on forms prescribed by
39 the Clerk of the West Virginia Legislative Claims
40 Commission. The commissioner shall reduce an award of
41 compensation or deny a claim for an award of compensation
42 that is otherwise payable to a claimant to the extent that the
43 economic loss upon which the claim is based is or will be
44 recouped from other persons, including collateral sources,
45 or if the reduction or denial is determined to be reasonable
46 because of the contributory misconduct of the claimant or
47 of a victim through whom he or she claims. If an award is
48 reduced or a claim is denied because of the expected
49 recoupment of all or part of the economic loss of the
50 claimant from a collateral source, the amount of the award
51 or the denial of the claim shall be conditioned upon the
52 claimant's economic loss being recouped by the collateral

53 source: *Provided*, That if it is thereafter determined that the
54 claimant will not receive all or part of the expected
55 recoupment, the claim shall be reopened and an award shall
56 be approved in an amount equal to the amount of expected
57 recoupment that it is determined the claimant will not
58 receive from the collateral source, subject to the limitation
59 set forth in subsection (g) of this section.

60 (g) (1) Except in the case of death, or as provided in
61 subdivision (2) of this subsection, compensation payable to
62 a victim and to all other claimants sustaining economic loss
63 because of injury to that victim may not exceed \$35,000 in
64 the aggregate. Compensation payable to all claimants
65 because of the death of the victim may not exceed \$50,000
66 in the aggregate.

67 (2) In the event the victim's personal injuries are so
68 severe as to leave the victim with a disability, as defined in
69 Section 223 of the Social Security Act, as amended, as
70 codified in 42 U. S. C. §423, the commission may award an
71 additional amount, not to exceed \$100,000, for special
72 needs attributable to the injury.

73 (h) If an award of compensation of \$5,000 or more is
74 made to a minor, a guardian shall be appointed pursuant to
75 the provisions of article ten, chapter forty-four of this code
76 to manage the minor's estate.

§14-2A-15. Hearings.

1 (a) If either the claim investigator or the claimant
2 disagrees with the approval of an award or the denial of a
3 claim in the summary manner set forth in the preceding
4 sections of this article, the claim investigator or the
5 claimant, or both, shall file with the clerk a request for
6 hearing. Such request shall be filed within twenty-one days
7 after notification by the commissioner of his or her decision.

8 (b) Upon receipt of a request for hearing, the clerk shall
9 set a date and time for hearing, shall advise the Attorney
10 General and the claimant of the receipt of the request and

11 docketing of the claim, and shall request the Attorney
12 General to commence negotiations with the claimant.

13 (c) During the period of negotiations and pending
14 hearing, the Attorney General, shall, if possible, reach an
15 agreement with the claimant regarding the facts upon which
16 the claim is based so as to avoid the necessity for the
17 introduction of evidence at the hearing. If the parties are
18 unable to agree upon the facts, an attempt shall be made to
19 stipulate the questions of fact in issue.

20 (d) The hearing held in accordance with this section
21 shall be before a single commissioner to whom the claim
22 has not been previously assigned. Hearings before a
23 commissioner may, in the discretion of such hearing officer,
24 be held at such locations throughout the state as will
25 facilitate the appearance of the claimant and witnesses.

26 (e) The hearing shall be conducted so as to disclose all
27 material facts and issues. The commissioner may examine
28 or cross-examine witnesses. The commissioner may call
29 witnesses or require evidence not produced by the parties;
30 may stipulate the questions to be argued by the parties; and
31 may continue the hearing until some subsequent time to
32 permit a more complete presentation of the claim.

33 (f) After the close of the hearing the commissioner shall
34 consider the claim and shall conclude his or her
35 determination, if possible, within thirty days.

36 (g) The commission shall adopt and may from time to
37 time amend rules of procedure to govern proceedings before
38 the commission in accordance with the provisions of this
39 article. The rules shall be designed to assure a simple,
40 expeditious and inexpensive consideration of claims. The
41 rules shall permit a claimant to appear in his or her own
42 behalf or be represented by counsel and provide for interests
43 of the state to be represented by the Attorney General in any
44 hearing under this section at no additional cost to the fund
45 or the state.

46 Under its rules, the commission shall not be bound by
47 the usual common law or statutory rules of evidence. The
48 commission may accept and weigh, in accordance with its
49 evidential value, any information that will assist the
50 commission in determining the factual basis of a claim.

§14-2A-16. Evidence.

1 (a) There is no privilege, except the privilege arising
2 from the attorney-client relationship, as to communications
3 or records that are relevant to the physical, mental or
4 emotional condition of the claimant or victim in a
5 proceeding under this article in which that condition is an
6 element.

7 (b) If the mental, physical or emotional condition of a
8 victim or claimant is material to a claim for an award of
9 compensation, the commission or a commissioner may
10 order the victim or claimant to submit to a mental or
11 physical examination by a physician or psychologist, and
12 may order an autopsy of a deceased victim. The order may
13 be made for good cause shown and upon notice to the person
14 to be examined and to the claimant and the claim
15 investigator. The order shall specify the time, place,
16 manner, conditions and scope of the examination or autopsy
17 and the person by whom it is to be made, and shall require
18 the person who performs the examination or autopsy to file
19 with the clerk of the West Virginia Legislative Claims
20 Commission a detailed written report of the examination or
21 autopsy. The report shall set out the findings, including the
22 results of all tests made, diagnosis, prognosis and other
23 conclusions and reports of earlier examinations of the same
24 conditions. On request of the person examined, the clerk of
25 the West Virginia Legislative Claims Commission shall
26 furnish him or her a copy of the report. If the victim is
27 deceased, the clerk of the West Virginia Legislative Claims
28 Commission, on request, shall furnish the claimant a copy
29 of the report.

30 (c) The commission, or a commissioner thereof, may
31 order law-enforcement officers employed by the State or
32 any political subdivision thereof to provide it or the claim
33 investigator with copies of any information or data gathered
34 in the investigation of the criminally injurious conduct that
35 is the basis of any claim to enable it to determine whether,
36 and the extent to which, a claimant qualifies for an award of
37 compensation.

38 (d) The commission or a commissioner thereof, may
39 require the claimant to supplement the application for an
40 award of compensation with any reasonably available
41 medical or psychological reports relating to the injury for
42 which the award of compensation is claimed.

43 (e) The commission or a commissioner thereof, or the
44 claim investigator, in a claim arising out of a violation of
45 article eight-b, chapter sixty-one of this code, shall not
46 request the victim or the claimant to supply any evidence of
47 specific instances of the victim's activity, or reputation
48 evidence of the victim's sexual activity, unless it involves
49 evidence of the victim's past sexual activity with the
50 offender, and then only to the extent that the judge, the
51 commissioner or the claim investigator finds that the
52 evidence is relevant to a fact at issue in the claim.

53 (f) Notwithstanding any provision of this code to the
54 contrary relating to the confidentiality of juvenile records,
55 the West Virginia Legislative Claims Commission, or a
56 commissioner thereof, or the claim investigator shall have
57 access to the records of juvenile proceedings which bear
58 upon an application for compensation under this article. The
59 West Virginia Legislative Claims Commission, or a
60 commissioner thereof, and the claim investigator, shall, to
61 the extent possible, maintain the confidentiality of juvenile
62 records.

§14-2A-17. Contempt sanction not available.

1 If a person refuses to comply with an order under this
2 article, or asserts a privilege, except privileges arising from
3 the attorney-client relationship, so as to withhold or
4 suppress evidence relevant to a claim for an award of
5 compensation, the commission or a commissioner thereof
6 may make any just order, including denial of the claim, but
7 shall not find the person in contempt. If necessary to carry
8 out any of his or her powers and duties, the claim
9 investigator may petition the West Virginia Legislative
10 Claims Commission for an appropriate order, including an
11 order authorizing the investigator to take the depositions of
12 witnesses by oral examination or written interrogatory, but
13 the West Virginia Legislative Claims Commission shall not
14 find a person in contempt for refusal to submit to a mental
15 or physical examination.

§14-2A-18. Effect of no criminal charges being filed or conviction of offender.

1 The commission or a commissioner thereof, may
2 approve an award of compensation whether or not any
3 person is convicted for committing the conduct that is the
4 basis of the award. The filing of a criminal charge shall be
5 a prerequisite for receipt of compensation unless it is
6 determined that no charges were filed due to the identity of
7 the perpetrator being unknown: *Provided*, That no criminal
8 charges need be filed if: (1) The claimant is an adult at the
9 time the conduct giving rise to the claim occurred and no
10 criminal charges were filed for reasons other than the desire
11 of the claimant and a law-enforcement agency confirms that
12 the available evidence supports a finding that a crime
13 occurred; or (2) the claimant was a juvenile at the time the
14 conduct giving rise to the claim occurred. Proof of
15 conviction of a person whose conduct gave rise to a claim is
16 conclusive evidence that the crime was committed, unless
17 an application for rehearing, an appeal of the conviction or
18 certiorari is pending, or a rehearing or new trial has been
19 ordered.

20 The commission or a commissioner thereof, shall
21 suspend, upon a request of the claim investigator, the
22 proceedings in any claim for an award of compensation
23 pending disposition of a criminal prosecution that has been
24 commenced or is imminent.

§14-2A-19. Attorney and witness fees.

1 (a) By separate order, the commission or a
2 commissioner thereof, shall determine and award
3 reasonable attorney's fees, commensurate with services
4 rendered and reimbursement for reasonable and necessary
5 expenses actually incurred shall be paid from the Crime
6 Victims Compensation Fund to the attorney representing a
7 claimant in a proceeding under this article at the same rates
8 as set forth in section thirteen-a, article twenty-one, chapter
9 twenty-nine of this code. Attorney's fees and
10 reimbursement may be denied upon a finding that the claim
11 or appeal is frivolous. Awards of attorney's fees and
12 reimbursement shall be in addition to awards of
13 compensation, and attorney's fees and reimbursement may
14 be awarded whether or not an award of compensation is
15 approved. An attorney shall not contract for or receive any
16 larger sum than the amount allowed under this section. In
17 no event may a prosecuting attorney or assistant prosecuting
18 attorney represent any victim seeking compensation under
19 this article.

20 (b) Each witness called by the commission to appear in
21 a hearing on a claim for an award of compensation shall
22 receive compensation and expenses in an amount equal to
23 that received by witnesses in civil cases as provided in
24 section sixteen, article one, chapter fifty-nine of this code to
25 be paid from the Crime Victims Compensation Fund.

§14-2A-19a. Effect on physician, hospital and healthcare providers filing an assignment of benefits; tolling of the statute of limitations.

1 (a) As part of the order, the commission or a
2 commissioner thereof, shall determine whether fees are due
3 and owing for health care services rendered by a physician,
4 hospital or other health care provider stemming from an
5 injury received as defined under this article, and further,
6 whether or not the physician, hospital or other health care
7 provider has been presented an assignment of benefits,
8 signed by the crime victim, authorizing direct payments of
9 benefits to the health care provider. If such fees are due and
10 owing and the health care provider has presented a valid
11 assignment of benefits, the commission or a commissioner
12 thereof, shall determine the amount or amounts and shall
13 cause such reasonable fees to be paid out of the amount
14 awarded the crime victim under this article directly to the
15 physician, hospital or other health care provider. The
16 requirements of this section shall be applicable to, and any
17 such unpaid fees shall be determined and payable from, the
18 awards made by the Legislature at regular session, 1987,
19 and subsequently: *Provided*, That when a claim is filed
20 under this section, the commission shall determine the total
21 damages due the crime victim, and where the total damages
22 exceed the maximum amount which may be awarded under
23 this article, the amount paid the health care provider shall be
24 paid in the same proportion to which the actual award bears
25 to the total damages determined by the commission. In any
26 case wherein an award is made which includes an amount
27 for funeral, cremation or burial expenses, or a combination
28 thereof, the commission shall provide for the payment
29 directly to the provider or providers of such services, in an
30 amount deemed proper by the commission, where such
31 expenses are unpaid at the time of the award.

32 (b) If the health care provider has filed an assignment of
33 benefits, the provider shall aid the crime victim in the
34 development of his or her claim by providing the
35 commission with the amount of such fees as well as the
36 amount of any portion of the fees paid the provider by the
37 crime victim directly or paid the provider for the crime
38 victim by a collateral source.

39 (c) Whether or not a health care provider has filed an
40 assignment of benefits, the commission shall disclose no
41 information regarding the status of the claim to the provider:
42 *Provided*, That the commission shall promptly notify the
43 provider of the final disposition of the claim, if the provider
44 is known to the commission.

45 (d) Whenever a person files a claim under this article,
46 the statute of limitations for the collection of unpaid fees
47 paid for such health care services shall be tolled during the
48 pendency of the claim before the commission.

§14-2A-19b. Rates and limitations for health care services.

1 The commission may establish by rule or order
2 maximum rates and service limitations for reimbursement
3 of health care services rendered by a physician, hospital, or
4 other health care provider. An informational copy of the
5 maximum rates and service limitations shall be filed with
6 the Joint Committee on Government and Finance upon
7 adoption by the commission. Any change in the maximum
8 rates or service limitations shall be effective sixty days after
9 the adoption of the changes. A provider who accepts
10 payment from the commission for a service shall accept the
11 commission's rates as payment in full and may not accept
12 any payment on account of the service from any other
13 source if the total of payments accepted would exceed the
14 maximum rate set by the commission for that service. A
15 provider may not charge a claimant for any difference
16 between the cost of a service provided to a claimant and the
17 commission's payment for that service. To ensure service
18 limitations are uniform and appropriate to the levels of
19 treatment required by the claimant, the commission may
20 review all claims for these services as necessary to ensure
21 their medical necessity.

§14-2A-20. Budget preparation; procedure for payment of claims.

1 (a) The Legislative Auditor shall submit to the
2 Department of Administration, on or before November 20,
3 of each year, an anticipated budget for the Crime Victims
4 Compensation Program provided in this article for the next
5 fiscal year, which shall include:

6 (1) An estimate of the balance and receipts anticipated
7 in the Crime Victims Compensation Fund;

8 (2) Amounts anticipated to be sufficient for the payment
9 of all administrative expenses necessary for the
10 administration of this article; and

11 (3) Amounts anticipated to be sufficient for the payment
12 of awards, attorney fees, witness fees and other authorized
13 fees, costs or expenses that may arise under this article
14 during the next fiscal year.

15 (b) The Governor shall include in his or her proposed
16 budget bill and revenue estimates the amounts submitted by
17 the Legislative Auditor under subsection (a) of this section.

18 (c) The clerk shall certify each authorized award and the
19 amount of the award and make requisition upon the Crime
20 Victims Compensation Fund to the Auditor.
21 Notwithstanding any provision of chapter twelve of this
22 code to the contrary, the Auditor shall issue a warrant to the
23 Treasurer without further examination or review of the
24 claim if there is a sufficient unexpended balance in the
25 Crime Victims Compensation Fund.

26 (d) The commission may provide that payment be made
27 to a claimant or to a third party for economic losses of the
28 claimant and the order may provide an award for the
29 payment for actual economic losses which are prospective
30 as well as those which have already been incurred.

**§14-2A-21. Annual report of West Virginia Legislative Claims
Commission.**

1 The West Virginia Legislative Claims Commission
2 shall prepare and transmit annually to the Governor and the
3 Legislature a report of the activities of the West Virginia
4 Legislative Claims Commission under this article. The
5 report shall include the number of claims filed, the number
6 of awards made and the amount of each award, and a
7 statistical summary of claims and awards made and denied;
8 the balance in the Crime Victims Compensation Fund with
9 a listing by source and amount of the moneys that have been
10 deposited in the fund; the amount that has been withdrawn
11 from the fund, including separate listings of the
12 administrative costs incurred by the West Virginia
13 Legislative Claims Commission, compensation of
14 commissioners and commission personnel, the amount
15 awarded as attorneys' fees.

§14-2A-25. Publicity.

1 (a) The clerk of the West Virginia Legislative Claims
2 Commission shall prepare an information brochure for the
3 benefit of the general public, outlining the rights of
4 claimants and procedures to be followed under this article.
5 Copies of such brochure shall be distributed to law-
6 enforcement agencies in the state, and be made available to
7 other interested persons.

8 (b) Any law-enforcement agency that investigates an
9 offense committed in this state involving personal injury
10 shall make reasonable efforts to provide information to the
11 victim of the offense and his or her dependents concerning
12 the availability of an award of compensation and advise
13 such persons that an application for an award of
14 compensation may be obtained from the clerk of the West
15 Virginia Legislative Claims Commission.

§14-2A-26. Rule-making.

1 (a) The West Virginia Legislative Claims Commission
2 may promulgate rules and regulations to implement the
3 provisions of this article.

4 (b) The West Virginia Legislative Claims Commission
 5 shall promulgate rules and regulations to govern the award
 6 of compensation to the spouse of, person living in the same
 7 household with, parent, child, brother or sister of the
 8 offender or his or her accomplice in order to avoid an unjust
 9 benefit to or the unjust enrichment of the offender or his or
 10 her accomplice.

§14-2A-28. Retroactive effect of amendments.

1 Amendments made to the provisions of this article
 2 during the regular session of the Legislature in the year
 3 1984, shall be of retroactive effect to the extent that such
 4 amended provisions shall apply to all cases pending before
 5 the West Virginia Legislative Claims Commission on the
 6 effective date of the act of the Legislature which effects such
 7 amendment.

CHAPTER 30

**(S. B. 171 - By Senators Ferns, Gaunch, Takubo,
 Trump, Prezioso, Stollings, Plymale and Blair)**

[Passed April 4, 2017; in effect ninety days from passage.]
 [Approved by the Governor on April 18, 2017.]

AN ACT to repeal §16-2K-1 and §16-2K-2 of the Code of West Virginia, 1931, as amended, relating to the Programs of All-Inclusive Care for the Elderly.

Be it enacted by the Legislature of West Virginia:

§1. Repeal of article creating Programs of All-Inclusive Care for the Elderly, “PACE”.

1 That §16-2K-1 and §16-2K-2 of the Code of West
 2 Virginia, 1931, as amended, are hereby repealed.


CHAPTER 31

**(S. B. 170 - By Senators Ferns, Gaunch, Takubo,
Trump, Prezioso, Stollings, Plymale, Blair and
Jeffries)**

[Passed April 4, 2017; in effect ninety days from passage.]
[Approved by the Governor on April 18, 2017.]

AN ACT to repeal §16-24-1, §16-24-2, §16-24-3, §16-24-4, §16-24-5, §16-24-6 and §16-24-7 of the Code of West Virginia, 1931, as amended, relating to the creation of the state hemophilia program.

Be it enacted by the Legislature of West Virginia:

§1. Repeal of article creating the state hemophilia program.

1 That §16-24-1, §16-24-2, §16-24-3, §16-24-4, §16-24-
2 5, §16-24-6 and §16-24-7 of the Code of West Virginia,
3 1931, as amended, are hereby repealed.

CHAPTER 32

**(S. B. 176 - By Senators Ferns, Gaunch, Takubo,
Trump, Prezioso, Stollings, Plymale, Blair and
Jeffries)**

[Passed March 8, 2017; in effect ninety days from passage.]
[Approved by the Governor on March 13, 2017.]

AN ACT to repeal §16-25-1, §16-25-2, §16-25-3 and §16-25-4 of the Code of West Virginia, 1931, as amended, relating to the detection of tuberculosis, high blood pressure and diabetes.

Be it enacted by the Legislature of West Virginia:

§1. Repeal of article concerning detection of tuberculosis, high blood pressure and diabetes.

1 That §16-25-1, §16-25-2, §16-25-3 and §16-25-4 of the
2 Code of West Virginia, 1931, as amended, are hereby
3 repealed.

CHAPTER 33

**(S. B. 169 - By Senators Ferns, Gaunch, Takubo,
Trump, Prezioso, Stollings, Plymale and Blair)**

[Passed April 4, 2017; in effect ninety days from passage.]
[Approved by the Governor on April 20, 2017.]

AN ACT to repeal §16-28-1, §16-28-2, §16-28-3, §16-28-4, §16-28-5, §16-28-6, §16-28-7, §16-28-8, §16-28-9 and §16-28-10 of the Code of West Virginia, 1931, as amended, relating to

repealing the article on providing assistance to Korea and Vietnam veterans exposed to certain chemical defoliants or herbicides or other causative agents, including Agent Orange.

Be it enacted by the Legislature of West Virginia:

§1. Repeal of article concerning assistance to Korea and Vietnam veterans exposed to certain chemical defoliants or herbicides or other causative agents, including Agent Orange.

1 That §16-28-1, §16-28-2, §16-28-3, §16-28-4, §16-28-
2 5, §16-28-6, §16-28-7, §16-28-8, §16-28-9 and §16-28-10
3 of the Code of West Virginia, 1931, as amended, are hereby
4 repealed.

CHAPTER 34

(S. B. 349 - By Senators Trump, Blair and Boso)

[Passed April 3, 2017; in effect ninety days from passage.]
[Approved by the Governor on April 14, 2017.]

AN ACT to repeal §25-1-10 of the Code of West Virginia, 1931, as amended, relating to the Commissioner of the Division of Corrections being responsible to insure all state buildings and property.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. ORGANIZATION, INSTITUTIONS AND CORRECTIONS MANAGEMENT.

§1. Repeal of section relating to state commissioner of public institutions and the insurance of state buildings and property.

1 That §25-1-10 of the Code of West Virginia, 1931, as
2 amended, is hereby repealed.

CHAPTER 35

(H. B. 2119 - By Delegates Ellington and Summers)

[Passed April 5, 2017; in effect ninety days from passage.]
[Approved by the Governor on April 21, 2017.]

AN ACT to repeal §33-16G-1, §33-16G-2, §33-16G-3, §33-16G-4, §33-16G-5, §33-16G-6, §33-16G-7, §33-16G-8, and §33-16G-9 of the Code of West Virginia, 1931, as amended; all relating to repealing the West Virginia Health Benefit Exchange Act.

Be it enacted by the Legislature of West Virginia:

§1. Repeal of article creating the West Virginia Health Benefit Exchange Act.

1 That §33-16G-1, §33-16G-2, §33-16G-3, §33-16G-4,
2 §33-16G-5, §33-16G-6, §33-16G-7, §33-16G-8, and §33-
3 16G-9 of the Code of West Virginia, 1931, as amended, are
4 hereby repealed.

CHAPTER 36

(Com. Sub. for S. B. 563 - By Senator Trump)

[Passed April 5, 2017; in effect ninety days from passage.]
[Approved by the Governor on April 21, 2017.]

AN ACT to amend and reenact §46A-2-105, §46A-2-122 and §46A-2-128 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §46A-2-140; to amend and reenact §46A-5-101

and §46A-5-102 of said code; to amend said code by adding thereto a new section, designated §46A-5-108; and to amend and reenact §46A-8-101 of said code, all relating to the Consumer Credit and Protection Act; modifying requirements for contracts allowing for balloon payments; establishing that agreements allowing for balloon payments shall contain certain language in form and substance substantially similar to existing requirements; modifying and clarifying definitions; excluding attorneys from the definition of “debt collector” under certain circumstances; changing the time period where direct contact with a consumer must cease after receipt of notice of representation from seventy-two hours to three business days; clarifying form of notice to a debt collector of a consumer’s representation by legal counsel; requiring notice of representation to a debt collector be sent by certified mail, return receipt requested; requiring a debt collector to make certain disclosures in all communications with a consumer about debt beyond the statute of limitations for filing a legal action for collection of that debt; establishing that contents of or omissions from a pleading do not provide the basis for a claim of a violation of the Consumer Credit and Protection Act under certain circumstances; establishing exceptions for when a pleading may form the basis of a claim under the Consumer Credit Protection Act; preserving certain common law causes of action; providing for statutes of limitation in foreclosure matters; providing that counterclaims are subject to the appropriate statute of limitations; adopting a right to cure under certain provisions of the Consumer Credit Protection Act; establishing process and procedures for cure offers and responses to cure offers; establishing remedies for cure offers and responses to such offers; tolling the statute of limitations in certain circumstances involving cure offers and responses; addressing admissibility into evidence of cure offers and responses to such offers; addressing awards of attorney fees in certain circumstances involving cure offers and responses to such offers; and providing for applicability and effective dates of these amendments to the Consumer Credit Protection Act.

Be it enacted by the Legislature of West Virginia:

That §46A-2-105, §46A-2-122 and §46A-2-128 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 §46A-2-140; that §46A-5-101 and §46A-5-102 of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §46A-5-108; and that §46A-8-101 of said code be amended and reenacted, all to read as follows:

ARTICLE 2. CONSUMER CREDIT PROTECTION.

§46A-2-105. Balloon payments.

1 (1) With respect to a consumer credit sale or a consumer
2 loan in which the initial total amount payable is less than
3 \$1,500, other than one primarily for an agricultural purpose
4 or one pursuant to a revolving charge account or revolving
5 loan account, if any scheduled payment is more than twice
6 as large as the average of earlier scheduled payments, the
7 consumer has the right to refinance the amount of that
8 payment, hereinafter in this section referred to as a balloon
9 payment, at the time it is due without penalty.

10 (2) With respect to a consumer credit sale or consumer
11 loan whenever any scheduled payment is at least twice as
12 large as the smallest of all earlier scheduled payments other
13 than any down payment, any writing purporting to contain
14 the agreement of the parties shall contain language in form
15 and substance substantially similar to the following: THIS
16 CONTRACT IS NOT PAYABLE IN INSTALLMENTS
17 OF EQUAL AMOUNTS: Followed, if there is only one
18 installment which is at least twice as large as the smallest of
19 all earlier scheduled payments other than any down
20 payment, by: AN INSTALLMENT OF \$..... WILL BE
21 DUE ON

22 or, if there is more than one such installment, by:
23 LARGER INSTALLMENTS WILL BE DUE AS
24 FOLLOWS:

25 (The amount of every such installment and its due date
26 shall be inserted).

27 (3) The provisions of this section shall not apply to the
28 extent that the payment schedule is adjusted to the seasonal
29 or irregular income of the consumer.

30 (4) Notwithstanding the foregoing provisions of this
31 section, the commissioner may, by rules and regulations, if
32 necessary to further protect consumers, otherwise regulate
33 or control agreements to be entered into in a consumer credit
34 sale or consumer loan transaction which provide for a
35 balloon payment or prohibit parties from entering into any
36 agreement in a consumer credit sale or consumer loan
37 transaction which provides for a balloon payment.

§46A-2-122. Definitions.

1 For the purposes of this section and sections one
2 hundred twenty-three, one hundred twenty-four, one
3 hundred twenty-five, one hundred twenty-six, one hundred
4 twenty-seven, one hundred twenty-eight, one hundred
5 twenty-nine and one hundred twenty-nine-a of this article,
6 the following terms shall have the following meanings:

7 (a) "Consumer" means any natural person obligated or
8 allegedly obligated to pay any debt.

9 (b) "Claim" means any obligation or alleged obligation
10 of a consumer to pay money arising out of a transaction in
11 which the money, property, insurance or service which is
12 the subject of the transaction is primarily for personal,
13 family or household purposes, whether or not such
14 obligation has been reduced to judgment.

15 (c) "Debt collection" means any action, conduct or
16 practice of soliciting claims for collection or in the
17 collection of claims owed or due or alleged to be owed or
18 due by a consumer.

19 (d) “Debt collector” means any person or organization
20 engaging directly or indirectly in debt collection. The term
21 includes any person or organization who sells or offers to
22 sell forms which are, or are represented to be, a collection
23 system, device or scheme, and are intended or calculated to
24 be used to collect claims. The term excludes attorneys
25 representing creditors provided the attorneys are licensed in
26 West Virginia or otherwise authorized to practice law in the
27 State of West Virginia and handling claims and collections
28 in their own name as an employee, partner, member,
29 shareholder or owner of a law firm and not operating a
30 collection agency under the management of a person who is
31 not a licensed attorney.

§46A-2-128. Unfair or unconscionable means.

1 No debt collector may use unfair or unconscionable
2 means to collect or attempt to collect any claim. Without
3 limiting the general application of the foregoing, the
4 following conduct is deemed to violate this section:

5 (a) The seeking or obtaining of any written statement or
6 acknowledgment in any form that specifies that a
7 consumer’s obligation is one incurred for necessities of life
8 where the original obligation was not in fact incurred for
9 such necessities;

10 (b) The seeking or obtaining of any written statement or
11 acknowledgment in any form containing an affirmation of
12 any obligation by a consumer who has been declared
13 bankrupt except where such affirmation is obtained
14 pursuant to applicable bankruptcy law;

15 (c) The collection or the attempt to collect from the
16 consumer all or any part of the debt collector’s fee or charge
17 for services rendered: *Provided*, That attorney’s fees, court
18 costs and other reasonable collection costs and charges
19 necessary for the collection of any amount due upon
20 delinquent educational loans made by any institution of
21 higher education within this state may be recovered when

22 the terms of the obligation so provide. Recovery of
23 attorney's fees and collection costs may not exceed thirty-
24 three and one-third percent of the amount due and owing to
25 any such institution: *Provided, however,* That nothing
26 contained in this subsection shall be construed to limit or
27 prohibit any institution of higher education from paying
28 additional attorney fees and collection costs as long as such
29 additional attorney fees and collection costs do not exceed
30 an amount equal to five percent of the amount of the debt
31 actually recovered and such additional attorney fees and
32 collection costs are deducted or paid from the amount of the
33 debt recovered for the institution or paid from other funds
34 available to the institution;

35 (d) The collection of or the attempt to collect any
36 interest or other charge, fee or expense incidental to the
37 principal obligation unless such interest or incidental fee,
38 charge or expense is expressly authorized by the agreement
39 creating or modifying the obligation and by statute or
40 regulation;

41 (e) Any communication with a consumer made more
42 than three business days after the debt collector receives
43 written notice from the consumer or his or her attorney that
44 the consumer is represented by an attorney specifically with
45 regard to the subject debt. To be effective under this
46 subsection, such notice must clearly state the attorney's
47 name, address and telephone number and be sent by
48 certified mail, return receipt requested, to the debt
49 collector's registered agent, identified by the debt collector
50 at the office of the West Virginia Secretary of State or, if not
51 registered with the West Virginia Secretary of State, then to
52 the debt collector's principal place of business.
53 Communication with a consumer is not prohibited under
54 this subsection if the attorney fails to answer
55 correspondence, return phone calls or discuss the obligation
56 in question, or if the attorney consents to direct
57 communication with the consumer. Regular account
58 statements provided to the consumer and notices required to

59 be provided to the consumer pursuant to applicable law shall
60 not constitute prohibited communications under this
61 section; and

62 (f) When the debt is beyond the statute of limitations for
63 filing a legal action for collection, failing to provide the
64 following disclosure informing the consumer in all written
65 communication with such consumer that:

66 (1) When collecting on a debt that is not past the date
67 for obsolescence provided for in Section 605(a) of the Fair
68 Credit Reporting Act, 15 U. S. C. 1681c: “The law limits
69 how long you can be sued on a debt. Because of the age of
70 your debt, (INSERT OWNER NAME) cannot sue you for
71 it. If you do not pay the debt, (INSERT OWNER NAME)
72 may report or continue to report it to the credit reporting
73 agencies as unpaid”; and

74 (2) When collecting on debt that is past the date for
75 obsolescence provided for in Section 605(a) of the Fair
76 Credit Reporting Act, 15 U. S. C. 1681c: “The law limits
77 how long you can be sued on a debt. Because of the age of
78 your debt, (INSERT OWNER NAME) cannot sue you for
79 it and (INSERT OWNER NAME) cannot report it to any
80 credit reporting agencies.”

§46A-2-140. Pleadings not to be the basis of a cause of action.

1 Nothing contained in or omitted from a pleading filed in
2 a court of this state shall be the basis of a cause of action
3 under this chapter, nor shall the act of filing a civil action be
4 the basis of a cause of action under this chapter unless the
5 pleading or the filing of the civil action constitutes a
6 material violation of sections 124(f), 127(d), 128(c), or
7 128(d) of this article: *Provided*, That demand in a pleading
8 to award costs authorized by the applicable rules of civil
9 procedure shall not be the basis of a cause of action under
10 this chapter. For purposes of this section, a pleading shall
11 have the same definition as provided in the Rules of Civil
12 Procedure applicable in the court where the action is filed.

13 Further, nothing contained in this section is intended to
14 abrogate or abolish common law causes of action for
15 malicious prosecution, abuse of process, harassment or
16 frivolity, but in no case shall the contents of pleadings in a
17 civil action nor the institution of a civil action in any court
18 be the basis for a claim of a violation of the West Virginia
19 Consumer Credit and Protection Act except as set forth
20 above.

ARTICLE 5. CIVIL LIABILITY AND CRIMINAL PENALTIES.

§46A-5-101. Effect of violations on rights of parties; limitation of actions.

1 (1) If a creditor or debt collector has violated the
2 provisions of this chapter applying to collection of excess
3 charges, security in sales and leases, disclosure with respect
4 to consumer leases, receipts, statements of account and
5 evidences of payment, limitations on default charges,
6 assignment of earnings, authorizations to confess judgment,
7 illegal, fraudulent or unconscionable conduct, any
8 prohibited debt collection practice, or restrictions on interest
9 in land as security, assignment of earnings to regulated
10 consumer lender, security agreement on household goods
11 for benefit of regulated consumer lender, and renegotiation
12 by regulated consumer lender of a loan discharged in
13 bankruptcy, the consumer has a cause of action to recover:
14 (a) Actual damages; and (b) a right in an action to recover
15 from the person violating this chapter a penalty of \$1,000
16 per violation: *Provided*, That the aggregate amount of the
17 penalty awarded shall not exceed the greater of \$175,000 or
18 the total alleged outstanding indebtedness: *Provided*,
19 *however*, That in a class action the aggregate limits on the
20 amount of the penalty set forth above shall be applied
21 severally to each named plaintiff and each class member
22 such that no named plaintiff nor any class member may
23 recover in excess of the greater of \$175,000 or the total
24 alleged outstanding indebtedness. With respect to violations
25 arising from consumer credit sales, consumer leases or

26 consumer loans, or from sales as defined in article six of this
27 chapter, no action pursuant to this subsection may be
28 brought more than four years after the violations occurred:
29 *Provided further*, That no action pursuant to this subsection
30 to set aside a foreclosure sale of any real estate securing a
31 consumer loan may be brought more than one year after the
32 foreclosure sale is final.

33 (2) If a creditor has violated the provisions of this
34 chapter respecting authority to make regulated consumer
35 loans, the loan is void and the consumer is not obligated to
36 pay either the principal or the loan finance charge. If he has
37 paid any part of the principal or of the finance charge, he
38 has a right to recover in an action the payment from the
39 person violating this chapter or from an assignee of that
40 person's rights who undertakes direct collection of
41 payments or enforcement of rights arising from the debt.
42 With respect to violations arising from regulated consumer
43 loans made pursuant to revolving loan accounts, no action
44 pursuant to this subsection may be brought more than four
45 years after the violation occurred. With respect to violations
46 of the provisions of this chapter respecting the authority to
47 make arising from other regulated consumer loans, no
48 action pursuant to this subsection may be brought more than
49 four years after the violation occurred: *Provided*, That no
50 action pursuant to this subsection to set aside a foreclosure
51 sale of any real estate securing a consumer loan may be
52 brought more than one year after the foreclosure sale is
53 final.

54 (3) A consumer is not obligated to pay a charge in
55 excess of that allowed by this chapter and if he has paid an
56 excess charge, he has a right to a refund. A refund may be
57 made by reducing the consumer's obligation by the amount
58 of the excess charge. If the consumer has paid an amount in
59 excess of the lawful obligation under the agreement, the
60 consumer may recover in an action the excess amount from
61 the person who made the excess charge or from an assignee
62 of that person's rights who undertakes direct collection of

63 payments from or enforcement of rights against the
64 consumer arising from the debt.

65 (4) If a creditor or debt collector has contracted for or
66 received a charge in excess of that allowed by this chapter,
67 the consumer may, in addition to recovering such excess
68 charge, also recover from the creditor or the person liable in
69 an action a penalty of \$1,000 per violation: *Provided*, That
70 the aggregate amount of the penalty awarded shall not
71 exceed the greater of \$175,000 or the total alleged
72 outstanding indebtedness: *Provided, however*, That in a
73 class action the aggregate limits on the amount of the
74 penalty set forth above shall be applied severally to each
75 named plaintiff and each class member such that no named
76 plaintiff nor any class member may recover in excess of the
77 greater of \$175,000 or the total alleged outstanding
78 indebtedness: *Provided further*, That no action pursuant to
79 this subsection to set aside a foreclosure sale of any real
80 estate securing a consumer loan may be brought more than
81 one year after said foreclosure sale is final.

82 (5) Except as otherwise provided, a violation of this
83 chapter does not impair rights on a debt.

84 (6) If an employer discharges an employee in violation
85 of the provisions prohibiting discharge, the employee may
86 within ninety days bring a civil action for recovery of wages
87 lost as a result of the violation and for an order requiring the
88 reinstatement of the employee. Damages recoverable shall
89 not exceed lost wages for six weeks.

90 (7) A creditor or debt collector has no liability for a
91 penalty under subsection (1) or (4) of this section if, after
92 discovering an error and prior to the institution of an action
93 under this section or the receipt of written notice of the error,
94 the creditor notifies the person concerned of the error and
95 corrects the error: (a) Within fifteen days if the error affects
96 no more than two persons; or (b) within sixty days if the
97 error affects more than two persons. If the violation consists
98 of a prohibited agreement, giving the consumer a corrected

99 copy of the writing containing the error is sufficient
100 notification and correction. If the violation consists of an
101 excess charge, correction shall be made by an adjustment or
102 refund.

103 (8) If the creditor or debt collector establishes by a
104 preponderance of evidence that a violation is unintentional
105 or the result of a bona fide error of fact notwithstanding the
106 maintenance of procedures reasonably adapted to avoid any
107 such violation or error, no liability is imposed under
108 subsections (1), (2) and (4) of this section and the validity
109 of the transaction is not affected.

§46A-5-102. Assertion of rights.

1 Rights granted by this chapter may be asserted as a
2 claim for setoff or defense to an action against a consumer
3 without regard to any limitation of actions. Any
4 counterclaim is subject to the appropriate limitation of
5 actions set forth in this chapter.

§46A-5-108. Right to cure.

1 (a) No action may be brought pursuant to this article and
2 articles two, three and four of this chapter until the
3 consumer has informed the creditor or debt collector in
4 writing and by certified mail, return receipt requested, to the
5 creditor's or debt collector's registered agent identified by
6 the creditor or debt collector at the office of the West
7 Virginia Secretary of State or, if not registered with the
8 West Virginia Secretary of State, then to the creditor's or
9 debt collector's principal place of business, of the alleged
10 violation and the factual basis for the violation and provide
11 the creditor or debt collector forty-five days from receipt by
12 the agent or at the principal place of business referenced
13 above of the notice of violation but twenty days in the case
14 a cause of action has already been filed to make a cure offer,
15 which shall be provided to the consumer's counsel or, if
16 unrepresented, to the consumer by certified mail, return
17 receipt requested: *Provided*, That the consumer shall have

18 twenty days from receipt of the cure offer to accept the cure
19 offer or it is deemed refused and withdrawn. When a claim
20 under the provisions set forth in section one hundred one is
21 presented as a counterclaim, cross-claim or third party
22 claim, the notice of right to cure shall be served with the
23 counterclaim, cross claim or third party claim in any manner
24 permitted by the Rules of Civil Procedure.

25 (b) If a cure offer is accepted, the creditor or debt
26 collector has twenty days to begin effectuating the agreed
27 upon cure and the cure must be completed within a
28 reasonable time.

29 (c) Any applicable statute of limitations is tolled for the
30 45-day period set forth in subsection (a) of this section or
31 for the period the effectuation of the cure offer is being
32 performed, whichever is longer.

33 (d) Nothing in this section prevents a consumer that has
34 accepted a cure offer from bringing a civil action against a
35 creditor or debt collector for failing to timely effect the cure
36 offer.

37 (e) Where an action is brought under this article or
38 article two, three or four of this chapter, it is a complete
39 defense that a cure offer was made, accepted and the agreed
40 upon cure was performed. If the finder of fact determines
41 that the cure offer was accepted and the agreed upon cure
42 performed, the creditor or debt collector is entitled to
43 reasonable attorney fees and costs attendant to defending
44 the action.

45 (f) No cure offer is admissible in any proceeding
46 initiated pursuant to the provisions of this article unless the
47 cure offer is delivered by a creditor or debt collector to the
48 person claiming loss or to any attorney representing such
49 person prior to the filing of the creditor or debt collector's
50 initial responsive pleading in such proceeding. If the cure
51 offer is timely delivered by the creditor or debt collector,
52 then the creditor or debt collector may introduce the cure
53 offer into evidence at trial. The creditor or debt collector is

54 not liable for the consumer's attorney's fees and court costs
55 incurred following delivery of the cure offer unless the
56 actual damages, civil penalties and any other monetary or
57 equitable relief provided for under this article and articles
58 two, three and four of this chapter are found to have been
59 sustained and awarded, without consideration of attorney
60 fees and court costs, to exceed the value of the cure offer.

ARTICLE 8. OPERATIVE DATE AND PROVISIONS FOR TRANSITION.

§46A-8-101. Time of becoming operative; provisions for transition; enforceability of prior transactions; applicability and effective dates of amendments.

1 (a) Except as otherwise provided in this section, this
2 chapter shall become operative at 12:01 a.m. on September
3 1, 1974.

4 (b) Notwithstanding the provisions of subsection (a) of
5 this section, in order to allow sufficient time to prepare for
6 the implementation and operation of this chapter and to act
7 on applications for licenses to make regulated consumer
8 loans under this chapter as amended, the provisions of
9 article four of this chapter, relating to regulated consumer
10 lenders, and the provisions of article seven of this chapter,
11 relating to their administration, shall, to the extent
12 necessary, become operative for such purposes at 12:01 a.m.
13 on September 1, 1996.

14 (c) Transactions entered into before this chapter
15 becomes operative and the rights, duties and interests
16 flowing from them thereafter may be terminated,
17 completed, consummated or enforced as required or
18 permitted by any statute, rule of law or other law amended,
19 repealed or modified by this chapter as though the repeal,
20 amendment or modification had not occurred, but this
21 chapter applies to:

22 (1) Refinancings and consolidations made after this
23 chapter becomes operative of consumer credit sales,
24 consumer leases and consumer loans whenever made;

25 (2) Consumer credit sales or consumer loans made after
26 this chapter becomes operative pursuant to revolving charge
27 accounts or revolving loan accounts entered into, arranged
28 or contracted for before this chapter becomes operative; and

29 (3) All consumer credit transactions made before this
30 chapter becomes operative insofar as this chapter limits the
31 remedies of creditors.

32 (d) *Applicability.* — The amendments made during the
33 2017 regular session of the Legislature to section one
34 hundred five, article two of this chapter shall apply to
35 consumer credit sales or consumer loans entered into on
36 after the effective date of those amendments. The
37 amendments made during the 2017 regular session of the
38 Legislature to sections one hundred twenty-eight and one
39 hundred forty, article two of this chapter, shall apply to all
40 causes of accruing on or after the effective date of those
41 amendments. The amendments made during the 2017
42 regular session of the Legislature to section one hundred
43 twenty-two, article two and sections one hundred one and
44 one hundred eight, article five of this chapter shall apply to
45 all causes of action filed on or after the effective date of
46 those amendments.

CHAPTER 37

**(Com. Sub. for S. B. 344 - By Senators Trump,
Gaunch, Azinger and Blair)**

[Passed April 5, 2017; in effect ninety days from passage.]
[Approved by the Governor on April 24, 2017.]

AN ACT to amend and reenact §46A-2-115 of the Code of West Virginia, 1931, as amended; and to amend and reenact §46A-3-111, §46A-3-112 and §46A-3-113 of said code, all relating to consumer credit sales and consumer loans; specifying

application of payments and partial payments on consumer credit sales and loans; modifying provisions related to delinquency charges; permitting certain payments be held in a suspense or unapplied funds account; providing requirements concerning funds held in a suspense or unapplied funds account; and assessing delinquency charges on such loans.

Be it enacted by the Legislature of West Virginia:

That §46A-2-115 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §46A-3-111, §46A-3-112 and §46A-3-113 of said code be amended and reenacted, all to read as follows:

ARTICLE 2. CONSUMER CREDIT PROTECTION.

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

1 (a) Except for reasonable expenses, including costs and
2 fees authorized by statute incurred in realizing on a security
3 interest, the agreements that evidence a consumer credit sale
4 or a consumer loan may not provide for charges as a result
5 of default by the consumer other than those authorized by
6 this chapter.

7 (b) With respect to this subsection:

8 (1) The phrase “consumer loan” shall mean a consumer
9 loan secured by real property: (A) Originated by a bank or
10 savings and loan association, or an affiliate, not solicited by
11 an unaffiliated broker; (B) held by a federal home loan bank,
12 the federal National Mortgage Association, the federal
13 Home Loan Mortgage Corporation, the Government
14 National Mortgage Association, the West Virginia Housing
15 Development Fund; or (C) insured or guaranteed by the
16 Farmers Home Administration, the Veterans
17 Administration or the Department of Housing and Urban
18 Development.

19 (2) Except as provided in subdivision (3) of this
20 subsection, the agreements that evidence a consumer loan

21 may permit the recovery of the following charges: (A)
22 Costs of publication; (B) an appraisal fee; (C) all costs
23 incidental to a title examination including professional fees,
24 expenses incident to travel and copies of real estate and tax
25 records; (D) expenses incidental to notice made to
26 lienholders and other parties and entities having an interest
27 in the real property to be sold; (E) certified mailing costs;
28 and (F) all fees and expenses incurred by a trustee incident
29 to a pending trustee's sale of the real property securing the
30 consumer loan.

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

45 (c) All payments made to a creditor in accordance with
46 the terms of any consumer credit sale or consumer loan shall
47 be credited upon receipt against payments due: *Provided,*
48 That amounts received and applied during a cure period will
49 not result in a duty to provide a new notice of right to cure:
50 *Provided, however,* That partial amounts received during
51 the period set forth in subdivision (3) subsection (b) of this
52 section do not create an automatic duty to reinstate and may
53 be returned by the creditor. Default charges shall be
54 accounted for separately. Those recoverable charges set
55 forth in said subsection arising during the period described
56 therein may be added to principal.

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

71 This subsection does not apply to delinquency charges
72 permitted under sections one hundred twelve and one
73 hundred thirteen, article three of this chapter; credit line
74 over-the-limit fees; deferral charges permitted under section
75 one hundred fourteen of said article; collateral protection
76 insurance permitted under section one hundred nine-a of
77 said article; and advances to pay taxes.

78 (e) A provision in violation of this section is
79 unenforceable. The amendments to this section by acts of
80 the Legislature in the regular session of 2003 are a
81 clarification of existing law and shall be retroactively
82 applied to all agreements in effect on the date of passage of
83 the amendments, except where controversies arising under
84 those agreements are pending prior to the date of passage of
85 the amendments.

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

ARTICLE 3. FINANCE CHARGES AND RELATED PROVISIONS.

§46A-3-111. Application of payments on account; rebate upon prepayment, refinancing or consolidation; judgments and interest on judgments.

1 (a) All payments made to a creditor in accordance with
2 the terms of a precomputed consumer credit sale or
3 consumer loan shall be applied to installments in the order
4 in which they fall due.

5 (b) All payments made to a creditor which do not
6 comply with the terms of a precomputed consumer credit
7 sale or consumer loan may be held in a suspense or
8 unapplied funds account. The creditor must disclose to the
9 consumer the total amount of funds held in a suspense or
10 unapplied funds account. On accumulation of funds
11 sufficient to cover a full payment in accordance with terms
12 of the precomputed consumer credit sale or consumer loan
13 agreement, the creditor shall apply the payment in
14 accordance with subsection (a) of this section.

15 (c) When the total amount is payable in substantially
16 equal consecutive monthly installments, the portion of the
17 sales finance charge or loan finance charge attributable to
18 any particular monthly installment period shall be that
19 proportion of the sales finance charge or loan finance charge
20 originally contracted for, as the balance scheduled to be
21 outstanding on the last day of the monthly installment
22 period before deducting the payment, if any, scheduled to
23 be made on that day bears to the sum of all the monthly
24 installment balances under the original schedule of
25 payments. This method of allocation is the sum of the digits
26 method, commonly referred to as the "Rule of 78".

27 (d) Upon prepayment in full of a precomputed consumer
28 credit sale or consumer loan by cash, a new loan,
29 refinancing, consolidation or otherwise, the creditor shall
30 rebate to the consumer that portion of the sales finance
31 charge or loan finance charge in the manner specified in
32 section five-d, article six, chapter forty-seven of this code:
33 *Provided*, That no rebate of less than \$1 need be made.

34 (e) Upon prepayment in full of a precomputed or
35 nonprecomputed consumer credit sale or consumer loan by
36 cash, execution of a new loan, refinancing, consolidation or
37 otherwise, except where the loan is a purchase money loan
38 secured by a first lien mortgage on residential property, or
39 is made by a federally insured depository institution, the
40 creditor shall rebate to the consumer that portion of the
41 unearned prepaid finance charges attributable to loan or
42 credit investigations fees, origination fees or points in the
43 manner specified in subsection (c), section five-d, article
44 six, chapter forty-seven of this code: *Provided*, That no
45 rebate of less than \$1 need be made: *Provided, however*,
46 That if the loan was made in furtherance of aiding or
47 abetting a person to whom the loan is assigned to evade this
48 rebate, then the rebate required herein shall apply.

49 (f) If the maturity of a precomputed consumer credit sale
50 or consumer loan is accelerated for any reason and judgment
51 is obtained, the debtor is entitled to the same rebate as if the
52 payment had been made on the date judgment is entered and
53 such judgment shall bear interest until paid at the rate of ten
54 percent per annum.

§46A-3-112. Delinquency charges on precomputed consumer credit sales or consumer loans.

1 (1) With respect to a precomputed consumer credit sale
2 or consumer loan, refinancing or consolidation, the parties
3 may contract for a delinquency charge on any installment
4 not paid in full within ten days after its scheduled due date
5 in an amount not exceeding the greater of:

6 (a) Five percent of the unpaid amount of the installment,
7 not to exceed \$30; or

8 (b) An amount equivalent to the deferral charge that
9 would be permitted to defer the unpaid amount of the
10 installment for the period that it is delinquent.

11 (2) A delinquency charge under subdivision (a),
12 subsection (1) of this section may be collected only once on

13 an installment however long it remains in default. No
14 delinquency charge may be collected with respect to a
15 deferred installment unless the installment is not paid in full
16 within ten days after its deferred due date. A delinquency
17 charge may be collected at the time it accrues or at any time
18 thereafter.

19 (3) No delinquency charge may be collected on an
20 installment which is paid in full within ten days after its
21 scheduled or deferred installment due date, even though a
22 delinquency or deferral charge on an earlier installment may
23 not have been paid in full.

24 (4) If two installments, or parts thereof, of a
25 precomputed consumer credit sale or consumer loan are in
26 default for ten days or more, the creditor may elect to
27 convert such sale or loan from a precomputed sale or loan
28 to one in which the sales finance charge or loan finance
29 charge is based on unpaid balances. In such event, the
30 creditor shall make a rebate pursuant to the provisions on
31 rebate upon prepayment, refinancing or consolidation as of
32 the maturity date of any installment then delinquent and
33 thereafter may make a sales finance charge or loan finance
34 charge as authorized by the appropriate provisions on sales
35 finance charges or loan finance charges for consumer credit
36 sales or consumer loans. The amount of the rebate may not
37 be reduced by the amount of any permitted minimum
38 charge. If the creditor proceeds under this subsection, any
39 delinquency or deferral charges made with respect to
40 installments due at or after the maturity date of the
41 delinquent installments shall be rebated and no further
42 delinquency or deferral charges shall be made.

43 (5) The commissioner shall prescribe by rule the method
44 or procedure for the calculation of delinquency charges
45 consistent with the other provisions of this chapter where
46 the precomputed consumer credit sale or consumer loan is
47 payable in unequal or irregular installments.

§46A-3-113. Delinquency charges on nonprecomputed consumer credit sales or consumer loans repayable in installments.

1 (1) In addition to the continuation of the sales finance
2 charge or loan finance charge on a delinquent installment
3 with respect to a nonprecomputed consumer credit sale or
4 consumer loan, refinancing or consolidation, repayable in
5 installments, the parties may contract for a delinquency
6 charge on any installment not paid in full within ten days
7 after its scheduled due date of five percent of the unpaid
8 amount of the installment, not to exceed \$30.

9 (2) A delinquency charge under subsection (1) of this
10 section may be collected only once on an installment
11 however long it remains in default. A delinquency charge
12 may be collected at the time it accrues or at any time
13 thereafter.

14 (3) No delinquency charge may be collected on an
15 installment which is paid in full within ten days after its
16 scheduled or deferred installment due date, even though a
17 delinquency or deferral charge on an earlier installment may
18 not have been paid in full.

CHAPTER 38

**(Com. Sub. for H. B. 2329 - By Delegates Rohrbach,
Sobonya, Ellington, Upson, Lovejoy, Frich,
Canestraro, Isner, N. Foster, Ward and C. Miller)**

[Passed April 8, 2017; in effect ninety days from passage.]
[Approved by the Governor on April 24, 2017.]

AN ACT to amend and reenact §60A-1-101 of the Code of West Virginia, 1931, as amended; to amend and reenact §60A-2-204 of said code; and to amend said code by adding thereto a

new section, designated §60A-4-415, all relating to prohibiting the unlawful production, manufacture or possession of fentanyl and fentanyl analogs and derivatives; defining a fentanyl analog or derivative; classifying a fentanyl analog or derivative as a Schedule I drug; classifying additional drugs to Schedule I of uniform controlled substances act; creating a felony offense and imposing criminal penalties for the unlawful manufacture, delivery, possession with intent to manufacture or deliver, and transport into state of fentanyl; defining terms; establishing increased penalties for manufacturing, delivering, possessing with intent to manufacture or deliver, and transporting into state with intent to deliver or manufacture in which fentanyl is a controlled substance involved in the offense; and providing for penalties based upon weight.

Be it enacted by the Legislature of West Virginia:

That §60A-1-101 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §60A-2-204 of said code be amended and reenacted; and that said code be amended by adding thereto a new section, designated §60A-4-415, all to read as follows:

ARTICLE 1. DEFINITIONS.

§60A-1-101. Definitions.

1 As used in this act:

2 (a) “Administer” means the direct application of a
3 controlled substance whether by injection, inhalation,
4 ingestion or any other means to the body of a patient or
5 research subject by:

6 (1) A practitioner (or, in his or her presence, by his or
7 her authorized agent); or

8 (2) The patient or research subject at the direction and
9 in the presence of the practitioner.

10 (b) “Agent” means an authorized person who acts on
11 behalf of or at the direction of a manufacturer, distributor or
12 dispenser. It does not include a common or contract carrier,
13 public warehouseman or employee of the carrier or
14 warehouseman.

15 (c) “Analogue” means a substance that, in relation to a
16 controlled substance, has a substantially similar chemical
17 structure.

18 (d) “Bureau” means the “Bureau of Narcotics and
19 Dangerous Drugs, United States Department of Justice” or
20 its successor agency.

21 (e) “Controlled substance” means a drug, substance or
22 immediate precursor in Schedules I through V of article two
23 of this chapter.

24 (f) “Counterfeit substance” means a controlled
25 substance which, or the container or labeling of which,
26 without authorization, bears the trademark, trade name or
27 other identifying mark, imprint, number or device, or any
28 likeness thereof, of a manufacturer, distributor or dispenser
29 other than the person who in fact manufactured, distributed
30 or dispensed the substance.

31 (g) “Imitation controlled substance” means: (1) A
32 controlled substance which is falsely represented to be a
33 different controlled substance; (2) a drug or substance
34 which is not a controlled substance but which is falsely
35 represented to be a controlled substance; or (3) a controlled
36 substance or other drug or substance or a combination
37 thereof which is shaped, sized, colored, marked, imprinted,
38 numbered, labeled, packaged, distributed or priced so as to
39 cause a reasonable person to believe that it is a controlled
40 substance.

41 (h) “Deliver” or “delivery” means the actual,
42 constructive or attempted transfer from one person to
43 another of: (1) A controlled substance, whether or not there

44 is an agency relationship; (2) a counterfeit substance; or (3)
45 an imitation controlled substance.

46 (i) "Dispense" means to deliver a controlled substance
47 to an ultimate user or research subject by or pursuant to the
48 lawful order of a practitioner, including the prescribing,
49 administering, packaging, labeling or compounding
50 necessary to prepare the substance for that delivery.

51 (j) "Dispenser" means a practitioner who dispenses.

52 (k) "Distribute" means to deliver, other than by
53 administering or dispensing, a controlled substance, a
54 counterfeit substance or an imitation controlled substance.

55 (l) "Distributor" means a person who distributes.

56 (m) "Drug" means: (1) Substances recognized as drugs
57 in the official "United States Pharmacopoeia, official
58 Homeopathic Pharmacopoeia of the United States or official
59 National Formulary", or any supplement to any of them; (2)
60 substances intended for use in the diagnosis, cure,
61 mitigation, treatment or prevention of disease in man or
62 animals; (3) substances (other than food) intended to affect
63 the structure or any function of the body of man or animals;
64 and (4) substances intended for use as a component of any
65 article specified in subdivision (1), (2) or (3) of this
66 subdivision. It does not include devices or their
67 components, parts or accessories.

68 (n) "Fentanyl analog or derivative" means any
69 substance which has a chemical structure which is
70 substantially similar to the chemical structure of fentanyl,
71 including any of its salts, isomers, or salts of isomers,
72 including any chemical compound or mixture. For purposes
73 of this chapter, the term "fentanyl derivative or analog"
74 includes any fentanyl analog that is not otherwise scheduled
75 in this chapter.

76 (o) "Immediate derivative" means a substance which is
77 the principal compound or any analogue of the parent

78 compound manufactured from a known controlled
79 substance primarily for use and which has equal or similar
80 pharmacologic activity as the parent compound which is
81 necessary to prevent, curtail or limit manufacture.

82 (p) "Immediate precursor" means a substance which is
83 the principal compound commonly used or produced
84 primarily for use and which is an immediate chemical
85 intermediary used or likely to be used in the manufacture of
86 a controlled substance, the control of which is necessary to
87 prevent, curtail or limit manufacture.

88 (q) "Manufacture" means the production, preparation,
89 propagation, compounding, conversion or processing of a
90 controlled substance, either directly or indirectly or by
91 extraction from substances of natural origin, or
92 independently by means of chemical synthesis, or by a
93 combination of extraction and chemical synthesis, and
94 includes any packaging or repackaging of the substance or
95 labeling or relabeling of its container, except that this term
96 does not include the preparation, compounding, packaging
97 or labeling of a controlled substance:

98 (1) By a practitioner as an incident to his or her
99 administering or dispensing of a controlled substance in the
100 course of his or her professional practice; or

101 (2) By a practitioner, or by his or her authorized agent
102 under his or her supervision, for the purpose of, or as an
103 incident to, research, teaching or chemical analysis and not
104 for sale.

105 (r) "Marijuana" means all parts of the plant "Cannabis
106 sativa L.", whether growing or not; the seeds thereof; the
107 resin extracted from any part of the plant; and every
108 compound, manufacture, salt, immediate derivative,
109 mixture or preparation of the plant, its seeds or resin. It does
110 not include the mature stalks of the plant, fiber produced
111 from the stalks, oil or cake made from the seeds of the plant,
112 any other compound, manufacture, salt, immediate

113 derivative, mixture or preparation of the mature stalks
114 (except the resin extracted therefrom), fiber, oil or cake, or
115 the sterilized seed of the plant which is incapable of
116 germination.

117 (s) "Narcotic drug" means any of the following, whether
118 produced directly or indirectly by extraction from
119 substances of vegetable origin or independently by means
120 of chemical synthesis, or by a combination of extraction and
121 chemical synthesis:

122 (1) Opium and opiate and any salt, compound,
123 immediate derivative or preparation of opium or opiate.

124 (2) Any salt, compound, isomer, immediate derivative
125 or preparation thereof which is chemically equivalent or
126 identical with any of the substances referred to in paragraph
127 (1) of this subdivision, but not including the isoquinoline
128 alkaloids of opium.

129 (3) Opium poppy and poppy straw.

130 (4) Coca leaves and any salt, compound, immediate
131 derivative or preparation of coca leaves and any salt,
132 compound, isomer, immediate derivative or preparation
133 thereof which is chemically equivalent or identical with any
134 of these substances, but not including decocainized coca
135 leaves or extractions of coca leaves which do not contain
136 cocaine or ecgonine.

137 (t) "Opiate" means any substance having an addiction-
138 forming or addiction-sustaining liability similar to
139 morphine or being capable of conversion into a drug having
140 addiction-forming or addiction-sustaining liability. It does
141 not include, unless specifically designated as controlled
142 under section two hundred one, article two of this chapter,
143 the dextrorotatory isomer of 3-methoxy-n-
144 methylmorphinan and its salts (dextromethorphan). It does
145 not include its racemic and levorotatory forms.

146 (u) “Opium poppy” means the plant of the species
147 “*Papaver somniferum* L.”, except its seeds.

148 (v) “Person” means individual, corporation,
149 government or governmental subdivision or agency,
150 business trust, estate, trust, partnership or association, or
151 any other legal entity.

152 (w) “Placebo” means an inert medicament or
153 preparation administered or dispensed for its psychological
154 effect, to satisfy a patient or research subject or to act as a
155 control in experimental series.

156 (x) “Poppy straw” means all parts, except the seeds, of
157 the opium poppy after mowing.

158 (y) “Practitioner” means:

159 (1) A physician, dentist, veterinarian, scientific
160 investigator or other person licensed, registered or
161 otherwise permitted to distribute, dispense, conduct
162 research with respect to, or to administer a controlled
163 substance in the course of professional practice or research
164 in this state.

165 (2) A pharmacy, hospital or other institution licensed,
166 registered or otherwise permitted to distribute, dispense,
167 conduct research with respect to, or to administer a
168 controlled substance in the course of professional practice
169 or research in this state.

170 (z) “Production” includes the manufacture, planting,
171 cultivation, growing or harvesting of a controlled substance.

172 (aa) “State”, when applied to a part of the United States,
173 includes any state, district, commonwealth, territory, insular
174 possession thereof and any area subject to the legal authority
175 of the United States of America.

176 (bb) “Ultimate user” means a person who lawfully
177 possesses a controlled substance for his or her own use or

178 for the use of a member of his or her household or for
179 administering to an animal owned by him or her or by a
180 member of his or her household.

ARTICLE 2. STANDARDS AND SCHEDULES.

*§60A-2-204. Schedule I.

1 (a) Schedule I shall consist of the drugs and other
2 substances, by whatever official name, common or usual
3 name, chemical name, or brand name designated, listed in
4 this section.

5 (b) Opiates. Unless specifically excepted or unless listed
6 in another schedule, any of the following opiates, including
7 their isomers, esters, ethers, salts and salts of isomers, esters
8 and ethers, whenever the existence of such isomers, esters,
9 ethers and salts is possible within the specific chemical
10 designation (for purposes of subdivision (34) of this
11 subsection only, the term isomer includes the optical and
12 geometric isomers):

13 (1) Acetyl-alpha-methylfentanyl (N-[1-(1-methyl-2-
14 phenethyl) -4-piperidiny]—phenylacetamide);

15 (2) Acetylmethadol;

16 (3) Allylprodine;

17 (4) Alphacetylmethadol (except levoalphacetylmethadol also
18 known as levo-alpha-acetylmethadol, levomethadyl acetate, or
19 LAAM);

20 (5) Alphameprodine;

21 (6) Alphamethadol;

*NOTE: This section was also amended by H. B. 2526 (Chapter 39),
which passed prior to this act.

- 22 (7) Alpha-methylfentanyl (N-[1-(alpha-methyl-beta-
23 phenyl) ethyl-4-piperidyl] propionanilide; 1-(1-methyl-2-
24 phenylethyl)-4-((propanilido) piperidine);
- 25 (8) Alpha-methylthiofentanyl (N-[1-methyl-2-(2-thienyl)
26 ethyl- 4-piperidiny]—phenylpropanamide);
- 27 (9) Benzethidine;
- 28 (10) Betacetylmethadol;
- 29 (11) Beta-hydroxyfentanyl (N-[1-(2-hydroxy-2-phenethyl) -
30 4-piperidiny]-N-phenylpropanamide);
- 31 (12) Beta-hydroxy-3-methylfentanyl (other name: N-[1-(2-
32 hydroxy-2-phenethyl)-3-methyl-4-piperidiny]-N-
33 phenylpropanamide);
- 34 (13) Betameprodine;
- 35 (14) Betamethadol;
- 36 (15) Betaprodine;
- 37 (16) Clonitazene;
- 38 (17) Dextromoramide;
- 39 (18) Diampromide;
- 40 (19) Diethylthiambutene;
- 41 (20) Difenoxin;
- 42 (21) Dimenoxadol;
- 43 (22) Dimepheptanol;
- 44 (23) Dimethylthiambutene;
- 45 (24) Dioxaphetyl butyrate;
- 46 (25) Dipipanone;

- 47 (26) Ethylmethylthiambutene;
- 48 (27) Etonitazene;
- 49 (28) Etoxidine;
- 50 (29) Fentanyl analog or derivative, as that term is
51 defined in article one of this chapter: *Provided*, That
52 fentanyl and carfentanil remains a Schedule II substance, as
53 set forth in section two hundred six of this article;
- 54 (30) Furethidine;
- 55 (31) Hydroxypethidine;
- 56 (32) Ketobemidone;
- 57 (33) Levomoramide;
- 58 (34) Levophenacymorphan;
- 59 (35) 3-Methylfentanyl (N-[3-methyl-1-(2-phenylethyl)-
60 4-piperidyl]-N-phenylpropanamide);
- 61 (36) 3-methylthiofentanyl (N-[3-methyl-1-(2-thienyl)
62 ethyl-4-piperidinyl]—phenylpropanamide);
- 63 (37) Morpheridine;
- 64 (38) MPPP (1-methyl-4-phenyl-4-propionoxypiperidine);
- 65 (39) Noracymethadol;
- 66 (40) Norlevorphanol;
- 67 (41) Normethadone;
- 68 (42) Norpipanone;
- 69 (43) Para-fluorofentanyl (N-(4-fluorophenyl)-N-[1-(2-
70 phenethyl)-4-piperidinyl] propanamide);
- 71 (44) PEPAP(1-(-2-phenethyl)-4-phenyl-4-acetoxypiperidine);

- 72 (45) Phenadoxone;
- 73 (46) Phenampromide;
- 74 (47) Phenomorphan;
- 75 (48) Phenoperidine;
- 76 (49) Piritramide;
- 77 (50) Proheptazine;
- 78 (51) Properidine;
- 79 (52) Propiram;
- 80 (53) Racemoramide;
- 81 (54) Thiofentanyl (N-phenyl-N-[1-(2-thienyl) ethyl-4-
82 piperidinyl]-propanamide);
- 83 (55) Tilidine;
- 84 (56) Trimeperidine.
- 85 (c) *Opium derivatives*. — Unless specifically excepted
86 or unless listed in another schedule, any of the following
87 opium immediate derivatives, its salts, isomers and salts of
88 isomers whenever the existence of such salts, isomers and
89 salts of isomers is possible within the specific chemical
90 designation:
- 91 (1) Acetorphine;
- 92 (2) Acetyldihydrocodeine;
- 93 (3) Benzylmorphine;
- 94 (4) Codeine methylbromide;
- 95 (5) Codeine-N-Oxide;
- 96 (6) Cyprenorphine;

- 97 (7) Desomorphine;
- 98 (8) Dihydromorphine;
- 99 (9) Drotebanol;
- 100 (10) Etorphine (except HCl Salt);
- 101 (11) Heroin;
- 102 (12) Hydromorphinol;
- 103 (13) Methyldesorphine;
- 104 (14) Methyldihydromorphine;
- 105 (15) Morphine methylbromide;
- 106 (16) Morphine methylsulfonate;
- 107 (17) Morphine-N-Oxide;
- 108 (18) Myrophine;
- 109 (19) Nicocodeine;
- 110 (20) Nicomorphine;
- 111 (21) Normorphine;
- 112 (22) Pholcodine;
- 113 (23) Thebacon.

114 (d) *Hallucinogenic substances*. — Unless specifically
115 excepted or unless listed in another schedule, any material,
116 compound, mixture or preparation, which contains any
117 quantity of the following hallucinogenic substances, or
118 which contains any of its salts, isomers and salts of isomers,
119 whenever the existence of such salts, isomers, and salts of
120 isomers is possible within the specific chemical designation
121 (for purposes of this subsection only, the term “isomer”
122 includes the optical, position and geometric isomers):

123 (1) Alpha-ethyltryptamine; some trade or other names:
124 etryptamine; Monase; alpha-ethyl-1H-indole-3-ethanamine;
125 3-(2-aminobutyl) indole; alpha-ET; and AET;

126 (2) 4-bromo-2, 5-dimethoxy-amphetamine; some trade
127 or other names: 4-bromo-2,5-dimethoxy-alpha-
128 methylphenethylamine; 4-bromo- 2,5-DMA;

129 (3) 4-Bromo-2,5-dimethoxyphenethylamine; some
130 trade or other names: 2-(4-bromo-2,5-dimethoxyphenyl)-1-
131 aminoethane; alpha- desmethyl DOB; 2C-B, Nexus;

132 (4)(A) N-(2-Methoxybenzyl)-4-bromo-2, 5-
133 dimethoxyphenethylamine. The substance has the
134 acronym 25B-NBOMe.

135 (B) 2-(4-chloro-2,5-dimethoxyphenyl)-N-(2-
136 methoxybenzyl) ethanamine (25C-NBOMe).

137 (C) 2-(4-iodo-2,5-dimethoxyphenyl)-N-(2-
138 methoxybenzyl) ethanamine (25I-NBOMe)

139 (5) 2,5-dimethoxyamphetamine; some trade or other
140 names: 2,5-dimethoxy-alpha-methylphenethylamine; 2,5-
141 DMA;

142 (6) 2,5-dimethoxy-4-ethylamphet-amine; some trade or
143 other names: DOET;

144 (7) 2,5-dimethoxy-4-(n)-propylthiophenethylamine
145 (other name: 2C-T-7);

146 (8) 4-methoxyamphetamine; some trade or other names:
147 4-methoxy-alpha-methylphenethylamine;
148 paramethoxyamphetamine; PMA;

149 (9) 5-methoxy-3, 4-methylenedioxy-amphetamine;

150 (10) 4-methyl-2,5-dimethoxy-amphetamine; some trade
151 and other names: 4-methyl-2,5-dimethoxy-alpha-
152 methylphenethylamine; "DOM"; and "STP";

- 153 (11) 3,4-methylenedioxy amphetamine;
- 154 (12) 3,4-methylenedioxymethamphetamine (MDMA);
- 155 (13) 3,4-methylenedioxy-N-ethylamphetamine (also
156 known as (ethyl-alpha-methyl-3,4 (methylenedioxy)
157 phenethylamine, N-ethyl MDA, MDE, MDEA);
- 158 (14) N-hydroxy-3,4-methylenedioxyamphetamine (also
159 known as (hydroxy-alpha-methyl-3,4 (methylenedioxy)
160 phenethylamine, and (hydroxy MDA);
- 161 (15) 3,4,5-trimethoxy amphetamine;
- 162 (15) (16) 5-methoxy-N, N-dimethyltryptamine (5-
163 MeO-DMT);
- 164 (17) Alpha-methyltryptamine (other name: AMT);
- 165 (18) Bufotenine; some trade and other names: 3-(beta-
166 Dimethylaminoethyl)-5-hydroxyindole;3-(2-
167 dimethylaminoethyl) -5-indolol; N, N-dimethylserotonin;
168 5-hydroxy-N,N- dimethyltryptamine; mappine;
- 169 (19) Diethyltryptamine; sometrade and other names: N,
170 N-Diethyltryptamine; DET;
- 171 (20) Dimethyltryptamine; some trade or other names:
172 DMT;
- 173 (21) 5-Methoxy-N, N-diisopropyltryptamine (5-MeO-
174 DIPT);
- 175 (22) Ibogaine; some trade and other names: 7-Ethyl-6, 6
176 Beta, 7, 8, 9, 10, 12, 13-octahydro-2-methoxy-6, 9-
177 methano-5H- pyrido [1', 2': 1, 2] azepino [5,4-b] indole;
178 Tabernanthe iboga;
- 179 (23) Lysergic acid diethylamide;
- 180 (24) Marijuana;

181 (25) Mescaline;

182 (26) Parahexyl-7374; some trade or other names: 3-
183 Hexyl -1-hydroxy-7, 8, 9, 10-tetrahydro-6, 6, 9-trimethyl-
184 6H-dibenzo [b,d] pyran; Synhexyl;

185 (27) Peyote; meaning all parts of the plant presently
186 classified botanically as *Lophophora williamsii* Lemaire,
187 whether growing or not, the seeds thereof, any extract from
188 any part of such plant, and every compound, manufacture,
189 salts, immediate derivative, mixture or preparation of such
190 plant, its seeds or extracts;

191 (28) N-ethyl-3-piperidyl benzilate;

192 (29) N-methyl-3-piperidyl benzilate;

193 (30) Psilocybin;

194 (31) Psilocyn;

195 (32) Tetrahydrocannabinols; synthetic equivalents of
196 the substances contained in the plant, or in the resinous
197 extractives of *Cannabis*, sp. and/or synthetic substances,
198 immediate derivatives and their isomers with similar
199 chemical structure and pharmacological activity such as the
200 following:

201 delta-1 Cis or trans tetrahydrocannabinol, and their
202 optical isomers;

203 delta-6 Cis or trans tetrahydrocannabinol, and their
204 optical isomers;

205 delta-3,4 Cis or trans tetrahydrocannabinol, and its
206 optical isomers;

207 (Since nomenclature of these substances is not
208 internationally standardized, compounds of these structures,
209 regardless of numerical designation of atomic positions
210 covered).

211 (33) Ethylamine analog of phencyclidine; some trade or
212 other names: N-ethyl-1-phenylcyclohexylamine, (1-
213 phenylcyclohexyl) ethylamine, N-(1-phenylcyclohexyl)
214 ethylamine, cyclohexamine, PCE;

215 (34) Pyrrolidine analog of phencyclidine; some trade or
216 other names: 1-(1-phenylcyclohexyl)-pyrrolidine, PCPy,
217 PHP;

218 (35) Thiophene analog of phencyclidine; some trade or
219 other names: 1-[1-(2-thienyl)-cyclohexyl]-piperidine, 2-
220 thienylanalogue of phencyclidine; TPCP, TCP;

221 (36) 1[1-(2-thienyl)cyclohexyl]pyrrolidine; some other
222 names: TCPy.

223 (37) 4-methylmethcathinone (Mephedrone);

224 (38) 3,4-methylenedioxypropylvalerone (MDPV);

225 (39) 2-(2,5-Dimethoxy-4-ethylphenyl)ethanamine (2C-
226 E);

227 (40) 2-(2,5-Dimethoxy-4-methylphenyl)ethanamine (2C-D)

228 (41) 2-(4-Chloro-2,5-dimethoxyphenyl)ethanamine (2C-C)

229 (42) 2-(4-Iodo-2,5-dimethoxyphenyl)ethanamine (2C-I)

230 (43) 2-[4-(Ethylthio)-2,5-dimethoxyphenyl]ethanamine (2C-
231 T-2)

232 (44) 2-[4-(Isopropylthio)-2,5-dimethoxyphenyl]ethanamine
233 (2C-T-4)

234 (45) 2-(2,5-Dimethoxyphenyl)ethanamine (2C-H)

235 (46) 2-(2,5-Dimethoxy-4-nitro-phenyl) ethanamine (2C-N)

236 (47) 2-(2,5-Dimethoxy-4-(n)-propylphenyl)ethanamine (2C-
237 P)

238 (48) 3,4-Methylenedioxy-N-methylcathinone (Methylone)

- 239 chapter(49) (2,5-dimethoxy-4-(n)-
240 propyltghiophenethylamine (2C-T-7, itsoptical isomers,
241 salts and salts of isomers
- 242 (50) 5-methoxy-N, N-dimethyltryptamine some trade or
243 other names: 5-methoxy-3-[2-(dimethylamino)ethyl]indole;
244 5-MeO-DMT(5-MeO-DMT)
- 245 (51) Alpha-methyltryptamine (other name: AMT)
- 246 (52) 5-methoxy-N, N-diisopropyltryptamine (other
247 name: 5-MeO-DIPT)
- 248 (53) Synthetic Cannabinoids as follows:
- 249 (A) 2-[(1R,3S)-3-hydroxycyclohexyl]-5- (2-
250 methylctan-2-yl) phenol {also known as CP 47,497 and
251 homologues};
- 252 (B) rel-2-[(1S,3R)-3-hydroxycyclohexyl] -5-(2-
253 methylnonan-2-yl) phenol {also known as CP 47,497-C8
254 homolog};
- 255 (C) [(6aR)-9-(hydroxymethyl)-6, 6-dimethyl-3-(2-
256 methylctan-2-yl)-6a, 7,10,10a-tetrahydrobenzo[c]chromen-1-
257 ol)] {also known as HU-210};
- 258 (D) (dexanabinol);
- 259 (6aS,10aS)-9-(hydroxymethyl)-6,6-dimethyl-3-(2-
260 methylctan-2-yl)-6a,7,10,10a-tetrahydrobenzo
- 261 l[c]chromen-1-ol) {also known as HU-211};
- 262 (E) 1-Pentyl-3-(1-naphthoyl) indole {also known as
263 JWH-018};
- 264 (F) 1-Butyl-3-(1-naphthoyl) indole {also known as
265 JWH-073};
- 266 (G) (2-methyl-1-propyl-1H-indol-3-yl)-1-napthalenyl-
267 methanone {also known as JWH-015};

268 (H) (1-hexyl-1H-indol-3-yl)-1-naphthalenyl-
269 methanone {also known as JWH-019};

270 (I) [1-[2-(4-morpholinyl) ethyl] -1H-indol-3-yl]-1-
271 naphthalenyl-methanone {also known as JWH-200};

272 (J) 1-(1-pentyl-1H-indol-3-yl)-2-(3-hydroxyphenyl)-
273 ethanone {also known as JWH-250};

274 (K) 2-((1S,2S,5S)-5-hydroxy-2-(3-hydroxypropyl)cyclohexyl) -
275 5-(2-methyloctan-2-yl)phenol {also known as CP 55,940};

276 (L) (4-methyl-1-naphthalenyl) (1-pentyl-1H-indol-3-yl)
277 -methanone {also known as JWH-

278 122};

279 (M) (4-methyl-1-naphthalenyl) (1-pentyl-1H-indol-3-
280 yl) -methanone {also known as JWH-

281 398;

282 (N) (4-methoxyphenyl)(1-pentyl-1H-indol-3-yl)methanone
283 {also known as RCS-4};

284 (O) 1-(1-(2-cyclohexylethyl) -1H-indol-3-yl) -2-(2-
285 methoxyphenyl) ethanone {also known as RCS-8};

286 (P) 1-pentyl-3-[1-(4-methoxynaphthoyl) indole (JWH-
287 081);

288 (Q) 1-(5-fluoropentyl)-3-(1-naphthoyl) indole
289 (AM2201); and

290 (R) 1-(5-fluoropentyl)-3-(2-iodobenzoyl) indole
291 (AM694).

292 (54) Synthetic cannabinoids or any material, compound,
293 mixture or preparation which contains any quantity of the
294 following substances, including their analogues, congeners,
295 homologues, isomers, salts and salts of analogues,
296 congeners, homologues and isomers, as follows:

297 (A) CP 47,497 AND homologues, 2-[(1R,3S)-3-
298 Hydroxycyclohexyl]-5-(2-methyloctan-2-

299 YL) phenol);

300 (B) HU-210, [(6AR,10AR)-9-(hydroxymethyl)-6,6-
301 dimethyl-3-(2-Methyloctan-2-YL)-6A,7,10, 10A-
302 tetrahydrobenzo[C] chromen-1-OL)];

303 (C) HU-211, (dexanabinol, (6AS,10AS)-9-
304 (hydroxymethyl)-6,6-Dimethyl-3-(2-methyloctan-2-YL)-
305 6A,7,10,10atetrahydrobenzo [C] chromen-1-OL);

306 (D) JWH-018, 1-pentyl-3-(1-naphthoyl) indole;

307 (E) JWH-019, 1-hexyl-3-(1-naphthoyl) indole;

308 (F) JWH-073, 1-butyl-3-(1-naphthoyl) indole;

309 (G) JWH-200, (1-(2-morpholin-4-ylethyl) indol-3-yl)-
310 Naphthalen-1-ylmethanone;

311 (H) JWH-250, 1-pentyl-3-(2-methoxyphenylacetyl)
312 indole.

313 (55) Synthetic cannabinoids including any material,
314 compound, mixture or preparation that is not listed as a
315 controlled substance in Schedule I through V, is not a
316 Federal Food and Drug Administration approved drug or
317 used within legitimate and approved medical research and
318 which contains any quantity of the following substances,
319 their salts, isomers, whether optical positional or geometric,
320 analogues, homologues and salts of isomers, analogues and
321 homologues, unless specifically exempted, whenever the
322 existence of these salts, isomers, analogues, homologues
323 and salts of isomers, analogues and homologues if possible
324 within the specific chemical designation:

325 (A) Tetrahydrocannabinols meaning tetrahydrocannabinols
326 which are naturally contained in a plant of the genus cannabis as
327 well as synthetic equivalents of the substances contained in the

328 plant or in the resinous extractives of cannabis or synthetic
329 substances, derivatives and their isomers with analogous
330 chemical structure and or pharmacological activity such as the
331 following:

332 (i) DELTA-1 CIS OR trans tetrahydrocannabinol and
333 their optical isomers.

334 (ii) DELTA-6 CIS OR trans tetrahydrocannabinol and
335 their optical isomers.

336 (iii) DELTA-3,4 CIS OR their trans
337 tetrahydrocannabinol and their optical isomers.

338 (B) Naphthoyl indoles or any compound containing a 3-
339 (-1- Naphthoyl) indole structure with substitution at the
340 nitrogen atom of the indole ring whether or not further
341 substituted in the indole ring to any extent and whether or
342 not substituted in the naphthyl ring to any extent. This shall
343 include the following:

344 (i) JWH 015;

345 (ii) JWH 018;

346 (iii) JWH 019;

347 (iv) JWH 073;

348 (v) JWH 081;

349 (vi) JWH 122;

350 (vii) JWH 200;

351 (viii) JWH 210;

352 (ix) JWH 398;

353 (x) AM 2201;

354 (xi) WIN 55,212.

355 (56) Synthetic Phenethylamines (including their optical,
356 positional, and geometric isomers, salts and salts of isomers,
357 whenever the existence of such salts, isomers, and salts of
358 isomers):

359 (A) 2-(4-iodo-2,5-dimethoxyphenyl)-N-(2-
360 methoxybenzyl)ethanamine (25I-NBOMe/2C-I-
361 NBOMe);

362 (B) 2-(4-chloro-2,5-dimethoxyphenyl)-N-(2-
363 methoxybenzyl)ethanamine (25C-NBOMe/2C-C-
364 NBOMe);

365 (C) 2-(4-bromo-2,5-dimethoxyphenyl)-N-(2-
366 methoxybenzyl)ethanamine (25B-NBOMe/ 2C-B-
367 NBOMe);

368 (57) Synthetic Opioids (including their isomers, esters,
369 ethers, salts and salts of isomers, esters and ethers):

370 (A) N-(1-phenethylpiperidin-4-yl)-N-phenylacetamide
371 (acetyl fentanyl);

372 (B) furanyl fentanyl;

373 (C) 3,4-dichloro-N-[2-(dimethylamino)cyclohexyl]-N-
374 methylbenzamide (also known as U-47700);

375 (D) N-(1-phenethylpiperidin-4-yl)-N-
376 phenylbutyramide, also known as N-(1-phenethylpiperidin-
377 4-yl)-N-phenylbutanamide, (butyryl fentanyl);

378 (E) N-[1-[2-hydroxy-2-(thiophen-2-yl)ethyl]piperidin-
379 4-yl]-N-phenylpropionamide, also known as N-[1-[2-
380 hydroxy-2-(2-thienyl)ethyl]-4-piperidiny]-N-
381 phenylpropanamide, (beta-hydroxythiofentanyl).

382 (58) Opioid Receptor Agonist (including its isomers,
383 esters, ethers, salts, and salts of isomers, esters and ethers):

384 (A) AH-7921 (3,4-dichloro-N- (1dimethylamino)
385 cyclohexylmethyl]benzamide).

386 (59) Naphthylmethyloindoles or any compound containing
387 a 1-hindol-3-yl-(1-naphthyl) methane structure with a
388 substitution at the nitrogen atom of the indole ring whether
389 or not further substituted in the indole ring to any extent and
390 whether or not substituted in the naphthyl ring to any extent.
391 This shall include, but not be limited to, JWH 175 and JWH
392 184.

393 (60) Naphthoylpyrroles or any compound containing a
394 3-(1-Naphthoyl) pyrrole structure with substitution at the
395 nitrogen atom of the pyrrole ring whether or not further
396 substituted in the pyrrole ring to any extent and whether or
397 not substituted in the naphthyl ring to any extent. This shall
398 include, but not be limited to, JWH 147 and JWH 307.

399 (61) Naphthylmethyloindenes or any compound containing
400 a Naphthylideneindene structure with substitution at the 3-
401 Position of the indene ring whether or not further substituted
402 in the indene ring to any extent and whether or not substituted
403 in the naphthyl ring to any extent. This shall include, but not
404 be limited to, JWH 176.

405 (62) Phenylacetyloindoles or any compound containing a
406 3-Phenylacetyloindole structure with substitution at the
407 nitrogen atom of the indole ring whether or not further
408 substituted in the indole ring to any extent and whether or
409 not substituted in the phenyl ring to any extent. This shall
410 include the following:

411 (A) RCS-8, SR-18 OR BTM-8;

412 (B) JWH 250;

413 (C) JWH 203;

414 (D) JWH 251;

415 (E) JWH 302.

416 (63) Cyclohexylphenols or any compound containing a
417 2-(3-hydroxycyclohexyl) phenol structure with a

418 substitution at the 5-position of the phenolic ring whether or
419 not substituted in the cyclohexyl ring to any extent. This
420 shall include the following:

421 (A) CP 47,497 and its homologues and analogs;

422 (B) Cannabicyclohexanol;

423 (C) CP 55,940.

424 (64) Benzoylindoles or any compound containing a 3-
425 (benzoyl) indole structure with substitution at the nitrogen
426 atom of the indole ring whether or not further substituted in
427 the indole ring to any extent and whether or not substituted
428 in the phenyl ring to any extent. This shall include the
429 following:

430 (A) AM 694;

431 (B) Pravadoline WIN 48,098;

432 (C) RCS 4;

433 (D) AM 679.

434 (65) [2,3-dihydro-5 methyl-3-(4-morpholinylmethyl)pyrrolo
435 [1,2,3-DE]-1, 4-benzoxazin-6-YL]-1-naphthalenymethanone. This shall
436 include WIN 55,212-2.

437 (66) Dibenzopyrans or any compound containing a 11-
438 hydroxydelta 8-tetrahydrocannabinol structure with
439 substitution on the 3-pentyl group. This shall include HU-
440 210, HU-211, JWH 051 and JWH 133.

441 (67) Adamantoylindoles or any compound containing a
442 3-(-1- Adamantoyl) indole structure with substitution at the
443 nitrogen atom of the indole ring whether or not further
444 substituted in the adamantoyl ring system to any extent.
445 This shall include AM1248.

446 (68) Tetramethylcyclopropylindoles or any compound
447 containing A 3-tetramethylcyclopropylindole structure with

448 substitution at the nitrogen atom of the indole ring whether
449 or not further substituted in the indole ring to any extent and
450 whether or not substituted in the tetramethylcyclopropyl
451 ring to any extent. This shall include UR-144 and XLR-11.

452 (69) N-(1-Adamantyl)-1-pentyl-1h-indazole-3-carboxamide.
453 This shall include AKB48.

454 (70) Any other synthetic chemical compound that is a
455 Cannabinoid receptor type 1 agonist as demonstrated by
456 binding studies and functional assays that is not listed in
457 Schedules II, III, IV and V, not federal Food and Drug
458 Administration approved drug or used within legitimate,
459 approved medical research. Since nomenclature of these
460 substances is not internationally standardized, any
461 immediate precursor or immediate derivative of these
462 substances shall be covered.

463 (71) Tryptamines:

464 (A) 5- methoxy- N- methyl-N-isopropyltryptamine (5-
465 MeO-MiPT)

466 (B) 4-hydroxy-N, N-diisopropyltryptamine (4-HO-
467 DiPT)

468 (C) 4-hydroxy-N-methyl-N-isopropyltryptamine (4-
469 HO-MiPT)

470 (D) 4-hydroxy-N-methyl-N-ethyltryptamine (4-HO-
471 MET)

472 (E) 4-acetoxy-N, N-diisopropyltryptamine (4-AcO-
473 DiPT)

474 (F) 5-methoxy- α -methyltryptamine (5-MeO-AMT)

475 (G) 4-methoxy-N, N-Dimethyltryptamine (4-MeO-
476 DMT)

477 (H) 4-hydroxy Diethyltryptamine (4-HO-DET)

478 (I) 5- methoxy- N, N- diallyltryptamine (5-MeO-
479 DALT)

480 (J) 4-acetoxy-N, N-Dimethyltryptamine (4-AcO DMT)

481 (K) 4-hydroxy Diethyltryptamine (4-HO-DET)

482 (72) N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-
483 (cyclohexylmethyl)-1H-indazole-3-carboxamide (AB-
484 CHMINACA);

485 (73) N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-pentyl-
486 1H-indazole-3-carboxamide (AB-PINACA);

487 (74) [1-(5-fluoropentyl)-1H-indazol-3-yl (naphthalen-
488 1-yl)methanone (THJ-2201);

489 (75) quinolin-8-yl 1-pentyl-1H-indole-3-carboxylate
490 (PB-22; QUPIC);

491 (76) quinolin-8-yl 1-(5-fluoropentyl)-1H-indole-3-
492 carboxylate (5-fluoro-PB-22; 5F-PB-22);

493 (77) N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-(4-
494 fluorobenzyl)-1H-indazole-3-carboxamide (AB-
495 FUBINACA);

496 (78) N-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-
497 1-pentyl-1H-indazole-3-carboxamide (ADB-PINACA);
498 and

499 (79) N-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-
500 1-(cyclohexylmethyl)-1H-indazole-3-carboxamide
501 (common names, MAB-CHMINACA and ADB-
502 CHMINACA);

503 (e) *Depressants*. — Unless specifically excepted or
504 unless listed in another schedule, any material, compound,
505 mixture, or preparation which contains any quantity of the
506 following substances having a depressant effect on the
507 central nervous system, including its salts, isomers and salts
508 of isomers whenever the existence of such salts, isomers and

509 salts of isomers is possible within the specific chemical
510 designation:

511 (1) Mecloqualone;

512 (2) Methaqualone.

513 (f) *Stimulants*. — Unless specifically excepted or unless
514 listed in another schedule, any material, compound,
515 mixture, or preparation which contains any quantity of the
516 following substances having a stimulant effect on the
517 central nervous system, including its salts, isomers and salts
518 of isomers:

519 (1) Aminorex; some other names: aminoxaphen; 2-
520 amino-5- phenyl-2-oxazoline; or 4,5-dihydro-5-phenyl-2-
521 oxazolamine;

522 (2) Cathinone; some trade or other names: 2-amino-1-
523 phenyl-1- propanone, alpha-aminopropiophenone, 2-
524 aminopropiophenone and norephedrone;

525 (3) Fenethylamine;

526 (4) Methcathinone, its immediate precursors and
527 immediate derivatives, its salts, optical isomers and salts of
528 optical isomers; some other names: (2-(methylamino)-
529 propiophenone; alpha-

530 (methylamino)propiophenone; 2-(methylamino)-1-
531 phenylpropan-1- one; alpha-methylaminopropiophenone;
532 monomethylpropion; 3,4-methylenedioxypropylamphetamine and/or
533 mephedrone; 3,4-methylenedioxypropylamphetamine (MPVD);
534 ephedrone; N-methylcathinone; methylcathinone; AL-464; AL-
535 422; AL- 463 and UR1432;

536 (5) (+-) cis-4-methylaminorex; ((+-) cis-4,5-dihydro-4-
537 methyl- 5-phenyl-2-oxazolamine);

538 (6) N-ethylamphetamine;

539 (7) N,N-dimethylamphetemine; also known as N,N-
540 alpha-trimethyl-benzeneethanamine; N,N-alpha-
541 trimethylphenethylamine.

542 (8) Alpha-pyrrolidinopentiophenone, also known as
543 alpha-PVP, optical isomers, salts and salts of isomers.

544 (9) Substituted amphetamines:

545 (A) 2-Fluoroamphetamine

546 (B) 3-Fluoroamphetamine

547 (C) 4-Fluoroamphetamine

548 (D) 2-chloroamphetamine

549 (E) 3-chloroamphetamine

550 (F) 4-chloroamphetamine

551 (G) 2-Fluoromethamphetamine

552 (H) 3-Fluoromethamphetamine

553 (I) 4-Fluoromethamphetamine

554 (J) 4-chloromethamphetamine

555 (10) 4-methyl-N-ethylcathinone (4-MEC);

556 (11) 4-methyl-alpha-pyrrolidinopropiophenone
557 (4-MePPP);

558 (12) 1-(1,3-benzodioxol-5-yl)-2-(methylamino)butan-
559 1-one (butylone);

560 (13) 2-(methylamino)-1-phenylpentan-1-one (pentedrone);

561 (14) 1-(1,3-benzodioxol-5-yl)-2-(methylamino)pentan-
562 1-one (pentylone);

563 (15) 4-fluoro-N-methylcathinone (4-FMC);

- 564 (16) 3-fluoro-N-methylcathinone (3-FMC);
- 565 (17) 1-(naphthalen-2-yl)-2-(pyrrolidin-1-yl)pentan-1-
566 one (naphyrone); and
- 567 (18) Alpha-pyrrolidinobutiophenone (α -PBP).
- 568 (g) Temporary listing of substances subject to
569 emergency scheduling. Any material, compound, mixture or
570 preparation which contains any quantity of the following
571 substances:
- 572 (1) N-[1-benzyl-4-piperidyl]-N-phenylpropanamide
573 (benzylfentanyl), its optical isomers, salts, and salts of
574 isomers.
- 575 (2) N-[1-(2-thienyl) methyl 1-4-piperidyl]-N-
576 phenylpropanamide (thenylfentanyl), its optical isomers,
577 salts and salts of isomers.
- 578 (3) N-benzylpiperazine, also known as BZP.
- 579 (h) The following controlled substances are included in
580 Schedule I:
- 581 (1) Synthetic Cathinones or any compound, except
582 bupropion or compounds listed under a different schedule,
583 or compounds used within legitimate and approved medical
584 research, structurally derived from 2- Aminopropan-1-one
585 by substitution at the 1-position with Monocyclic or fused
586 polycyclic ring systems, whether or not the compound is
587 further modified in any of the following ways:
- 588 (A) By substitution in the ring system to any extent with
589 Alkyl, alkylendioxy, alkoxy, haloalkyl, hydroxyl or halide
590 Substituents whether or not further substituted in the ring
591 system by one or more other univalent substituents.
- 592 (B) By substitution at the 3-Position with an acyclic
593 alkyl substituent.
- 594 (C) By substitution at the 2-amino nitrogen atom with
595 alkyl, dialkyl, benzyl or methoxybenzyl groups.

596 (D) By inclusion of the 2-amino nitrogen atom in a
597 cyclic structure.

598 (2) Any other synthetic chemical compound that is a
599 Cannabinoid receptor type 1 agonist as demonstrated by
600 binding studies and functional assays that is not listed in
601 Schedules II, III, IV and V, not federal Food and Drug
602 Administration approved drug or used within legitimate,
603 approved medical research.

ARTICLE 4. OFFENSES AND PENALTIES.

§60A-4-415. Unlawful manufacture, delivery, transport into state, or possession of fentanyl.

1 (a) For purposes of this section,

2 (1) “Controlled substance” shall have the same meaning
3 as provided in subsection (e), section one hundred one,
4 article one of this chapter.

5 (2) “Fentanyl” refers to the substance identified in
6 subdivision (9), subsection (c), section two hundred six,
7 article two of this chapter, and any analog or derivative
8 thereof.

9 (b) Any person who violates the provisions of
10 subsection (a), section four hundred one of this article or
11 section four hundred nine of this article in which fentanyl is
12 a controlled substance involved in the offense, either alone
13 or in combination with another controlled substance, shall
14 be guilty of a felony, and upon conviction thereof, shall be
15 punished in accordance with the following:

16 (1) If the net weight of fentanyl involved in the offense
17 is less than one gram, such person shall be imprisoned in a
18 correctional facility not less than two nor more than ten
19 years.

20 (2) If the net weight of fentanyl involved in the offense
21 is one gram or more but less than five grams, such person
22 shall be imprisoned in a correctional facility not less than
23 three nor more than fifteen years.

24 (3) If the net weight of fentanyl involved in the offense
25 is five grams or more, such person shall be imprisoned in a
26 correctional facility not less than four nor more than twenty
27 years.

CHAPTER 39

**(Com. Sub. for H. B. 2526 - By Delegates Ellington,
Summers, Sobonya and Rohrbach)**

[Passed April 8, 2017; in effect ninety days from passage.]
[Approved by the Governor on April 26, 2017.]

AN ACT to amend and reenact §60A-2-201, §60A-2-204, §60A-2-206, §60A-2-210 and §60A-2-212 of the Code of West Virginia, 1931, as amended, all relating to classifying additional drugs to Schedules I, II, IV and V of controlled substances; and adding a provision relating to the scheduling of a cannabidiol in a product approved by the Food and Drug Administration.

Be it enacted by the Legislature of West Virginia:

That §60A-2-201, §60A-2-204, §60A-2-206, §60A-2-210 and §60A-2-212 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 2. STANDARDS AND SCHEDULES.

§60A-2-201. Authority of state Board of Pharmacy; recommendations to Legislature.

1 (a) The state Board of Pharmacy shall administer the
2 provisions of this chapter. It shall also, on the first day of
3 each regular legislative session, recommend to the
4 Legislature which substances should be added to or deleted
5 from the schedules of controlled substances contained in
6 this article or reschedule therein. The state Board of

7 Pharmacy shall also have the authority between regular
8 legislative sessions, on an emergency basis, to add to or
9 delete from the schedules of controlled substances
10 contained in this article or reschedule such substances based
11 upon the recommendations and approval of the federal food,
12 drug and cosmetic agency, and shall report such actions on
13 the first day of the regular legislative session immediately
14 following said actions.

15 In making any such recommendation regarding a
16 substance, the state Board of Pharmacy shall consider the
17 following factors:

18 (1) The actual or relative potential for abuse;

19 (2) The scientific evidence of its pharmacological
20 effect, if known;

21 (3) The state of current scientific knowledge regarding
22 the substance;

23 (4) The history and current pattern of abuse;

24 (5) The scope, duration and significance of abuse;

25 (6) The potential of the substance to produce psychic or
26 physiological dependence liability; and

27 (7) Whether the substance is an immediate precursor of
28 a substance already controlled under this article.

29 (b) After considering the factors enumerated in
30 subsection (a), the state Board of Pharmacy shall make
31 findings with respect to the substance under consideration.
32 If it finds that any substance not already controlled under
33 any schedule has a potential for abuse, it shall recommend
34 to the Legislature that the substance be added to the
35 appropriate schedule. If it finds that any substance already
36 controlled under any schedule should be rescheduled or
37 deleted, it shall so recommend to the Legislature.

38 (c) If the state Board of Pharmacy designates a
39 substance as an immediate precursor, substances which are
40 precursors of the controlled precursor shall not be subject to
41 control solely because they are precursors of the controlled
42 precursor.

43 (d) If any substance is designated, rescheduled or
44 deleted as a controlled substance under federal laws and
45 notice thereof is given to the state Board of Pharmacy, the
46 board shall recommend similar control of such substance to
47 the Legislature, specifically stating that such
48 recommendation is based on federal action and the reasons
49 why the federal government deemed such action necessary
50 and proper.

51 (e) The authority vested in the board by subsection (a)
52 of this section shall not extend to distilled spirits, wine, malt
53 beverages or tobacco as those terms are defined or used in
54 other chapters of this code nor to any nonnarcotic substance
55 if such substance may under the "Federal Food, Drug and
56 Cosmetic Act" and the law of this state lawfully be sold over
57 the counter without a prescription.

58 (f) Notwithstanding any provision of this chapter to the
59 contrary, the sale, wholesale, distribution or prescribing of
60 a cannabidiol in a product approved by the Food and Drug
61 Administration is permitted and shall be placed on the
62 schedule as provided for by the Drug Enforcement
63 Administration.

***§60A-2-204. Schedule I.**

1 (a) Schedule I shall consist of the drugs and other
2 substances, by whatever official name, common or usual
3 name, chemical name, or brand name designated, listed in
4 this section.

*NOTE: This section was also amended by H. B. 2329 (Chapter 38),
which passed subsequent to this act.

5 (b) Opiates. Unless specifically excepted or unless listed
6 in another schedule, any of the following opiates, including
7 their isomers, esters, ethers, salts and salts of isomers, esters
8 and ethers, whenever the existence of such isomers, esters,
9 ethers and salts is possible within the specific chemical
10 designation (for purposes of subdivision (34) of this
11 subsection only, the term isomer includes the optical and
12 geometric isomers):

13 (1) Acetyl-alpha-methylfentanyl (N-[1-(1-methyl-2-
14 phenethyl) -4-piperidiny]—phenylacetamide);

15 (2) Acetylmethadol;

16 (3) Allylprodine;

17 (4) Alphacetylmethadol (except
18 levoalphacetylmethadol also known as levo-alpha-
19 acetylmethadol, levomethadyl acetate, or LAAM);

20 (5) Alphameprodine;

21 (6) Alphamethadol;

22 (7) Alpha-methylfentanyl (N-[1-(alpha-methyl-beta-
23 phenyl) ethyl-4-piperidyl] propionanilide; 1-(1-methyl-2-
24 phenylethyl)-4-((propanilido) piperidine);

25 (8) Alpha-methylthiofentanyl (N-[1-methyl-2-(2-
26 thienyl) ethyl- 4-piperidiny]—phenylpropanamide);

27 (9) Benzethidine;

28 (10) Betacetylmethadol;

29 (11) Beta-hydroxyfentanyl (N-[1-(2-hydroxy-2-
30 phenethyl) -4- piperidiny]-N-phenylpropanamide);

31 (12) Beta-hydroxy-3-methylfentanyl (other name: N-[1-
32 (2- hydroxy-2-phenethyl)-3-methyl-4-piperidiny]-N-
33 phenylpropanamide);

- 34 (13) Betameprodine;
- 35 (14) Betamethadol;
- 36 (15) Betaprodine;
- 37 (16) Clonitazene;
- 38 (17) Dextromoramide;
- 39 (18) Diampromide;
- 40 (19) Diethylthiambutene;
- 41 (20) Difenoxin;
- 42 (21) Dimenoxadol;
- 43 (22) Dimepheptanol;
- 44 (23) Dimethylthiambutene;
- 45 (24) Dioxaphetyl butyrate;
- 46 (25) Dipipanone;
- 47 (26) Ethylmethylthiambutene;
- 48 (27) Etonitazene;
- 49 (28) Etoxidine;
- 50 (29) Furethidine;
- 51 (30) Hydroxypethidine;
- 52 (31) Ketobemidone;
- 53 (32) Levomoramide;
- 54 (33) Levophenacymorphan;
- 55 (34) 3-Methylfentanyl (N-[3-methyl-1-(2-phenylethyl)-
- 56 4- piperidyl]-N-phenylpropanamide);

- 57 (35) 3-methylthiofentanyl (N-[3-methyl-1-(2-thienyl)
58 ethyl-4-piperidinyl]—phenylpropanamide);
- 59 (36) Morpheridine;
- 60 (37) MPPP (1-methyl-4-phenyl-4-
61 propionoxypiperidine);
- 62 (38) Noracymethadol;
- 63 (39) Norlevorphanol;
- 64 (40) Normethadone;
- 65 (41) Norpipanone;
- 66 (42) Para-fluorofentanyl (N-(4-fluorophenyl)-N-[1-(2-
67 phenethyl)-4-piperidinyl] propanamide);
- 68 (43) PEPAP(1-(2-phenethyl)-4-phenyl-4-
69 acetoxypiperidine);
- 70 (44) Phenadoxone;
- 71 (45) Phenampromide;
- 72 (46) Phenomorphan;
- 73 (47) Phenoperidine;
- 74 (48) Piritramide;
- 75 (49) Proheptazine;
- 76 (50) Properidine;
- 77 (51) Propiram;
- 78 (52) Racemoramide;
- 79 (53) Thiofentanyl (N-phenyl-N-[1-(2-thienyl) ethyl-4-
80 piperidinyl]-propanamide);
- 81 (54) Tilidine;

82 (55) Trimeperidine.

83 (c) *Opium derivatives*. — Unless specifically excepted
84 or unless listed in another schedule, any of the following
85 opium immediate derivatives, its salts, isomers and salts of
86 isomers whenever the existence of such salts, isomers and
87 salts of isomers is possible within the specific chemical
88 designation:

- 89 (1) Acetorphine;
90 (2) Acetyldihydrocodeine;
91 (3) Benzylmorphine;
92 (4) Codeine methylbromide;
93 (5) Codeine-N-Oxide;
94 (6) Cyprenorphine;
95 (7) Desomorphine;
96 (8) Dihydromorphine;
97 (9) Drotebanol;
98 (10) Etorphine (except HCl Salt);
99 (11) Heroin;
100 (12) Hydromorphinol;
101 (13) Methyldesorphine;
102 (14) Methyldihydromorphine;
103 (15) Morphine methylbromide;
104 (16) Morphine methylsulfonate;
105 (17) Morphine-N-Oxide;
106 (18) Myrophine;

107 (19) Nicocodeine;

108 (20) Nicomorphine;

109 (21) Normorphine;

110 (22) Pholcodine;

111 (23) Thebacon.

112 (d) *Hallucinogenic substances*. — Unless specifically
113 excepted or unless listed in another schedule, any material,
114 compound, mixture or preparation, which contains any
115 quantity of the following hallucinogenic substances, or
116 which contains any of its salts, isomers and salts of isomers,
117 whenever the existence of such salts, isomers, and salts of
118 isomers is possible within the specific chemical designation
119 (for purposes of this subsection only, the term “isomer”
120 includes the optical, position and geometric isomers):

121 (1) Alpha-ethyltryptamine; some trade or other names:
122 etryptamine; Monase; alpha-ethy-1H-indole-3-ethanamine;
123 3-(2-aminobutyl) indole; alpha-ET; and AET;

124 (2) 4-bromo-2, 5-dimethoxy-amphetamine; some trade
125 or other names: 4-bromo-2,5-dimethoxy-alpha-
126 methylphenethylamine; 4-bromo- 2,5-DMA;

127 (3) 4-Bromo-2,5-dimethoxyphenethylamine; some
128 trade or other names: 2-(4-bromo-2,5-dimethoxyphenyl)-1-
129 aminoethane; alpha- desmethyl DOB; 2C-B, Nexus;

130 (4)(A) N-(2-Methoxybenzyl)-4-bromo-2, 5-
131 dimethoxyphenethylamine. The substance has the acronym
132 25B-NBOMe.

133 (B) 2-(4-chloro-2,5-dimethoxyphenyl)-N-(2-
134 methoxybenzyl) ethanamine (25C-NBOMe).

135 (C) 2-(4-iodo-2,5-dimethoxyphenyl)-N-(2-
136 methoxybenzyl) ethanamine (25I-NBOMe)

- 137 (5) 2,5-dimethoxyamphetamine; some trade or other
138 names: 2,5-dimethoxy-alpha-methylphenethylamine; 2,5-
139 DMA;
- 140 (6) 2,5-dimethoxy-4-ethylamphet-amine; some trade or
141 other names: DOET;
- 142 (7) 2,5-dimethoxy-4-(n)-propylthiophenethylamine
143 (other name: 2C-T-7);
- 144 (8) 4-methoxyamphetamine; some trade or other names:
145 4-methoxy-alpha-methylphenethylamine;
146 paramethoxyamphetamine; PMA;
- 147 (9) 5-methoxy-3, 4-methylenedioxy-amphetamine;
- 148 (10) 4-methyl-2,5-dimethoxy-amphetamine; some trade
149 and other names: 4-methyl-2,5-dimethoxy-alpha-
150 methylphenethylamine; "DOM"; and "STP";
- 151 (11) 3,4-methylenedioxy amphetamine;
- 152 (12) 3,4-methylenedioxymethamphetamine (MDMA);
- 153 (13) 3,4-methylenedioxy-N-ethylamphetamine (also
154 known as (ethyl-alpha-methyl-3,4 (methylenedioxy)
155 phenethylamine, N-ethyl MDA, MDE, MDEA);
- 156 (14) N-hydroxy-3,4-methylenedioxyamphetamine (also
157 known as (hydroxy-alpha-methyl-3,4 (methylenedioxy)
158 phenethylamine, and (hydroxy MDA);
- 159 (15) 3,4,5-trimethoxy amphetamine;
- 160 (16) 5-methoxy-N, N-dimethyltryptamine (5-MeO-
161 DMT);
- 162 (17) Alpha-methyltryptamine (other name: AMT);
- 163 (18) Bufotenine; some trade and other names: 3-(beta-
164 Dimethylaminoethyl)-5-hydroxyindole;3-(2-

- 165 dimethylaminoethyl)-5-indolol; N, N-dimethylserotonin;
166 5-hydroxy-N,N- dimethyltryptamine; mappine;
- 167 (19) Diethyltryptamine; sometrade and other names: N,
168 N-Diethyltryptamine; DET;
- 169 (20) Dimethyltryptamine; some trade or other names:
170 DMT;
- 171 (21) 5-Methoxy-N, N-diisopropyltryptamine (5-MeO-
172 DIPT);
- 173 (22) Ibogaine; some trade and other names: 7-Ethyl-6, 6
174 Beta, 7, 8, 9, 10, 12, 13-octahydro-2-methoxy-6, 9-
175 methano-5H- pyrido [1', 2': 1, 2] azeplino [5,4-b] indole;
176 Tabernanthe iboga;
- 177 (23) Lysergic acid diethylamide;
- 178 (24) Marijuana;
- 179 (25) Mescaline;
- 180 (26) Parahexyl-7374; some trade or other names: 3-
181 Hexyl -1-hydroxy-7, 8, 9, 10-tetrahydro-6, 6, 9-trimethyl-
182 6H-dibenzo [b,d] pyran; Synhexyl;
- 183 (27) Peyote; meaning all parts of the plant presently
184 classified botanically as *Lophophora williamsii* Lemaire,
185 whether growing or not, the seeds thereof, any extract from
186 any part of such plant, and every compound, manufacture,
187 salts, immediate derivative, mixture or preparation of such
188 plant, its seeds or extracts;
- 189 (28) N-ethyl-3-piperidyl benzilate;
- 190 (29) N-methyl-3-piperidyl benzilate;
- 191 (30) Psilocybin;
- 192 (31) Psilocyn;

193 (32) Tetrahydrocannabinols; synthetic equivalents of
194 the substances contained in the plant, or in the resinous
195 extractives of Cannabis, sp. and/or synthetic substances,
196 immediate derivatives and their isomers with similar
197 chemical structure and pharmacological activity such as the
198 following:

199 delta-1 Cis or trans tetrahydrocannabinol, and their
200 optical isomers;

201 delta-6 Cis or trans tetrahydrocannabinol, and their
202 optical isomers;

203 delta-3,4 Cis or trans tetrahydrocannabinol, and its
204 optical isomers;

205 (Since nomenclature of these substances is not
206 internationally standardized, compounds of these structures,
207 regardless of numerical designation of atomic positions
208 covered).

209 (33) Ethylamine analog of phencyclidine; some trade or
210 other names: N-ethyl-1-phenylcyclohexylamine, (1-
211 phenylcyclohexyl) ethylamine, N-(1-phenylcyclohexyl)
212 ethylamine, cyclohexamine, PCE;

213 (34) Pyrrolidine analog of phencyclidine; some trade or
214 other names: 1-(1-phenylcyclohexyl)-pyrrolidine, PCPy,
215 PHP;

216 (35) Thiophene analog of phencyclidine; some trade or
217 other names: 1-[1-(2-thienyl)-cyclohexyl]-piperidine, 2-
218 thienylanalog of phencyclidine; TPCP, TCP;

219 (36) 1[1-(2-thienyl)cyclohexyl]pyrrolidine; some other
220 names: TCPy.

221 (37) 4-methylmethcathinone (Mephedrone);

222 (38) 3,4-methylenedioxyprovalerone (MDPV);

- 223 (39) 2-(2,5-Dimethoxy-4-ethylphenyl)ethanamine (2C-
224 E);
- 225 (40) 2-(2,5-Dimethoxy-4-methylphenyl)ethanamine
226 (2C-D);
- 227 (41) 2-(4-Chloro-2,5-dimethoxyphenyl)ethanamine
228 (2C-C);
- 229 (42) 2-(4-Iodo-2,5-dimethoxyphenyl)ethanamine (2C-
230 I);
- 231 (43) 2-[4-(Ethylthio)-2,5-dimethoxyphenyl]ethanamine
232 (2C-T-2);
- 233 (44) 2-[4-(Isopropylthio)-2,5-
234 dimethoxyphenyl]ethanamine (2C-T-4);
- 235 (45) 2-(2,5-Dimethoxyphenyl)ethanamine (2C-H);
- 236 (46) 2-(2,5-Dimethoxy-4-nitro-phenyl) ethanamine
237 (2C-N);
- 238 (47) 2-(2,5-Dimethoxy-4-(n)-propylphenyl)ethanamine
239 (2C-P);
- 240 (48) 3,4-Methylenedioxy-N-methylcathinone
241 (Methylone);
- 242 (49) (2,5-dimethoxy-4-(n)-propylthiophenethylamine
243 (2C-T-7, its optical isomers, salts and salts of isomers
- 244 (50) 5-methoxy-N, N-dimethyltryptamine some trade or
245 other names: 5-methoxy-3-[2-(dimethylamino)ethyl]indole;
246 5-MeO-DMT(5-MeO-DMT);
- 247 (51) Alpha-methyltryptamine (other name: AMT);
- 248 (52) 5-methoxy-N, N-diisopropyltryptamine (other
249 name: 5-MeO-DIPT);
- 250 (53) Synthetic Cannabinoids as follows:

251 (A) 2-[(1R,3S)-3-hydroxycyclohexyl]-5- (2-
252 methyloctan-2-yl) phenol {also known as CP 47,497 and
253 homologues};

254 (B) rel-2-[(1S,3R)-3-hydroxycyclohexyl] -5-(2-
255 methylnonan-2-yl) phenol {also known as CP 47,497-C8
256 homolog};

257 (C) [(6aR)-9-(hydroxymethyl)-6, 6-dimethyl-3-(2-
258 methyloctan-2-yl)-6a, 7,10,10a-
259 tetrahydrobenzo[c]chromen-1-ol)] {also known as HU-
260 210};

261 (D) (dexanabinol);

262 (6aS,10aS)-9-(hydroxymethyl)-6,6-dimethyl-3-(2-
263 methyloctan-2-yl)-6a,7,10,10a-
264 tetrahydrobenzol[c]chromen-1-ol) {also known as HU-
265 211};

266 (E) 1-Pentyl-3-(1-naphthoyl) indole {also known as
267 JWH-018};

268 (F) 1-Butyl-3-(1-naphthoyl) indole {also known as
269 JWH-073};

270 (G) (2-methyl-1-propyl-1H-indol-3-yl)-1-naphthalenyl-
271 methanone {also known as JWH-015};

272 (H) (1-hexyl-1H-indol-3-yl)-1-naphthalenyl-
273 methanone {also known as JWH-019};

274 (I) [1-[2-(4-morpholinyl) ethyl] -1H-indol-3-yl]-1-
275 naphthalenyl-methanone {also known as JWH-200};

276 (J) 1-(1-pentyl-1H-indol-3-yl)-2-(3-hydroxyphenyl)-
277 ethanone {also known as JWH-250};

278 (K) 2-((1S,2S,5S)-5-hydroxy-2- (3-
279 hydroxypropyl)cyclohexyl) -5-(2-methyloctan-2-yl)phenol
280 {also known as CP 55,940};

281 (L) (4-methyl-1-naphthalenyl) (1-pentyl-1H-indol-3-yl)
282 -methanone {also known as JWH-

283 122};

284 (M) (4-methyl-1-naphthalenyl) (1-pentyl-1H-indol-3-
285 yl) -methanone {also known as JWH-

286 398;

287 (N) (4-methoxyphenyl)(1-pentyl-1H-indol-3-
288 yl)methanone {also known as RCS-4};

289 (O) 1-(1-(2-cyclohexylethyl) -1H-indol-3-yl) -2-(2-
290 methoxyphenyl) ethanone {also known as RCS-8};

291 (P) 1-pentyl-3-[1-(4-methoxynaphthoyl) indole (JWH-
292 081);

293 (Q) 1-(5-fluoropentyl)-3-(1-naphthoyl) indole
294 (AM2201); and

295 (R) 1-(5-fluoropentyl)-3-(2-iodobenzoyl) indole
296 (AM694).

297 (54) Synthetic cannabinoids or any material, compound,
298 mixture or preparation which contains any quantity of the
299 following substances, including their analogues, congeners,
300 homologues, isomers, salts and salts of analogues,
301 congeners, homologues and isomers, as follows:

302 (A) CP 47,497 AND homologues, 2-[(1R,3S)-3-
303 Hydroxycyclohexyl]-5-(2-methyloctan-2-YL) phenol);

304 (B) HU-210, [(6AR,10AR)-9-(hydroxymethyl)-6,6-
305 dimethyl-3-(2-Methyloctan-2-YL)-6A,7,10, 10A-
306 tetrahydrobenzo[C] chromen-1-OL)];

307 (C) HU-211, (dexanabinol, (6AS,10AS)-9-
308 (hydroxymethyl)-6,6-Dimethyl-3-(2-methyloctan-2-YL)-
309 6A,7,10,10 atetrahydrobenzo [C] chromen-1-OL);

310 (D) JWH-018, 1-pentyl-3-(1-naphthoyl) indole;

311 (E) JWH-019, 1-hexyl-3-(1-naphthoyl) indole;

312 (F) JWH-073, 1-butyl-3-(1-naphthoyl) indole;

313 (G) JWH-200, (1-(2-morpholin-4-ylethyl) indol-3-yl)-
314 Naphthalen-1-ylmethanone;

315 (H) JWH-250, 1-pentyl-3-(2-methoxyphenylacetyl)
316 indole.

317 (55) Synthetic cannabinoids including any material,
318 compound, mixture or preparation that is not listed as a
319 controlled substance in Schedule I through V, is not a
320 federal Food and Drug Administration approved drug or
321 used within legitimate and approved medical research and
322 which contains any quantity of the following substances,
323 their salts, isomers, whether optical positional or geometric,
324 analogues, homologues and salts of isomers, analogues and
325 homologues, unless specifically exempted, whenever the
326 existence of these salts, isomers, analogues, homologues
327 and salts of isomers, analogues and homologues if possible
328 within the specific chemical designation:

329 (A) Tetrahydrocannabinols meaning tetrahydrocannabinols
330 which are naturally contained in a plant of the genus cannabis as
331 well as synthetic equivalents of the substances contained in the
332 plant or in the resinous extractives of cannabis or synthetic
333 substances, derivatives and their isomers with analogous
334 chemical structure and or pharmacological activity such as the
335 following:

336 (i) DELTA-1 CIS OR trans tetrahydrocannabinol and
337 their Optical isomers.

338 (ii) DELTA-6 CIS OR trans tetrahydrocannabinol and
339 their Optical isomers.

340 (iii) DELTA-3,4 CIS OR their trans
341 tetrahydrocannabinol and their optical isomers.

342 (B) Naphthoyl indoles or any compound containing a 3-
343 (-1- Naphthoyl) indole structure with substitution at the
344 nitrogen atom of the indole ring whether or not further
345 substituted in the indole ring to any extent and whether or
346 not substituted in the naphthyl ring to any extent. This shall
347 include the following:

348 (i) JWH 015;

349 (ii) JWH 018;

350 (iii) JWH 019;

351 (iv) JWH 073;

352 (v) JWH 081;

353 (vi) JWH 122;

354 (vii) JWH 200;

355 (viii) JWH 210;

356 (ix) JWH 398;

357 (x) AM 2201;

358 (xi) WIN 55,212.

359 (56) Synthetic Phenethylamines (including their optical,
360 positional, and geometric isomers, salts and salts of isomers,
361 whenever the existence of such salts, isomers, and salts of
362 isomers):

363 (A) 2-(4-iodo-2,5-dimethoxyphenyl)-N-(2-
364 methoxybenzyl)ethanamine (25I-NBOMe/ 2C-I-NBOMe);

365 (B) 2-(4-chloro-2,5-dimethoxyphenyl)-N-(2-
366 methoxybenzyl)ethanamine (25C-NBOMe/2C-C-
367 NBOMe);

368 (C) 2-(4-bromo-2,5-dimethoxyphenyl)-N-(2-
369 methoxybenzyl)ethanamine (25B-NBOMe/ 2C-B-
370 NBOMe);

371 (57) Synthetic Opioids (including their isomers, esters,
372 ethers, salts and salts of isomers, esters and ethers):

373 (A) N-(1-phenethylpiperidin-4-yl)-N-phenylacetamide
374 (acetyl fentanyl);

375 (B) furanyl fentanyl;

376 (C) 3,4-dichloro-N-[2-(dimethylamino)cyclohexyl]-N-
377 methylbenzamide (also known as U-47700);

378 (D) N-(1-phenethylpiperidin-4-yl)-N-
379 phenylbutyramide, also known as N-(1-phenethylpiperidin-
380 4-yl)-N-phenylbutanamide, (butyryl fentanyl);

381 (E) N-[1-[2-hydroxy-2-(thiophen-2-yl)ethylpiperidin-
382 4-yl]-N-phenylpropionamide, also known as N-[1-[2-
383 hydroxy-2-(2-thienyl)ethyl]-4-piperidinyl]-N-
384 phenylpropanamide, (beta-hydroxythiofentanyl).

385 (58) Opioid Receptor Agonist (including its isomers,
386 esters, ethers, salts, and salts of isomers, esters and ethers):

387 (A) AH-7921 (3,4-dichloro-N-
388 (1dimethylamino)cyclohexylmethyl]benzamide).

389 (59) Naphylmethylindoles or any compound containing
390 a 1indol-3-yl-(1-naphthyl) methane structure with a
391 substitution at the nitrogen atom of the indole ring whether
392 or not further substituted in the indole ring to any extent and
393 whether or not substituted in the naphthyl ring to any extent.
394 This shall include, but not be limited to, JWH 175 and JWH
395 184.

396 (60) Naphthoylpyrroles or any compound containing a
397 3-(1- Naphthoyl) pyrrole structure with substitution at the
398 nitrogen atom of the pyrrole ring whether or not further
399 substituted in the pyrrole ring to any extent and whether or
400 not substituted in the naphthyl ring to any extent. This shall
401 include, but not be limited to, JWH 147 and JWH 307.

402 (61) Naphthylmethylenes or any compound
403 containing a Naphthylideneindene structure with
404 substitution at the 3- Position of the indene ring whether or
405 not further substituted in the indene ring to any extent and
406 whether or not substituted in the naphthyl ring to any extent.
407 This shall include, but not be limited to, JWH 176.

408 (62) Phenylacetylindoles or any compound containing a
409 3- Phenylacetylindole structure with substitution at the
410 nitrogen atom of the indole ring whether or not further
411 substituted in the indole ring to any extent and whether or
412 not substituted in the phenyl ring to any extent. This shall
413 include the following:

414 (A) RCS-8, SR-18 OR BTM-8;

415 (B) JWH 250;

416 (C) JWH 203;

417 (D) JWH 251;

418 (E) JWH 302.

419 (63) Cyclohexylphenols or any compound containing a
420 2-(3- hydroxycyclohexyl) phenol structure with a
421 substitution at the 5-position of the phenolic ring whether or
422 not substituted in the cyclohexyl ring to any extent. This
423 shall include the following:

424 (A) CP 47,497 and its homologues and analogs;

425 (B) Cannabicyclohexanol;

426 (C) CP 55,940.

427 (64) Benzoylindoles or any compound containing a 3-
428 (benzoyl) indole structure with substitution at the nitrogen
429 atom of the indole ring whether or not further substituted in
430 the indole ring to any extent and whether or not substituted
431 in the phenyl ring to any extent. This shall include the
432 following:

433 (A) AM 694;

434 (B) Pravadoline WIN 48,098;

435 (C) RCS 4;

436 (D) AM 679.

437 (65) [2,3-dihydro-5 methyl-3-(4-
438 morpholinylmethyl)pyrrolo [1,2,3-DE]-1, 4-benzoxazin-6-
439 YL]-1-naphthalenymethanone. This shall include WIN
440 55,212-2.

441 (66) Dibenzopyrans or any compound containing a 11-
442 hydroxydelta 8-tetrahydrocannabinol structure with
443 substitution on the 3-pentyl group. This shall include HU-
444 210, HU-211, JWH 051 and JWH 133.

445 (67) Adamantoylindoles or any compound containing a
446 3-(-1- Adamantoyl) indole structure with substitution at the
447 nitrogen atom of the indole ring whether or not further
448 substituted in the adamantoyl ring system to any extent.
449 This shall include AM1248.

450 (68) Tetramethylcyclopropylindoles or any compound
451 containing A 3-tetramethylcyclopropylindole structure with
452 substitution at the nitrogen atom of the indole ring whether
453 or not further substituted in the indole ring to any extent and
454 whether or not substituted in the tetramethylcyclopropyl
455 ring to any extent. This shall include UR-144 and XLR-11.

456 (69) N-(1-Adamantyl)-1-pentyl-1h-indazole-3-
457 carboxamide. This shall include AKB48.

458 (70) Any other synthetic chemical compound that is a
459 Cannabinoid receptor type 1 agonist as demonstrated by
460 binding studies and functional assays that is not listed in
461 Schedules II, III, IV and V, not federal Food and Drug
462 Administration approved drug or used within legitimate,
463 approved medical research. Since nomenclature of these
464 substances is not internationally standardized, any
465 immediate precursor or immediate derivative of these
466 substances shall be covered.

467 (71) Tryptamines:

468 (A) 5- methoxy- N- methyl-N-isopropyltryptamine (5-
469 MeO-MiPT)

470 (B) 4-hydroxy-N, N-diisopropyltryptamine (4-HO-
471 DiPT)

472 (C) 4-hydroxy-N-methyl-N-isopropyltryptamine (4-
473 HO-MiPT)

474 (D) 4-hydroxy-N-methyl-N-ethyltryptamine (4-HO-
475 MET)

476 (E) 4-acetoxy-N, N-diisopropyltryptamine (4-AcO-
477 DiPT)

478 (F) 5-methoxy- α -methyltryptamine (5-MeO-AMT)

479 (G) 4-methoxy-N, N-Dimethyltryptamine (4-MeO-
480 DMT)

481 (H) 4-hydroxy Diethyltryptamine (4-HO-DET)

482 (I) 5- methoxy- N, N- diallyltryptamine (5-MeO-
483 DALT)

484 (J) 4-acetoxy-N, N-Dimethyltryptamine (4-AcO DMT)

485 (K) 4-hydroxy Diethyltryptamine (4-HO-DET)

486 (72) N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-
487 (cyclohexylmethyl)-1H-indazole-3-carboxamide (AB-
488 CHMINACA);

489 (73) N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-pentyl-
490 1H-indazole-3-carboxamide (AB-PINACA);

491 (74) [1-(5-fluoropentyl)-1H-indazol-3-yl (naphthalen-
492 1-yl)methanone (THJ-2201);

493 (75) quinolin-8-yl 1-pentyl-1H-indole-3-carboxylate
494 (PB-22; QUPIC);

495 (76) quinolin-8-yl 1-(5-fluoropentyl)-1H-indole-3-
496 carboxylate (5-fluoro-PB-22; 5F-PB-22);

497 (77) N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-(4-
498 fluorobenzyl)-1H-indazole-3-carboxamide (AB-
499 FUBINACA);

500 (78) N-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-
501 1-pentyl-1H-indazole-3-carboxamide (ADB-PINACA);
502 and

503 (79) N-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-
504 1-(cyclohexylmethyl)-1H-indazole-3-carboxamide
505 (common names, MAB-CHMINACA and ADB-
506 CHMINACA);

507 (e) Depressants. — Unless specifically excepted or
508 unless listed in another schedule, any material, compound,
509 mixture, or preparation which contains any quantity of the
510 following substances having a depressant effect on the
511 central nervous system, including its salts, isomers and salts
512 of isomers whenever the existence of such salts, isomers and
513 salts of isomers is possible within the specific chemical
514 designation:

515 (1) Mecloqualone;

516 (2) Methaqualone.

517 (f) *Stimulants*. — Unless specifically excepted or unless
518 listed in another schedule, any material, compound,
519 mixture, or preparation which contains any quantity of the
520 following substances having a stimulant effect on the
521 central nervous system, including its salts, isomers and salts
522 of isomers:

523 (1) Aminorex; some other names: aminoxaphen; 2-
524 amino-5- phenyl-2-oxazoline; or 4,5-dihydro-5-phenyl-2-
525 oxazolamine;

526 (2) Cathinone; some trade or other names: 2-amino-1-
527 phenyl-1- propanone, alpha-aminopropiophenone, 2-
528 aminopropiophenone and norephedrone;

529 (3) Fenethylamine;

530 (4) Methcathinone, its immediate precursors and
531 immediate derivatives, its salts, optical isomers and salts of
532 optical isomers; some other names: (2-(methylamino)-
533 propiophenone; alpha-(methylamino)propiophenone; 2-
534 (methylamino)-1-phenylpropan-1- one; alpha—
535 methylaminopropiophenone; monomethylpropion; 3,4-
536 methylenedioxypropylvalerone and/or mephedrone; 3,4-
537 methylenedioxypropylvalerone (MPVD); ephedrone; N-
538 methylcathinone; methylcathinone; AL-464; AL-422; AL-
539 463 and UR1432;

540 (5) (+-) cis-4-methylaminorex; ((+-) cis-4,5-dihydro-4-
541 methyl- 5-phenyl-2-oxazolamine);

542 (6) N-ethylamphetamine;

543 (7) N,N-dimethylamphetamine; also known as N,N-
544 alpha- trimethyl-benzeneethanamine; N,N-alpha-
545 trimethylphenethylamine.

546 (8) Alpha-pyrrolidinopentiophenone, also known as
547 alpha-PVP, optical isomers, salts and salts of isomers.

- 548 (9) Substituted amphetamines:
- 549 (A) 2-Fluoroamphetamine
- 550 (B) 3-Fluoroamphetamine
- 551 (C) 4-Fluoroamphetamine
- 552 (D) 2-chloroamphetamine
- 553 (E) 3-chloroamphetamine
- 554 (F) 4-chloroamphetamine
- 555 (G) 2-Fluoromethamphetamine
- 556 (H) 3-Fluoromethamphetamine
- 557 (I) 4-Fluoromethamphetamine
- 558 (J) 4-chloromethamphetamine
- 559 (10) 4-methyl-N-ethylcathinone (4-MEC);
- 560 (11) 4-methyl-alpha-pyrrolidinopropiophenone (4-
561 MePPP);
- 562 (12) 1-(1,3-benzodioxol-5-yl)-2-(methylamino)butan-
563 1-one (butylone);
- 564 (13) 2-(methylamino)-1-phenylpentan-1-one
565 (pentedrone);
- 566 (14) 1-(1,3-benzodioxol-5-yl)-2-(methylamino)pentan-
567 1-one (pentylone);
- 568 (15) 4-fluoro-N-methylcathinone (4-FMC);
- 569 (16) 3-fluoro-N-methylcathinone (3-FMC);
- 570 (17) 1-(naphthalen-2-yl)-2-(pyrrolidin-1-yl)pentan-1-
571 one (naphyrone); and
- 572 (18) Alpha-pyrrolidinobutiophenone (α -PBP).

573 (g) Temporary listing of substances subject to
574 emergency scheduling. Any material, compound, mixture or
575 preparation which contains any quantity of the following
576 substances:

577 (1) N-[1-benzyl-4-piperidyl]-N-phenylpropanamide
578 (benzylfentanyl), its optical isomers, salts, and salts of
579 isomers.

580 (2) N-[1-(2-thienyl) methyl-4-piperidyl]-N-
581 phenylpropanamide (thenylfentanyl), its optical isomers,
582 salts and salts of isomers.

583 (3) N-benzylpiperazine, also known as BZP.

584 (h) The following controlled substances are included in
585 Schedule I:

586 (1) Synthetic Cathinones or any compound, except
587 bupropion or compounds listed under a different schedule,
588 or compounds used within legitimate and approved medical
589 research, structurally derived from 2- Aminopropan-1-one
590 by substitution at the 1-position with Monocyclic or fused
591 polycyclic ring systems, whether or not the compound is
592 further modified in any of the following ways:

593 (A) By substitution in the ring system to any extent with
594 Alkyl, alkylendioxy, alkoxy, haloalkyl, hydroxyl or halide
595 Substituents whether or not further substituted in the ring
596 system by one or more other univalent substituents.

597 (B) By substitution at the 3-Position with an acyclic
598 alkyl substituent.

599 (C) By substitution at the 2-amino nitrogen atom with
600 alkyl, dialkyl, benzyl or methoxybenzyl groups.

601 (D) By inclusion of the 2-amino nitrogen atom in a
602 cyclic structure.

603 (2) Any other synthetic chemical compound that is a
604 Cannabinoid receptor type 1 agonist as demonstrated by
605 binding studies and functional assays that is not listed in
606 Schedules II, III, IV and V, not federal Food and Drug
607 Administration approved drug or used within legitimate,
608 approved medical research.

§60A-2-206. Schedule II.

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

5 (b) *Substances, vegetable origin or chemical synthesis.*
6 — Unless specifically excepted or unless listed in another
7 schedule, any of the following substances whether produced
8 directly or indirectly by extraction from substances of
9 vegetable origin, or independently by means of chemical
10 synthesis, or by a combination of extraction and chemical
11 synthesis:

12 (1) Opium and opiate, and any salt, compound,
13 derivative or preparation of opium or opiate excluding
14 apomorphine, thebaine-derived butorphanol, dextroprhan,
15 nalbuphine, nalmefene, naloxone and naltrexone, and their
16 respective salts, but including the following:

17 (A) Raw opium;

18 (B) Opium extracts;

19 (C) Opium fluid;

20 (D) Powdered opium;

21 (E) Granulated opium;

22 (F) Tincture of opium;

23 (G) Codeine;

- 24 (H) Dihydroetorphine;
- 25 (I) Ethylmorphine;
- 26 (J) Etorphine hydrochloride;
- 27 (K) Hydrocodone;
- 28 (L) Hydromorphone;
- 29 (M) Metopon;
- 30 (N) Morphine;
- 31 (O) Oripavine;
- 32 (P) Oxycodone;
- 33 (Q) Oxymorphone; and
- 34 (R) Thebaine;
- 35 (2) Any salt, compound, derivative or preparation
36 thereof which is chemically equivalent or identical with any
37 of the substances referred to in subdivision (1) of this
38 subsection, except that these substances shall not include the
39 isoquinoline alkaloids of opium;
- 40 (3) Opium poppy and poppy straw;
- 41 (4) Coca leaves and any salt, compound, derivative or
42 preparation of coca leaves (including cocaine and ecgonine
43 and their salts, isomers, derivatives and salts of isomers and
44 derivatives), and any salt, compound, derivative or
45 preparation thereof which is chemically equivalent or
46 identical with any of these substances, except that the
47 substances shall not include decocainized coca leaves or
48 extractions of coca leaves, which extractions do not contain
49 cocaine or ecgonine;

50 (5) Concentrate of poppy straw (the crude extract of
51 poppy straw in either liquid, solid or powder form which
52 contains the phenanthrene alkaloids of the opium poppy).

53 (c) *Opiates*. — Unless specifically excepted or unless in
54 another schedule, any of the following opiates, including its
55 isomers, esters, ethers, salts and salts of isomers, esters and
56 ethers whenever the existence of such isomers, esters, ethers
57 and salts is possible within the specific chemical
58 designation, dextrophan and levopropoxyphene excepted:

59 (1) Alfentanil;

60 (2) Alphaprodine;

61 (3) Anileridine;

62 (4) Bezitramide;

63 (5) Bulk dextropropoxyphene (nondosage forms);

64 (6) Carfentanil;

65 (7) Dihydrocodeine;

66 (8) Diphenoxylate;

67 (9) Fentanyl;

68 (10) Isomethadone;

69 (11) Levo-alpha-acetylmethadol; some other names: levo-
70 alpha-acetylmethadol, levomethadyl acetate, LAAM;

71 (12) Levomethorphan;

72 (13) Levorphanol;

73 (14) Metazocine;

74 (15) Methadone;

75 (16) Methadone-Intermediate, 4-cyano-2-
76 dimethylamino-4, 4-diphenyl butane;

77 (17) Moramide-Intermediate, 2-methyl-3-morpholino-
78 1, 1-diphenylpropane-carboxylic acid;

79 (18) Pethidine; (meperidine);

80 (19) Pethidine-Intermediate-A, 4-cyano-1-methyl-4-
81 phenylpiperidine;

82 (20) Pethidine-Intermediate-B, ethyl-4-
83 phenylpiperidine-4-carboxylate;

84 (21) Pethidine-Intermediate-C, 1-methyl-4-
85 phenylpiperidine-4-carboxylic acid;

86 (22) Phenazocine;

87 (23) Piminodine;

88 (24) Racemethorphan;

89 (25) Racemorphan;

90 (26) Remifentanil;

91 (27) Sufentanil;

92 (28) Tapentadol;

93 (29) Thiafentanil (4-(methoxycarbonyl)-4-(N-
94 phenmethoxyacetamido)-1-2-(thienyl)ethylpiperidine),
95 including its isomers, esters, ethers, salts and salts of
96 isomers, esters and ethers.

97 (d) *Stimulants*. — Unless specifically excepted or unless
98 listed in another schedule, any material, compound, mixture
99 or preparation which contains any quantity of the following
100 substances having a stimulant effect on the central nervous
101 system:

102 (1) Amphetamine, its salts, optical isomers and salts of
103 its optical isomers;

104 (2) Methamphetamine, its salts, isomers and salts of its
105 isomers;

106 (3) Methylphenidate;

107 (4) Phenmetrazine and its salts; and

108 (5) Lisdexamfetamine.

109 (e) *Depressants*. — Unless specifically excepted or
110 unless listed in another schedule, any material, compound,
111 mixture or preparation which contains any quantity of the
112 following substances having a depressant effect on the
113 central nervous system, including its salts, isomers and salts
114 of isomers whenever the existence of such salts, isomers and
115 salts of isomers is possible within the specific chemical
116 designation:

117 (1) Amobarbital;

118 (2) Glutethimide;

119 (3) Pentobarbital;

120 (4) Phencyclidine;

121 (5) Secobarbital.

122 (f) *Hallucinogenic substances*:

123 Nabilone: [Another name for nabilone: (+-)-trans-3-(1,
124 1-dimethylheptyl)-6, 6a, 7, 8, 10, 10a-hexahydro-1-
125 hydroxy-6, 6-dimethyl-9H-dibenzo [b,d] pyran-9-one].

126 (g) *Immediate precursors*. — Unless specifically
127 excepted or unless listed in another schedule, any material,
128 compound, mixture, or preparation which contains any
129 quantity of the following substances:

130 (1) Immediate precursor to amphetamine and
131 methamphetamine:

132 (A) Phenylacetone;

133 (B) Some trade or other names: phenyl-2-propanone;
134 P2P; benzyl methyl ketone; methyl benzyl ketone;

135 (2) Immediate precursors to phencyclidine (PCP):

136 (A) 1-phenylcyclohexylamine; and

137 (B) 1-piperidinocyclohexanecarbonitrile (PCC).

138 (3) Immediate precursor to fentanyl:

139 4-anilino-N-phenethyl-4-piperidine (ANPP).

§60A-2-210. Schedule IV.

1 (a) Schedule IV shall consist of the drugs and other
2 substances, by whatever official name, common or usual
3 name, chemical name, or brand name designated, listed in
4 this section.

5 (b) *Narcotic drugs.* — Unless specifically excepted or
6 unless listed in another schedule, any material, compound,
7 mixture or preparation containing any of the following
8 narcotic drugs, or their salts calculated as the free anhydrous
9 base or alkaloid, in limited quantities as set forth below:

10 (1) Not more than 1 milligram of difenoxin and not less
11 than 25 micrograms of atropine sulfate per dosage unit;

12 (2) Dextropropoxyphene (alpha-(+)-4-dimethylamino-
13 1,2-diphenyl-3-methyl-2-propionoxybutane).

14 (c) *Depressants.* — Unless specifically excepted or
15 unless listed in another schedule, any material, compound,
16 mixture or preparation which contains any quantity of the
17 following substances, including its salts, isomers and salts
18 of isomers whenever the existence of such salts, isomers and

19 salts of isomers is possible within the specific chemical
20 designation:

- 21 (1) Alprazolam;
- 22 (2) Barbital;
- 23 (3) Bromazepam;
- 24 (4) Camazepam;
- 25 (5) Carisoprodol;
- 26 (6) Chloral betaine;
- 27 (7) Chloral hydrate;
- 28 (8) Chlordiazepoxide;
- 29 (9) Clobazam;
- 30 (10) Clonazepam;
- 31 (11) Clorazepate;
- 32 (12) Clotiazepam;
- 33 (13) Cloxazolam;
- 34 (14) Delorazepam;
- 35 (15) Diazepam;
- 36 (16) Dichloralphenazone;
- 37 (17) Estazolam;
- 38 (18) Ethchlorvynol;
- 39 (19) Ethinamate;
- 40 (20) Ethyl loflazepate;
- 41 (21) Fludiazepam;

- 42 (22) Flunitrazepam;
- 43 (23) Flurazepam;
- 44 (24) Fospropofol;
- 45 (25) Halazepam;
- 46 (26) Haloxazolam;
- 47 (27) Ketazolam;
- 48 (28) Loprazolam;
- 49 (29) Lorazepam;
- 50 (30) Lormetazepam;
- 51 (31) Mebutamate;
- 52 (32) Medazepam;
- 53 (33) Meprobamate;
- 54 (34) Methohexital;
- 55 (35) Methylphenobarbital (mephobarbital);
- 56 (36) Midazolam;
- 57 (37) Nimetazepam;
- 58 (38) Nitrazepam;
- 59 (39) Nordiazepam;
- 60 (40) Oxazepam;
- 61 (41) Oxazolam;
- 62 (42) Paraldehyde;
- 63 (43) Petrichloral;
- 64 (44) Phenobarbital;

- 65 (45) Pinazepam;
- 66 (46) Prazepam;
- 67 (47) Quazepam;
- 68 (48) Temazepam;
- 69 (49) Tetrazepam;
- 70 (50) Triazolam;
- 71 (51) Zaleplon;
- 72 (52) Zolpidem;
- 73 (53) Zopiclone;
- 74 (54) Suvorexant ([(7R)-4-(5-chloro-1,3-benzoxazol-2-
75 yl)-7-methyl-1,4-diazepan-1-yl] [5-methyl-2-(2H-1,2,3-
76 triazol-2-yl)phenyl]methanone).
- 77 (d) Any material, compound, mixture or preparation
78 which contains any quantity of the following substance,
79 including its salts, isomers (whether optical, position or
80 geometric) and salts of such isomers whenever the existence
81 of such salts, isomers and salts of isomers is possible:
82 Fenfluramine and Dexfenfluramine.
- 83 (e) *Stimulants*. — Unless specifically excepted or unless
84 listed in another schedule, any material, compound, mixture
85 or preparation which contains any quantity of the following
86 substances having a stimulant effect on the central nervous
87 system, including its salts, isomers and salts of isomers:
- 88 (1) Cathine ((+)-norpseudoephedrine);
- 89 (2) Diethylpropion;
- 90 (3) Fencamfamin;
- 91 (4) Fenproporex;
- 92 (5) Mazindol;

- 93 (6) Mefenorex;
- 94 (7) Modafinil;
- 95 (8) Pemoline (including organometallic complexes and
96 chelates thereof);
- 97 (9) Phentermine;
- 98 (10) Pipradrol;
- 99 (11) Sibutramine;
- 100 (12) SPA ((-)-1-dimethylamino-1,2-diphenylethane);
- 101 (13) Eluxadoline (5-[[[(2S)-2-amino-3-[4-aminocarbonyl]-
102 2,6-dimethylphenyl]-1-oxopropyl [(1S)-1-(4-phenyl-1H-
103 imidazol-2-yl)ethyl]amino]methyl]-2-methoxybenzoic acid);
- 104 (f) *Other substances.* — Unless specifically excepted or
105 unless listed in another schedule, any material, compound,
106 mixture or preparation which contains any quantity of the
107 following substances, including its salts:
- 108 (1) Pentazocine;
- 109 (2) Butorphanol;
- 110 (3) Tramadol (2-[(dimethylamino) methyl]-1-(3-
111 methoxyphenyl) cyclohexanol).
- 112 Amyl nitrite, butyl nitrite, isobutyl nitrite and the other
113 organic nitrites are controlled substances and no product
114 containing these compounds as a significant component
115 shall be possessed, bought or sold other than pursuant to a
116 bona fide prescription or for industrial or manufacturing
117 purposes.

§60A-2-212. Schedule V.

- 1 (a) Schedule V shall consist of the drugs and other
2 substances, by whatever official name, common or usual
3 name, chemical name, or brand name designated, listed in
4 this section.

5 (b) Narcotic drugs containing nonnarcotic active
6 medicinal ingredients. Any compound, mixture or preparation
7 containing any of the following narcotic drugs or their salts
8 calculated as the free anhydrous base or alkaloid in limited
9 quantities as set forth below, which shall include one or more
10 nonnarcotic active medicinal ingredients in sufficient
11 proportion to confer upon the compound, mixture or
12 preparation valuable medicinal qualities other than those
13 possessed by the narcotic drug alone:

14 (1) Not more than 200 milligrams of codeine per 100
15 milliliters or per 100 grams;

16 (2) Not more than 100 milligrams of dihydrocodeine per
17 100 milliliters or per 100 grams;

18 (3) Not more than 100 milligrams of ethylmorphine per
19 100 milliliters or per 100 grams;

20 (4) Not more than 2.5 milligrams of diphenoxylate and not
21 less than 25 micrograms of atropine sulfate per dosage unit;

22 (5) Not more than 100 milligrams of opium per 100
23 milliliters or per 100 grams;

24 (6) Not more than 0.5 milligrams of difenoxin and not
25 less than 25 micrograms of atropine sulfate per dosage unit.

26 (c) *Stimulants*. — Unless specifically exempted or
27 excluded or unless listed in another schedule, any material,
28 compound, mixture or preparation which contains any
29 quantity of the following substances having a stimulant
30 effect on the central nervous system, including its salts,
31 isomers and salts of isomers:

32 (1) Pyrovalerone.

33 (d) Any compound, mixture or preparation containing
34 as its single active ingredient ephedrine, pseudoephedrine or
35 phenylpropanolamine, their salts or optical isomers, or salts
36 of optical isomers except products which are for pediatric
37 use primarily intended for administration to children under
38 the age of twelve: *Provided*, That neither the offenses set

39 forth in section four hundred one, article four of this chapter,
40 nor the penalties therein, shall be applicable to ephedrine,
41 pseudoephedrine or phenylpropanolamine which shall be
42 subject to the provisions of article ten of this chapter.

43 (e) *Depressants*. — Unless specifically exempted or
44 excluded or unless listed in another schedule, any material,
45 compound, mixture or preparation which contains any
46 quantity of the following substances having a depressant
47 effect on the central nervous system, including its salts:

48 (1) Ezogabine [N-[2-amino-4-94-fluorobenzylamino)-
49 phenyl]-carbamic acid ethyl ester];

50 (2) Lacosamide [(R)-2-acetoamido- N -benzyl-3-
51 methoxy-propionamide];

52 (3) Pregabalin [(S)-3-(aminomethyl)-5-methylhexanoic
53 acid]; and

54 (4) Brivaracetam ((2S)-2-[(4R)-2-oxo-4-
55 propylpyrrolidin-1-yl] butanamide) (also referred to as
56 BRV; UCB-34714; Briviact), including its salts.

CHAPTER 40

**(Com. Sub. for H. B. 2579 - By Delegates Sobonya, R.
Romine, Upson, G. Foster, N. Foster, Summers,
Storch, Arvon, C. Miller, Rohrbach and Zatezalo)**

[Passed April 8, 2017; in effect ninety days from passage.]
[Approved by the Governor on April 26, 2017.]

AN ACT to amend and reenact §60A-4-409 of the Code of West Virginia, 1931, as amended, relating to the offense of transporting illegal substances into the state generally; increasing penalties for illegal transportation of controlled substances into the state; clarifying that causing illegal

transportation of controlled substances into the state is prohibited; providing for a differing penalty for an offense involving marihuana; and creating enhanced criminal penalties for transporting certain controlled substances into the state based on quantity.

Be it enacted by the Legislature of West Virginia:

That §60A-4-409 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 4. OFFENSES AND PENALTIES.

§60A-4-409. Prohibited acts – Transportation of controlled substances into state; penalties.

1 (a) Except as otherwise authorized by the provisions of
2 this code, it is unlawful for any person to transport or cause
3 to be transported into this state a controlled substance with
4 the intent to deliver the same or with the intent to
5 manufacture a controlled substance.

6 (b) Any person who violates this section with respect to:

7 (1) A controlled substance classified in Schedule I or II,
8 which is a narcotic drug, shall be guilty of a felony and,
9 upon conviction, may be imprisoned in the state correctional
10 facility for not less than one year nor more than fifteen
11 years, or fined not more than \$25,000, or both;

12 (2) Any other controlled substance classified in
13 Schedule I, II or III shall be guilty of a felony and, upon
14 conviction, may be imprisoned in the state correctional
15 facility for not less than one year nor more than ten years,
16 or fined not more than \$15,000, or both: *Provided*, That for
17 the substance marihuana, as scheduled in subdivision (24)
18 subsection (d), section two hundred four, article two of this
19 chapter, the penalty, upon conviction of a violation of this
20 subsection, shall be that set forth in subdivision (3) of this
21 subsection.

22 (3) A substance classified in Schedule IV shall be guilty
23 of a felony and, upon conviction, may be imprisoned in the
24 state correctional facility for not less than one year nor more
25 than five years, or fined not more than \$10,000, or both;

26 (4) A substance classified in Schedule V shall be guilty
27 of a misdemeanor and, upon conviction, may be confined in
28 jail for not less than six months nor more than one year, or
29 fined not more than \$5,000, or both: *Provided*, That for
30 offenses relating to any substance classified as Schedule V
31 in article ten of this chapter, the penalties established in said
32 article apply.

33 (c) Notwithstanding the provisions of subsection (b) of
34 this section, any person violating or causing a violation of
35 subsection (a) of this section involving one kilogram or
36 more of heroin, five kilograms or more of cocaine or
37 cocaine base, one hundred grams or more of phencyclidine,
38 ten grams or more of lysergic acid diethylamide, or fifty
39 grams or more of methamphetamine or five hundred grams
40 of a substance or material containing a measurable amount
41 of methamphetamine, is guilty of a felony and, upon
42 conviction thereof, shall be imprisoned in a state
43 correctional facility for a determinate sentence of not less
44 than two nor more than thirty years.

45 (d) Notwithstanding the provisions of subsection (b) of
46 this section, any person violating or causing a violation of
47 subsection (a) of this section involving one hundred but
48 fewer than 1000 grams of heroin, not less than five hundred
49 but fewer than 5,000 grams of cocaine or cocaine base, not
50 less than ten but fewer than ninety-nine grams of
51 phencyclidine, not less than one but fewer than ten grams of
52 lysergic acid diethylamide, or not less than five but fewer
53 than fifty grams of methamphetamine or not less than fifty
54 grams but fewer than five hundred grams of a substance or
55 material containing a measurable amount of
56 methamphetamine, is guilty of a felony and, upon
57 conviction thereof, shall be imprisoned in a state

58 correctional facility for a determinate sentence of not less
59 than two nor more than twenty years.

60 (e) Notwithstanding the provisions of subsection (b) of
61 this section, any person violating or attempting to violate the
62 provisions of subsection (a) of this section involving not less
63 than ten grams nor more than one hundred grams of heroin,
64 not less than fifty grams nor more than five hundred grams
65 of cocaine or cocaine base, not less than two grams nor more
66 than ten grams of phencyclidine, not less than two hundred
67 micrograms nor more than one gram of lysergic acid
68 diethylamide, or not less than four hundred ninety-nine
69 milligrams nor more than five grams of methamphetamine
70 or not less than twenty grams nor more than fifty grams of
71 a substance or material containing a measurable amount of
72 methamphetamine is guilty of a felony and, upon conviction
73 thereof, shall be imprisoned in a state correctional facility
74 for a determinate sentence of not less than two nor more
75 than fifteen years.

76 (f) The offense established by this section shall be in
77 addition to and a separate and distinct offense from any
78 other offense set forth in this code.



CHAPTER 41

(Com. Sub. for S. B. 219 - By Senator Weld)

[Passed April 8, 2017; in effect ninety days from passage.]
[Approved by the Governor on April 26, 2017.]

AN ACT to amend the Code of West Virginia, 1931, as amended,
by adding thereto a new section, designated §60A-4-414,
relating generally to conspiracy to commit violations of the
Uniform Controlled Substances Act; creating the felony
offense of conspiracy to violate controlled substances law;

creating distinct felony offenses of conspiracy to manufacture, deliver or possess with intent to manufacture or deliver heroin, cocaine or cocaine base, phencyclidine, lysergic acid diethylamide and methamphetamine distinguished by the weight of the controlled substance; 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 §60A-4-414, to read as follows:

ARTICLE 4. OFFENSES AND PENALTIES.

§60A-4-414. Conspiracy.

1 (a) Any person who willfully conspires with one or
2 more persons to commit a felony violation of section four
3 hundred one of this article, if one or more of such persons
4 does any act to effect the object of the conspiracy, is guilty
5 of a felony and, upon conviction thereof, shall be
6 imprisoned in a state correctional facility for a determinate
7 sentence of not less than two nor more than ten years:
8 *Provided*, That the provisions of this subsection are
9 inapplicable to felony violations of section four hundred one
10 of this article prohibiting the manufacture, delivery or
11 possession with intent to manufacture or deliver marijuana.

12 (b) Notwithstanding the provisions of subsection (a) of
13 this section, any person who willfully conspires with one or
14 more persons to manufacture, deliver or possess with intent
15 to manufacture or deliver one kilogram or more of heroin,
16 five kilograms or more of cocaine or cocaine base, one
17 hundred grams or more of phencyclidine, ten grams or more
18 of lysergic acid diethylamide, or fifty grams or more of
19 methamphetamine or five hundred grams of a substance or
20 material containing a measurable amount of
21 methamphetamine, if one or more of such persons does any
22 act to effect the object of the conspiracy, is guilty of a felony
23 and, upon conviction thereof, shall be imprisoned in a state

24 correctional facility for a determinate sentence of not less
25 than two nor more than thirty years.

26 (c) Notwithstanding the provisions of subsection (a) of
27 this section, any person who willfully conspires with one or
28 more persons to manufacture, deliver or possess with intent
29 to manufacture or deliver not less than one hundred but
30 fewer than one thousand grams of heroin, not less than five
31 hundred but fewer than five thousand grams of cocaine or
32 cocaine base, not less than ten but fewer than one hundred
33 grams of phencyclidine, not less than one but fewer than ten
34 grams of lysergic acid diethylamide, or not less than five but
35 fewer than fifty grams of methamphetamine or not less than
36 fifty grams but fewer than five hundred grams of a substance
37 or material containing a measurable amount of
38 methamphetamine, if one or more of such persons does any
39 act to effect the object of the conspiracy, is guilty of a felony
40 and, upon conviction thereof, shall be imprisoned in a state
41 correctional facility for a determinate sentence of not less
42 than two nor more than twenty years.

43 (d) Notwithstanding the provisions of subsection (a) of
44 this section, any person who willfully conspires with one or
45 more persons to manufacture, deliver, possess with intent to
46 manufacture or deliver not less than ten grams nor more than
47 one hundred grams of heroin, not less than fifty grams nor
48 more than five hundred grams of cocaine or cocaine base,
49 not less than two grams nor more than ten grams of
50 phencyclidine, not less than two hundred micrograms nor
51 more than one gram of lysergic acid diethylamide, or not
52 less than four hundred ninety-nine milligrams nor more than
53 five grams of methamphetamine or not less than twenty
54 grams nor more than fifty grams of a substance or material
55 containing a measurable amount of methamphetamine, if
56 one or more of such persons does any act to effect the object
57 of the conspiracy, is guilty of a felony and, upon conviction
58 thereof, shall be imprisoned in a state correctional facility
59 for a determinate sentence of not less than two nor more
60 than fifteen years.

61 (e) The trier of fact shall determine the quantity of the
62 controlled substance attributable to the defendant beyond a
63 reasonable doubt based on evidence adduced at trial.

64 (f) The determination of the trier of fact as to the
65 quantity of controlled substance attributable to the
66 defendant in a charge under this section may include all of
67 the controlled substances manufactured, delivered or
68 possessed with intent to deliver or manufacture by other
69 participants or members of the conspiracy.

70 (g) Offenses in this section proscribing conduct
71 involving lesser quantities are lesser included offenses of
72 offenses proscribing conduct involving larger quantities.

73 (h) No person may be charged under the provisions of
74 section thirty-one, article ten, chapter sixty-one of this code
75 for conduct that is charged under this section.

76 (i) Nothing in this section may be construed to place any
77 limitation whatsoever upon alternative sentencing options
78 available to a court.



CHAPTER 42

(Com. Sub. for S. B. 220 - By Senator Weld)

[Passed April 8, 2017; in effect ninety days from passage.]

[Approved by the Governor on April 26, 2017.]

AN ACT to amend the Code of West Virginia, 1931, as amended,
by adding thereto a new section, designated §60A-4-416,
relating generally to offenses and penalties under the Uniform
Controlled Substances Act; creating the felony offense of
delivering controlled substances or counterfeit controlled
substances for an illicit purpose resulting in the death of
another person and providing criminal penalties therefor;

creating the criminal offense of failing to seek necessary medical attention for another while jointly engaged in illegal use of controlled substances where death ensues; and providing criminal penalties therefor.

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 §60A-4-416, to read as follows:

ARTICLE 4. OFFENSES AND PENALTIES.

§60A-4-416. Drug delivery resulting in death; failure to render aid.

1 (a) Any person who knowingly and willfully delivers a
2 controlled substance or counterfeit controlled substance in
3 violation of the provisions of section four hundred one,
4 article four of this chapter for an illicit purpose and the use,
5 ingestion or consumption of the controlled substance or
6 counterfeit controlled substance alone or in combination
7 with one or more other controlled substances, proximately
8 causes the death of a person using, ingesting or consuming
9 the controlled substance, is guilty of a felony and, upon
10 conviction thereof, shall be imprisoned in a state
11 correctional facility for a determinate sentence of not less
12 than three nor more than fifteen years.

13 (b) Any person who, while engaged in the illegal use of
14 a controlled substance with another, who knowingly fails to
15 seek medical assistance for such other person when the
16 other person suffers an overdose of the controlled substance
17 or suffers a significant adverse physical reaction to the
18 controlled substance and the overdose or adverse physical
19 reaction proximately causes the death of the other person, is
20 guilty of a felony and, upon conviction thereof, shall be
21 imprisoned for not less than one year nor more than five
22 years.



CHAPTER 43

(Com. Sub. for S. B. 333 - By Senators Takubo, Palumbo, Stollings, Romano, Cline and Maroney)

[Passed April 8, 2017; in effect ninety days from passage.]

[Approved by the Governor on April 26, 2017.]

AN ACT to amend and reenact §60A-9-4, §60A-9-5 and §60A-9-5a of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §60A-9-9, all relating to the Controlled Substances Monitoring Program database; requiring reporting instances of an overdose or a suspected overdose to the database; setting out elements to be reported; allowing access to the database to deans of the state's medical schools or their designees for monitoring prescribing practices of prescribing faculty members, prescribers and residents enrolled in a degree program at the school where the dean serves; allowing access to designated physician reviewers for medical provider employers; providing access to a physician reviewer designated by an employer of medical providers for monitoring prescribing practices of physicians, advance practice registered nurses or physician assistants in their employ; providing access to chief medical officers of a hospital or a physician designated by the chief executive officer of a hospital who does not have a chief medical officer for monitoring prescribing practices of prescribers who have admitting privileges to the hospital; providing that information obtained from accessing the West Virginia Controlled Substances Monitoring Program database shall be documented in a patient's medical record maintained by a private prescriber or any inpatient facility licensed pursuant to public health; allowing the Board of Pharmacy to require that drugs of concern be reported to the database; clarifying

identity information required to be retained by dispensers of controlled substances regarding persons picking up prescriptions other than the patient; exempting reporting requirements for drugs of concern from criminal penalties; allowing duly authorized agents of the Office of Health Facility Licensure and Certification to access the database for use in certification, licensure and regulation of health facilities; providing that a failure to report drugs of concern may be considered a violation of the practice act of the prescriber and may result in discipline by the appropriate licensing board; providing for rulemaking; requiring the licensing boards to report to the Board of Pharmacy when notified of unusual prescribing habits of a licensee; and making technical corrections.

Be it enacted by the Legislature of West Virginia:

That §60A-9-4, §60A-9-5 and §60A-9-5a 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 §60A-9-9, all to read as follows:

ARTICLE 9. CONTROLLED SUBSTANCES MONITORING.

§60A-9-4. Required information.

- 1 (a) Whenever a medical services provider dispenses a
- 2 controlled substance listed in Schedule II, III or IV as
- 3 established under the provisions of article two of this
- 4 chapter or an opioid antagonist, or whenever a prescription
- 5 for the controlled substance or opioid antagonist is filled by:
- 6 (i) A pharmacist or pharmacy in this state; (ii) a hospital, or
- 7 other health care facility, for outpatient use; or (iii) a
- 8 pharmacy or pharmacist licensed by the Board of Pharmacy,
- 9 but situated outside this state for delivery to a person
- 10 residing in this state, the medical services provider, health
- 11 care facility, pharmacist or pharmacy shall, in a manner
- 12 prescribed by rules promulgated by the Board of Pharmacy
- 13 pursuant to this article, report the following information, as
- 14 applicable:

15 (1) The name, address, pharmacy prescription number
16 and Drug Enforcement Administration controlled substance
17 registration number of the dispensing pharmacy or the
18 dispensing physician or dentist;

19 (2) The full legal name, address and birth date of the
20 person for whom the prescription is written;

21 (3) The name, address and Drug Enforcement
22 Administration controlled substances registration number
23 of the practitioner writing the prescription;

24 (4) The name and national drug code number of the
25 Schedule II, III and IV controlled substance or opioid
26 antagonist dispensed;

27 (5) The quantity and dosage of the Schedule II, III and
28 IV controlled substance or opioid antagonist dispensed;

29 (6) The date the prescription was written and the date
30 filled;

31 (7) The number of refills, if any, authorized by the
32 prescription;

33 (8) If the prescription being dispensed is being picked
34 up by someone other than the patient on behalf of the
35 patient, information about the person picking up the
36 prescription as set forth on the person's government-issued
37 photo identification card shall be retained in either print or
38 electronic form until such time as otherwise directed by rule
39 promulgated by the Board of Pharmacy; and

40 (9) The source of payment for the controlled substance
41 dispensed.

42 (b) Whenever a medical services provider treats a
43 patient for an overdose that has occurred as a result of illicit
44 or prescribed medication, the medical service provider shall
45 report the full legal name, address and birth date of the
46 person who is being treated, including any known ancillary

47 evidence of the overdose. The Board of Pharmacy shall
48 coordinate with the Division of Justice and Community
49 Services and the Office of Drug Control Policy regarding
50 the collection of overdose data.

51 (c) The Board of Pharmacy may prescribe by rule
52 promulgated pursuant to this article the form to be used in
53 prescribing a Schedule II, III and IV substance or opioid
54 antagonist if, in the determination of the Board of
55 Pharmacy, the administration of the requirements of this
56 section would be facilitated.

57 (d) Products regulated by the provisions of article ten of
58 this chapter shall be subject to reporting pursuant to the
59 provisions of this article to the extent set forth in said article.

60 (e) Reporting required by this section is not required for
61 a drug administered directly to a patient by a practitioner.
62 Reporting is, however, required by this section for a drug
63 dispensed to a patient by a practitioner. The quantity
64 dispensed by a prescribing practitioner to his or her own
65 patient may not exceed an amount adequate to treat the
66 patient for a maximum of seventy-two hours with no greater
67 than two 72-hour cycles dispensed in any fifteen-day period
68 of time.

69 (f) The Board of Pharmacy shall notify a physician
70 prescribing buprenorphine or buprenorphine/naloxone
71 within sixty days of the availability of an abuse deterrent
72 form of buprenorphine or buprenorphine/naloxone if
73 approved by the Food and Drug Administration as provided
74 in FDA Guidance to Industry. Upon receipt of the notice, a
75 physician may switch their patients using buprenorphine or
76 buprenorphine/naloxone to the abuse deterrent form of the
77 drug.

§60A-9-5. Confidentiality; limited access to records; period of retention; no civil liability for required reporting.

1 (a)(1) The information required by this article to be kept
2 by the Board of Pharmacy is confidential and not subject to

3 the provisions of chapter twenty-nine-b of this code or
4 obtainable as discovery in civil matters absent a court order
5 and is open to inspection only by inspectors and agents of
6 the Board of Pharmacy, members of the West Virginia State
7 Police expressly authorized by the Superintendent of the
8 West Virginia State Police to have access to the
9 information, authorized agents of local law-enforcement
10 agencies as members of a federally affiliated drug task
11 force, authorized agents of the federal Drug Enforcement
12 Administration, duly authorized agents of the Bureau for
13 Medical Services, duly authorized agents of the Office of
14 the Chief Medical Examiner for use in post-mortem
15 examinations, duly authorized agents of the Office of Health
16 Facility Licensure and Certification for use in certification,
17 licensure and regulation of health facilities, duly authorized
18 agents of licensing boards of practitioners in this state and
19 other states authorized to prescribe Schedules II, III and IV
20 controlled substances, prescribing practitioners and
21 pharmacists, a dean of any medical school or his or her
22 designee located in this state to access prescriber level data
23 to monitor prescribing practices of faculty members,
24 prescribers and residents enrolled in a degree program at the
25 school where he or she serves as dean, a physician reviewer
26 designated by an employer of medical providers to monitor
27 prescriber level information of prescribing practices of
28 physicians, advance practice registered nurses or physician
29 assistant in their employ, and a chief medical officer of a
30 hospital or a physician designated by the chief executive
31 officer of a hospital who does not have a chief medical
32 officer, for prescribers who have admitting privileges to the
33 hospital or prescriber level information, and persons with an
34 enforceable court order or regulatory agency administrative
35 subpoena. All law-enforcement personnel who have access
36 to the Controlled Substances Monitoring Program database
37 shall be granted access in accordance with applicable state
38 laws and the Board of Pharmacy's rules, shall be certified
39 as a West Virginia law-enforcement officer and shall have
40 successfully completed training approved by the Board of
41 Pharmacy. All information released by the Board of

42 Pharmacy must be related to a specific patient or a specific
43 individual or entity under investigation by any of the above
44 parties except that practitioners who prescribe or dispense
45 controlled substances may request specific data related to
46 their Drug Enforcement Administration controlled
47 substance registration number or for the purpose of
48 providing treatment to a patient: *Provided*, That the West
49 Virginia Controlled Substances Monitoring Program
50 Database Review Committee established in subsection (b)
51 of this section is authorized to query the database to comply
52 with said subsection.

53 (2) Subject to the provisions of subdivision (1) of this
54 subsection, the Board of Pharmacy shall also review the
55 West Virginia Controlled Substance Monitoring Program
56 database and issue reports that identify abnormal or unusual
57 practices of patients who exceed parameters as determined
58 by the advisory committee established in this section. The
59 Board of Pharmacy shall communicate with practitioners
60 and dispensers to more effectively manage the medications
61 of their patients in the manner recommended by the
62 advisory committee. All other reports produced by the
63 Board of Pharmacy shall be kept confidential. The Board of
64 Pharmacy shall maintain the information required by this
65 article for a period of not less than five years.
66 Notwithstanding any other provisions of this code to the
67 contrary, data obtained under the provisions of this article
68 may be used for compilation of educational, scholarly or
69 statistical purposes, and may be shared with the West
70 Virginia Department of Health and Human Resources for
71 those purposes, as long as the identities of persons or entities
72 and any personally identifiable information, including
73 protected health information, contained therein shall be
74 redacted, scrubbed or otherwise irreversibly destroyed in a
75 manner that will preserve the confidential nature of the
76 information. No individual or entity required to report under
77 section four of this article may be subject to a claim for civil
78 damages or other civil relief for the reporting of information

79 to the Board of Pharmacy as required under and in
80 accordance with the provisions of this article.

81 (3) The Board of Pharmacy shall establish an advisory
82 committee to develop, implement and recommend
83 parameters to be used in identifying abnormal or unusual
84 usage patterns of patients in this state. This advisory
85 committee shall:

86 (A) Consist of the following members: A physician
87 licensed by the West Virginia Board of Medicine, a dentist
88 licensed by the West Virginia Board of Dental Examiners,
89 a physician licensed by the West Virginia Board of
90 Osteopathic Medicine, a licensed physician certified by the
91 American Board of Pain Medicine, a licensed physician
92 board certified in medical oncology recommended by the
93 West Virginia State Medical Association, a licensed
94 physician board certified in palliative care recommended by
95 the West Virginia Center on End of Life Care, a pharmacist
96 licensed by the West Virginia Board of Pharmacy, a
97 licensed physician member of the West Virginia Academy
98 of Family Physicians, an expert in drug diversion and such
99 other members as determined by the Board of Pharmacy.

100 (B) Recommend parameters to identify abnormal or
101 unusual usage patterns of controlled substances for patients
102 in order to prepare reports as requested in accordance with
103 subdivision (2) of this subsection.

104 (C) Make recommendations for training, research and
105 other areas that are determined by the committee to have the
106 potential to reduce inappropriate use of prescription drugs
107 in this state, including, but not limited to, studying issues
108 related to diversion of controlled substances used for the
109 management of opioid addiction.

110 (D) Monitor the ability of medical services providers,
111 health care facilities, pharmacists and pharmacies to meet
112 the 24-hour reporting requirement for the Controlled
113 Substances Monitoring Program set forth in section three of

114 this article, and report on the feasibility of requiring
115 real-time reporting.

116 (E) Establish outreach programs with local law
117 enforcement to provide education to local law enforcement
118 on the requirements and use of the Controlled Substances
119 Monitoring Program database established in this article.

120 (b) The Board of Pharmacy shall create a West Virginia
121 Controlled Substances Monitoring Program Database
122 Review Committee of individuals consisting of two
123 prosecuting attorneys from West Virginia counties, two
124 physicians with specialties which require extensive use of
125 controlled substances and a pharmacist who is trained in the
126 use and abuse of controlled substances. The review
127 committee may determine that an additional physician who
128 is an expert in the field under investigation be added to the
129 team when the facts of a case indicate that the additional
130 expertise is required. The review committee, working
131 independently, may query the database based on parameters
132 established by the advisory committee. The review
133 committee may make determinations on a case-by-case
134 basis on specific unusual prescribing or dispensing patterns
135 indicated by outliers in the system or abnormal or unusual
136 usage patterns of controlled substances by patients which
137 the review committee has reasonable cause to believe
138 necessitates further action by law enforcement or the
139 licensing board having jurisdiction over the practitioners or
140 dispensers under consideration. The licensing board having
141 jurisdiction over the practitioner or dispenser under
142 consideration shall report back to the Board of Pharmacy
143 regarding any findings, investigation or discipline resulting
144 from the findings of the review committee within thirty days
145 of resolution of any action taken by the licensing board
146 resulting from the information provided by the Board of
147 Pharmacy. The review committee shall also review notices
148 provided by the chief medical examiner pursuant to
149 subsection (h), section ten, article twelve, chapter sixty-one
150 of this code and determine on a case-by-case basis whether

151 a practitioner who prescribed or dispensed a controlled
152 substance resulting in or contributing to the drug overdose
153 may have breached professional or occupational standards
154 or committed a criminal act when prescribing the controlled
155 substance at issue to the decedent. Only in those cases in
156 which there is reasonable cause to believe a breach of
157 professional or occupational standards or a criminal act may
158 have occurred, the review committee shall notify the
159 appropriate professional licensing agency having
160 jurisdiction over the applicable practitioner or dispenser and
161 appropriate law-enforcement agencies and provide pertinent
162 information from the database for their consideration. The
163 number of cases identified shall be determined by the
164 review committee based on a number that can be adequately
165 reviewed by the review committee. The information
166 obtained and developed may not be shared except as
167 provided in this article and is not subject to the provisions
168 of chapter twenty-nine-b of this code or obtainable as
169 discovering in civil matters absent a court order.

170 (c) The Board of Pharmacy is responsible for
171 establishing and providing administrative support for the
172 advisory committee and the West Virginia Controlled
173 Substances Monitoring Program Database Review
174 Committee. The advisory committee and the review
175 committee shall elect a chair by majority vote. Members of
176 the advisory committee and the review committee may not
177 be compensated in their capacity as members but shall be
178 reimbursed for reasonable expenses incurred in the
179 performance of their duties.

180 (d) The Board of Pharmacy shall promulgate rules with
181 advice and consent of the advisory committee, in
182 accordance with the provisions of article three, chapter
183 twenty-nine-a of this code. The legislative rules must
184 include, but shall not be limited to, the following matters:

185 (1) Identifying parameters used in identifying abnormal
186 or unusual prescribing or dispensing patterns;

187 (2) Processing parameters and developing reports of
188 abnormal or unusual prescribing or dispensing patterns for
189 patients, practitioners and dispensers;

190 (3) Establishing the information to be contained in
191 reports and the process by which the reports will be
192 generated and disseminated; and

193 (4) Setting up processes and procedures to ensure that
194 the privacy, confidentiality, and security of information
195 collected, recorded, transmitted and maintained by the
196 review committee is not disclosed except as provided in this
197 section.

198 (e) Persons or entities with access to the West Virginia
199 Controlled Substances Monitoring Program database
200 pursuant to this section may, pursuant to rules promulgated
201 by the Board of Pharmacy, delegate appropriate personnel
202 to have access to said database.

203 (f) Good faith reliance by a practitioner on information
204 contained in the West Virginia Controlled Substances
205 Monitoring Program database in prescribing or dispensing
206 or refusing or declining to prescribe or dispense a Schedule
207 II, III or IV controlled substance shall constitute an absolute
208 defense in any civil or criminal action brought due to
209 prescribing or dispensing or refusing or declining to
210 prescribe or dispense.

211 (g) A prescribing or dispensing practitioner may notify
212 law enforcement of a patient who, in the prescribing or
213 dispensing practitioner's judgment, may be in violation of
214 section four hundred ten, article four of this chapter, based
215 on information obtained and reviewed from the controlled
216 substances monitoring database. A prescribing or
217 dispensing practitioner who makes a notification pursuant
218 to this subsection is immune from any civil, administrative
219 or criminal liability that otherwise might be incurred or
220 imposed because of the notification if the notification is
221 made in good faith.

222 (h) Nothing in the article may be construed to require a
223 practitioner to access the West Virginia Controlled
224 Substances Monitoring Program database except as
225 provided in section five-a of this article.

226 (i) The Board of Pharmacy shall provide an annual
227 report on the West Virginia Controlled Substance
228 Monitoring Program to the Legislative Oversight
229 Commission on Health and Human Resources
230 Accountability with recommendations for needed
231 legislation no later than January 1 of each year.

**§60A-9-5a. Practitioner requirements to access database and
conduct annual search of the database; required
rulemaking.**

1 (a) All practitioners, as that term is defined in section
2 one hundred one, article two of this chapter who prescribe
3 or dispense Schedule II, III or IV controlled substances shall
4 register with the West Virginia Controlled Substances
5 Monitoring Program and obtain and maintain online or
6 other electronic access to the program database: *Provided*,
7 That compliance with the provisions of this subsection must
8 be accomplished within thirty days of the practitioner
9 obtaining a new license: *Provided, however*, That the Board
10 of Pharmacy may renew a practitioner's license without
11 proof that the practitioner meet the requirements of this
12 subsection.

13 (b) Upon initially prescribing or dispensing any pain-
14 relieving controlled substance for a patient for whom they
15 are providing pain-relieving controlled substances as part of
16 a course of treatment for chronic, nonmalignant pain but
17 who are not suffering from a terminal illness and at least
18 annually thereafter should the practitioner or dispenser
19 continue to treat the patient with controlled substances, all
20 persons with prescriptive or dispensing authority and in
21 possession of a valid Drug Enforcement Administration
22 registration identification number and, who are licensed by
23 the Board of Medicine as set forth in article three, chapter

24 thirty of this code, the Board of Registered Professional
25 Nurses as set forth in article seven of said chapter, the Board
26 of Dental Examiners as set forth in article four of said
27 chapter and the Board of Osteopathic Medicine as set forth
28 in article fourteen of said chapter shall access the West
29 Virginia Controlled Substances Monitoring Program
30 database for information regarding specific patients. The
31 information obtained from accessing the West Virginia
32 Controlled Substances Monitoring Program database for the
33 patient shall be documented in the patient's medical record
34 maintained by a private prescriber or any inpatient facility
35 licensed pursuant to the provisions of chapter sixteen of this
36 code. A pain-relieving controlled substance shall be defined
37 as set forth in section one, article three-a, chapter thirty of
38 this code.

39 (c) The various boards mentioned in subsection (b) of
40 this section shall promulgate both emergency and legislative
41 rules pursuant to the provisions of article three, chapter
42 twenty-nine-a of this code to effectuate the provisions of
43 this section.

§60A-9-9. Drugs of concern designation.

1 (a) The Board of Pharmacy may designate certain drugs
2 as drugs of concern which must be reported to the database
3 established pursuant to this article. The designation of a
4 drug of concern shall be reserved for drugs which have a
5 high potential for abuse. Whenever a medical services
6 provider dispenses a drug of concern or whenever a
7 prescription for a drug of concern is filled by: (i) A
8 pharmacist or pharmacy in this state; (ii) a hospital, or other
9 health care facility, for outpatient use; or (iii) a pharmacy or
10 pharmacist licensed by the Board of Pharmacy, but situated
11 outside this state for delivery to a person residing in this
12 state, the medical services provider, health care facility,
13 pharmacist or pharmacy shall, in a manner prescribed by
14 rules promulgated by the Board of Pharmacy under this
15 article, report the following information, as applicable:

16 (1) The name, address, pharmacy prescription number
17 and Drug Enforcement Administration controlled substance
18 registration number of the dispensing pharmacy or the
19 dispensing physician or dentist;

20 (2) The full legal name, address and birth date of the
21 person for whom the prescription is written;

22 (3) The name, address and Drug Enforcement
23 Administration controlled substances registration number
24 of the practitioner writing the prescription;

25 (4) The name and national drug number of the drug of
26 concern dispensed;

27 (5) The quantity and dosage of the drug of concern
28 dispensed;

29 (6) The date the prescription was written and the date
30 filled;

31 (7) The number of refills, if any, authorized by the
32 prescription;

33 (8) If the prescription being dispensed is being picked
34 up by someone other than the patient on behalf of the
35 patient, information about the person picking up the
36 prescription as set forth on the person's government-issued
37 photo identification card shall be retained in either print or
38 electronic form until such time as otherwise directed by rule
39 promulgated by the Board of Pharmacy; and

40 (9) The source of payment for the drug of concern
41 dispensed.

42 (b) The penalties set forth in section seven of this article
43 shall not apply to drugs listed as drugs of concern. Failure
44 to report may be considered a violation of the practice act of
45 the prescriber and may result in discipline by the appropriate
46 licensing board.

47 (c) The Board of Pharmacy may promulgate emergency
48 rules pursuant to the provisions of section fifteen, article
49 three, chapter twenty-nine-a of this code to effectuate the
50 provisions of this section.

CHAPTER 44

(Com. Sub. for H. B. 2083 - By Delegates Rodighiero
and Frich)

[Passed April 8, 2017; in effect ninety days from passage.]
[Approved by the Governor on April 25, 2017.]

AN ACT to amend and reenact §60A-10-12 of the Code of West Virginia, 1931, as amended, relating to the Methamphetamine Laboratory Eradication Act; increasing the felony criminal penalty for knowingly causing or permitting a minor to be present in a location where methamphetamine is manufactured or attempted to be manufactured; clarifying that knowingly causing or permitting a minor to be present in a location where methamphetamine is manufactured and thereby causing the minor serious bodily injury is a separate, distinct offense; and clarifying the definition of serious bodily injury.

Be it enacted by the Legislature of West Virginia:

That §60A-10-12 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 10. METHAMPHETAMINE LABORATORY ERADICATION ACT.

§60A-10-12. Exposure of children to methamphetamine manufacturing; penalties.

1 (a) Any person eighteen years of age or older who
2 knowingly causes or permits a minor to be present in a
3 location where methamphetamine is manufactured or
4 attempted to be manufactured is guilty of a felony and, upon
5 conviction thereof, shall be imprisoned in a state
6 correctional facility for not less than two nor more than ten
7 years, fined not more than \$10,000, or both.

8 (b) Notwithstanding the provisions of subsection (a) of
9 this section, any person eighteen years of age or older who
10 knowingly causes or permits a minor to be present in a
11 location where methamphetamine is manufactured or
12 attempted to be manufactured and the child thereby suffers
13 serious bodily injury is guilty of a felony and, upon
14 conviction thereof, shall be imprisoned in a state
15 correctional facility for not less than three nor more than
16 fifteen years, fined not more than \$25,000, or both
17 imprisoned and fined.

18 (c) As used in subsection (b) of this section, “serious
19 bodily injury” shall have the same meaning as this term is
20 defined in section one, article eight-b, chapter sixty-one of
21 this code.



CHAPTER 45

(H. B. 2653 - By Delegates Ellington, Sobonya and Cooper)

[Passed April 4, 2017; in effect ninety days from passage.]
[Approved by the Governor on April 11, 2017.]

AN ACT to amend and reenact §60A-10-16 of the Code of West Virginia, 1931, as amended, relating to extending the Multi-State Real-Time Tracking System.

Be it enacted by the Legislature of West Virginia:

That §60A-10-16 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 10. METHAMPHETAMINE LABORATORY ERADICATION ACT.

§60A-10-16. Expiration of enactments.

1 The provisions of this article establishing the Multi-
2 State Real-Time Tracking System shall expire on June 30,
3 2023.

CHAPTER 46

**(S. B. 490 - By Senators Azinger, Trump,
Mullins and Boso)**

[Passed April 7, 2017; in effect ninety days from passage.]
[Approved by the Governor on April 21, 2017.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §31D-8-842a, relating to the standard of liability for officers of a corporation; establishing standards of liability for officers of a corporation; providing an officer is not liable to the corporation or its shareholders for any decision to take or not to take action or any failure to take any action as an officer except in specified circumstances; providing standards a party seeking to hold an officer liable must establish when seeking money damages; providing standards a party seeking to hold an officer liable must establish when seeking other legal remedies; and clarifying that certain actions under different code sections or the United States code are unaffected.

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 §31D-8-842a, to read as follows:

ARTICLE 8. DIRECTORS AND OFFICERS.

§31D-8-842a. Standards of liability for officers.

1 (a) An officer is not liable to the corporation or its
2 shareholders for any decision to take or not to take action,
3 or any failure to take any action, as an officer, unless the
4 party asserting liability in a proceeding establishes that:

5 (1) Any provision in the articles of incorporation
6 authorized by subdivision (4), subsection (b), section two
7 hundred two, article two of this chapter or the protections
8 afforded by section eight hundred sixty of this article or
9 article seven-c, chapter fifty-five of this code interposed as
10 a bar to the proceeding by the officer, does not preclude
11 liability; and

12 (2) The challenged conduct consisted or was the result
13 of:

14 (A) Action not in good faith; or

15 (B) A decision: (i) Which the officer did not reasonably
16 believe to be in the best interests of the corporation; or (ii)
17 as to which the officer was not informed to an extent the
18 officer reasonably believed appropriate in the
19 circumstances; or

20 (C) A lack of objectivity due to the officer's familial,
21 financial or business relationship with, or a lack of
22 independence due to the officer's domination or control by,
23 another person having a material interest in the challenged
24 conduct: (i) Which relationship or which domination or
25 control could reasonably be expected to have affected the
26 officer's judgment respecting the challenged conduct in a
27 manner adverse to the corporation; and (ii) after a
28 reasonable expectation has been established, the officer

29 does not establish that the challenged conduct was
30 reasonably believed by the officer to be in the best interests
31 of the corporation; or

32 (D) A sustained failure of the officer to devote attention
33 to ongoing oversight of the business and affairs of the
34 corporation, or a failure to devote timely attention, by
35 making or causing to be made appropriate inquiry when
36 particular facts and circumstances of significant concern
37 materialize that would alert a reasonably attentive officer to
38 the need for inquiry;

39 (E) Receipt of a financial benefit to which the officer
40 was not entitled or any other breach of the officer's duties
41 to deal fairly with the corporation and its shareholders that
42 is actionable under applicable law.

43 (b) The party seeking to hold the officer liable:

44 (1) For money damages, has the burden of establishing
45 that:

46 (A) Harm to the corporation or its shareholders has been
47 suffered; and

48 (B) The harm suffered was proximately caused by the
49 officer's challenged conduct; or

50 (2) For other money payment under a legal remedy,
51 including compensation for the unauthorized use of
52 corporate assets, has whatever persuasion burden may be
53 called for to establish that the payment sought is appropriate
54 in the circumstances; or

55 (3) For other money payment under an equitable
56 remedy, including profit recovery by or disgorgement to the
57 corporation, has whatever persuasion burden may be called
58 for to establish that the equitable remedy sought is
59 appropriate in the circumstances.

60 (c) Nothing contained in this section may: (1) In any
61 instance where fairness is at issue, including consideration
62 of the fairness of a transaction to the corporation under
63 section eight hundred sixty of this article, alter the burden
64 of proving the fact or lack of fairness otherwise applicable;
65 (2) alter the fact or lack of liability of an officer under
66 another section of this chapter, including the provisions
67 governing the consequences of an unlawful distribution
68 under section eight hundred thirty-three of this article or a
69 transactional interest under section eight hundred sixty of
70 this article; or (3) affect any rights to which the corporation
71 or a shareholder may be entitled under another provision of
72 this code or the United States Code.

CHAPTER 47

**(S. B. 444 - By Senators Trump, Weld,
Miller and Gaunch)**

[Passed April 8, 2017; in effect ninety days from passage.]
[Approved by the Governor on April 20, 2017.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §51-1-22, relating to establishing a new special revenue fund, designated the Court Advanced Technology Subscription Fund, for the purpose of collecting and remitting moneys to the State Treasury for the use of certain advanced technology systems provided by the Supreme Court of Appeals.

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 §51-1-22, to read as follows:

ARTICLE 1. SUPREME COURT OF APPEALS.**§51-1-22. Court Advanced Technology Subscription Fund created.**

1 (a) There is created within the State Treasury a special
2 revenue fund designated the Court Advanced Technology
3 Subscription Fund to be administered by the West Virginia
4 Supreme Court of Appeals.

5 (b) The fund shall consist of moneys received from
6 subscribers using the court's advanced technology
7 systems including, but not limited to, the e-filing system
8 and the Unified Judicial Application Information
9 System.

10 (c) All moneys deposited into the State Treasury and
11 credited to the Court Advanced Technology Subscription
12 Fund shall be used to pay the costs associated with
13 maintaining and administering the court's advanced
14 technology systems.

15 (d) All moneys collected by the administrator of the
16 Supreme Court of Appeals for the use of the court's
17 advanced technology shall be deposited into the Court
18 Advanced Technology Subscription Fund. Expenditures
19 from the fund shall be for the purposes set forth in
20 subsection (c) of this section and are not authorized from
21 collections but are to be made only in accordance with
22 appropriation by the Legislature in accordance with
23 article three, chapter twelve of this code and upon
24 fulfillment of the requirements of article two, chapter
25 eleven-b of this code: *Provided*, That for the fiscal year
26 ending June 30, 2017, expenditures are authorized from
27 collections rather than pursuant to appropriation by the
28 Legislature.

●

CHAPTER 48

**(Com. Sub. for H. B. 2731 - By Delegates Shott, R.
Miller, Kessinger, Lane and Byrd)
[By Request of the West Virginia Supreme Court of Appeals]**

[Passed April 8, 2017; in effect ninety days from passage.]
[Approved by the Governor on April 26, 2017.]

AN ACT to amend and reenact §51-2-2 of the Code of West Virginia, 1931, as amended, relating to clarifying that only civil actions with controversial amounts exceeding \$7,500 must be heard in circuit court, except in actions relating to real estate installment sales contracts or actions confined exclusively by the Constitution to some other tribunal.

Be it enacted by the Legislature of West Virginia:

That §51-2-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2. CIRCUIT COURTS; CIRCUIT JUDGES.

§51-2-2. Jurisdiction.

1 (a) The circuit court shall have supervision and control
2 of all proceedings before magistrates, by mandamus,
3 prohibition and certiorari.

4 (b) Except in cases confined exclusively by the
5 Constitution to some other tribunal, the circuit court shall
6 have original and general jurisdiction of all matters at law
7 where the amount in controversy, excluding interest,
8 exceeds \$7,500: *Provided*, That the jurisdictional limit on
9 amounts in controversy does not apply to real estate
10 installment sales contracts.

11 (c) The circuit court shall have original and general
12 jurisdiction in all of the following matters:

13 (1) Habeas corpus;

14 (2) Mandamus;

15 (3) Quo warranto;

16 (4) Prohibition;

17 (5) Crimes; and

18 (6) Misdemeanors.

19 (d) The circuit court shall have original and general
20 jurisdiction in all cases in equity, including jurisdiction in
21 equity to remove any cloud on the title to real property, or
22 any part of a cloud, or any estate, right or interest in the real
23 property, and to determine questions of title with respect to
24 the real property without requiring allegations or proof of
25 actual possession of the real property.

26 (e) The circuit court shall have appellate jurisdiction in
27 all cases, civil and criminal, where an appeal, writ of error
28 or supersedeas may be allowed to the judgment or
29 proceedings of any inferior tribunal.

30 (f) The circuit court shall also have any other
31 jurisdiction, whether supervisory, original, appellate or
32 concurrent, as is or may be prescribed by law.

CHAPTER 49

**(Com. Sub. for S. B. 247 - By Senators Trump,
Carmichael (Mr. President), Hall, Palumbo, Woelfel
and Blair)**

[Passed April 1, 2017; in effect from passage.]
[Approved by the Governor on April 11, 2017.]

AN ACT to amend the Code of West Virginia, 1931, as amended,
by adding thereto a new section, designated §52-2-11, relating
generally to grand juries; authorizing prosecuting attorneys to

designate law-enforcement officers and investigators to receive evidence subpoenaed and received by a prosecuting attorney under the authority of a grand jury and to serve as custodians thereof; authorizing designated custodians to use subpoenaed material for legitimate investigative purposes; requiring custodians to preserve grand jury confidentiality and to execute nondisclosure statements to affirm same; authorizing designated custodian to share subpoenaed material with other law-enforcement officers and agencies under limited circumstances; limiting law-enforcement use of such subpoenaed material to legitimate investigative purposes; allowing designated custodians to retain subpoenaed material until conclusion of investigation or prosecution; 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 §52-2-11, to read as follows:

ARTICLE 2. GRAND JURIES.

§52-2-11. Materials subpoenaed by grand jury; authorizing custodian possession and use thereof.

1 (a) For purposes of this section:

2 (1) “Prosecuting attorney” means a prosecuting
3 attorney, assistant prosecuting attorney or duly appointed
4 special prosecuting attorney.

5 (2) “Investigator” means an investigator employed by a
6 prosecuting attorney’s office or an employee of a state
7 agency authorized by the provisions of this code to perform
8 criminal investigations. For purposes of this definition, state
9 agency shall include a legislative committee, commission or
10 entity authorized by the provisions of this code to perform
11 criminal investigations.

12 (3) “Law-enforcement officer” shall have the same
13 meaning as is set forth in section one, article twenty-nine,
14 chapter thirty of this code: *Provided*, That for purposes of
15 this section, “law-enforcement officer” shall also include
16 those individuals meeting the definition of “chief executive”
17 set forth in section one, article twenty-nine, chapter thirty of
18 this code.

19 (4) “Subpoenaed material” means books, records,
20 documents, papers, computers, laptops, computer hard
21 drives, electronic records, including, but not limited to,
22 emails, electronic files, electronic documents, metadata or
23 any other thing in any form in which it may exist.

24 (b) Notwithstanding any provision of this code to the
25 contrary, material subpoenaed and received by a
26 prosecuting attorney pursuant to a grand jury subpoena may
27 thereafter, in the discretion of the prosecuting attorney, be
28 delivered to a designated law-enforcement officer or
29 investigator. Upon receipt from the prosecuting attorney,
30 the designated law-enforcement officer or investigator may
31 keep, review and analyze the subpoenaed materials and
32 otherwise use the subpoenaed materials for investigative
33 purposes.

34 (c) Prior to providing subpoenaed material to a
35 designated law-enforcement officer or investigator, as
36 authorized by subsection (b) of this section, the prosecuting
37 attorney shall prepare and have the designated law-
38 enforcement officer or investigator execute a nondisclosure
39 statement acknowledging the existence and content of the
40 subpoenaed material is secret under Rule 6(e) of the West
41 Virginia Rules of Criminal Procedure. The prosecuting
42 attorney shall file all nondisclosure statements, under seal,
43 with the clerk of the circuit court. The existence or contents
44 of any subpoenaed material subject to the provisions of this
45 section may only be disclosed to another law-enforcement
46 officer or investigator for investigative purposes with the
47 prior written authorization of the prosecuting attorney and

48 the receiving law-enforcement officer’s or investigator’s
49 execution of a nondisclosure statement.

50 (d) The designated law-enforcement officer or
51 investigator, as authorized by subsection (b) of this section,
52 may, in the discretion of the prosecuting attorney, retain the
53 subpoenaed material or other evidence in his or her
54 possession, care, custody or control until the termination of
55 the investigation or presentation of the subpoenaed matter
56 to the grand jury.

CHAPTER 50

**(Com. Sub. for S. B. 442 - By Senators Weld and
Cline)**

[Passed March 31, 2017; in effect ninety days from passage.]
[Approved by the Governor on April 11, 2017.]

AN ACT to amend and reenact §61-2-9 and §61-2-28 of the Code of West Virginia, 1931, as amended, all relating generally to crimes against the person; modifying definitions of “assault”, “battery”, “domestic assault” and “domestic battery”; and establishing penalties therefore.

Be it enacted by the Legislature of West Virginia:

That §61-2-9 and §61-2-28 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 2. CRIMES AGAINST THE PERSON.

§61-2-9. Malicious or unlawful assault; assault; battery; penalties.

1 (a) If any person maliciously shoots, stabs, cuts or
2 wounds any person, or by any means cause him or her
3 bodily injury with intent to maim, disfigure, disable or kill,

4 he or she, except where it is otherwise provided, is guilty of
5 a felony and, upon conviction thereof, shall be punished by
6 confinement in a state correctional facility not less than two
7 nor more than ten years. If the act is done unlawfully, but
8 not maliciously, with the intent aforesaid, the offender is
9 guilty of a felony and, upon conviction thereof, shall either
10 be imprisoned in a state correctional facility not less than
11 one nor more than five years, or be confined in jail not
12 exceeding twelve months and fined not exceeding \$500.

13 (b) *Assault*. — Any person who unlawfully attempts to
14 commit a violent injury to the person of another or
15 unlawfully commits an act that places another in reasonable
16 apprehension of immediately receiving a violent injury is
17 guilty of a misdemeanor and, upon conviction thereof, shall
18 be confined in jail for not more than six months or fined not
19 more than \$100, or both fined and confined.

20 (c) *Battery*. — Any person who unlawfully and
21 intentionally makes physical contact of an insulting or
22 provoking nature to the person of another or unlawfully and
23 intentionally causes physical harm to another person is
24 guilty of a misdemeanor and, upon conviction thereof, shall
25 be confined in jail for not more than twelve months or fined
26 not more than \$500, or both fined and confined.

27 (d) Any person convicted of a violation of subsection
28 (b) or (c) of this section who has, in the ten years prior to
29 the conviction, been convicted of a violation of either
30 subsection (b) or (c) of this section where the victim was a
31 current or former spouse, current or former sexual or
32 intimate partner, a person with whom the defendant has a
33 child in common, a person with whom the defendant
34 cohabits or has cohabited, a parent or guardian or the
35 defendant's child or ward at the time of the offense or
36 convicted of a violation of section twenty-eight of this
37 article or has served a period of pretrial diversion for an
38 alleged violation of subsection (b) or (c) of this section or
39 section twenty-eight of this article when the victim has a
40 present or past relationship, upon conviction, is subject to

41 the penalties set forth in section twenty-eight of this article
42 for a second, third or subsequent criminal act of domestic
43 violence offense, as appropriate.

§61-2-28. Domestic violence — criminal acts.

1 (a) *Domestic battery.* — Any person who unlawfully
2 and intentionally makes physical contact of an insulting or
3 provoking nature with his or her family or household
4 member, or unlawfully and intentionally causes physical
5 harm to his or her family or household member, is guilty of
6 a misdemeanor and, upon conviction thereof, shall be
7 confined in jail for not more than twelve months or fined not
8 more than \$500, or both fined and confined.

9 (b) *Domestic assault.* — Any person who unlawfully
10 attempts to commit a violent injury against his or her family
11 or household member, or unlawfully commits an act that
12 places his or her family or household member in reasonable
13 apprehension of immediately receiving a violent injury, is
14 guilty of a misdemeanor and, upon conviction thereof, shall
15 be confined in jail for not more than six months or fined not
16 more than \$100, or both fined and confined.

17 (c) *Second offense.* — Domestic assault or domestic
18 battery.

19 A person convicted of a violation of subsection (a) of
20 this section after having been previously convicted of a
21 violation of subsection (a) or (b) of this section, after having
22 been convicted of a violation of subsection (b) or (c), section
23 nine of this article or subsection (a), section fourteen-g of
24 this article, where the victim was his or her current or former
25 spouse, current or former sexual or intimate partner, person
26 with whom the defendant has a child in common, person
27 with whom the defendant cohabits or has cohabited, a parent
28 or guardian, the defendant's child or ward or a member of
29 the defendant's household at the time of the offense or who
30 has previously been granted a period of pretrial diversion
31 pursuant to section twenty-two, article eleven of this chapter

32 for a violation of subsection (a) or (b) of this section, or a
33 violation of subsection (b) or (c), section nine of this article
34 or subsection (a), section fourteen-g of this article where the
35 victim was a current or former spouse, current or former
36 sexual or intimate partner, person with whom the defendant
37 has a child in common, person with whom the defendant
38 cohabits or has cohabited, a parent or guardian, the
39 defendant's child or ward or a member of the defendant's
40 household at the time of the offense is guilty of a
41 misdemeanor and, upon conviction thereof, shall be
42 confined in jail for not less than sixty days nor more than
43 one year or fined not more than \$1,000, or both fined and
44 confined.

45 A person convicted of a violation of subsection (b) of
46 this section after having been previously convicted of a
47 violation of subsection (a) or (b) of this section, after having
48 been convicted of a violation of subsection (b) or (c), section
49 nine of this article or subsection (a), section fourteen-g of
50 this article, where the victim was a current or former spouse,
51 current or former sexual or intimate partner, person with
52 whom the defendant has a child in common, person with
53 whom the defendant cohabits or has cohabited, a parent or
54 guardian, the defendant's child or ward or a member of the
55 defendant's household at the time of the offense or having
56 previously been granted a period of pretrial diversion
57 pursuant to section twenty-two, article eleven of this chapter
58 for a violation of subsection (a) or (b) of this section or
59 subsection (b) or (c), section nine of this article or
60 subsection (a), section fourteen-g of this article where the
61 victim was a current or former spouse, current or former
62 sexual or intimate partner, person with whom the defendant
63 has a child in common, person with whom the defendant
64 cohabits or has cohabited, a parent or guardian, the
65 defendant's child or ward or a member of the defendant's
66 household at the time of the offense shall be confined in jail
67 for not less than thirty days nor more than six months or
68 fined not more than \$500, or both fined and confined.

69 (d) Any person who has been convicted of a third or
70 subsequent violation of the provisions of subsection (a) or
71 (b) of this section, a third or subsequent violation of the
72 provisions of section nine of this article or subsection (a),
73 section fourteen-g of this article, where the victim was a
74 current or former spouse, current or former sexual or
75 intimate partner, person with whom the defendant has a
76 child in common, person with whom the defendant cohabits
77 or has cohabited, a parent or guardian, the defendant's child
78 or ward or a member of the defendant's household at the
79 time of the offense or who has previously been granted a
80 period of pretrial diversion pursuant to section twenty-two,
81 article eleven of this chapter for a violation of subsection (a)
82 or (b) of this section or a violation of the provisions of
83 section nine of this article or subsection (a), section
84 fourteen-g of this article in which the victim was a current
85 or former spouse, current or former sexual or intimate
86 partner, person with whom the defendant has a child in
87 common, person with whom the defendant cohabits or has
88 cohabited, a parent or guardian, the defendant's child or
89 ward or a member of the defendant's household at the time
90 of the offense, or any combination of convictions or
91 diversions for these offenses, is guilty of a felony if the
92 offense occurs within ten years of a prior conviction of any
93 of these offenses and, upon conviction thereof, shall be
94 confined in a state correctional facility not less than one nor
95 more than five years or fined not more than \$2,500, or both
96 fined and confined.

97 (e) As used in this section, "family or household
98 member" means "family or household member" as defined
99 in section two hundred four, article twenty-seven, chapter
100 forty-eight of this code.

101 (f) A person charged with a violation of this section may
102 not also be charged with a violation of subsection (b) or (c),
103 section nine of this article for the same act.

104 (g) No law-enforcement officer may be subject to any
105 civil or criminal action for false arrest or unlawful detention

106 for effecting an arrest pursuant to this section or pursuant to
107 section one thousand two, article twenty-seven, chapter
108 forty-eight of this code.

CHAPTER 51

**(H. B. 3018 - By Delegates Isner, Canestraro,
Sobonya, Summers, Boggs, Fast, Kessinger, R. Miller,
Capito, Robinson and Lovejoy)**

[Passed April 8, 2017; in effect ninety days from passage.]
[Approved by the Governor on April 26, 2017.]

AN ACT to amend and reenact §61-2-10b of the Code of West Virginia, 1931, as amended, relating to crimes against the person; defining correctional employee; including correctional employees as persons to whom the criminal penalties for malicious assault, unlawful assault, battery and assault in this section apply; establishing penalties; and prohibiting certain persons so convicted from receiving concurrent sentences under certain circumstances.

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, correctional employees and emergency medical service personnel; definitions; penalties.

1 (a) For purposes of this section:

2 (1) “Government representative” means any officer or
3 employee of the state or a political subdivision thereof, or a
4 person under contract with a state agency or political
5 subdivision thereof.

6 (2) “Health care worker” means any nurse, nurse
7 practitioner, physician, physician assistant or technician
8 practicing at, and all persons employed by or under contract
9 to a hospital, county or district health department, long-term
10 care facility, physician’s office, clinic or outpatient
11 treatment facility.

12 (3) “Emergency service personnel” means any paid or
13 volunteer firefighter, emergency medical technician,
14 paramedic, or other emergency services personnel
15 employed by or under contract with an emergency medical
16 service provider or a state agency or political subdivision
17 thereof.

18 (4) “Utility worker” means any individual employed by
19 a public utility or electric cooperative or under contract to a
20 public utility, electric cooperative or interstate pipeline.

21 (5) “Law-enforcement officer” has the same definition
22 as this term is defined in W.Va. Code §30-29-1, except for
23 purposes of this section, “law-enforcement officer” shall
24 additionally include those individuals defined as “chief
25 executive” in W.Va. Code §30-29-1.

26 (6) “Correctional employee” means any individual
27 employed by the West Virginia Division of Corrections, the
28 West Virginia Regional Jail Authority, and the West
29 Virginia Division of Juvenile Services and an employee of
30 an entity providing services to incarcerated, detained or
31 housed persons pursuant to a contract with such agencies.

32 (b) *Malicious assault.* — Any person who maliciously
33 shoots, stabs, cuts or wounds or by any means causes bodily
34 injury with intent to maim, disfigure, disable or kill a
35 government representative, health care worker, utility

36 worker, emergency service personnel, correctional
37 employee or law-enforcement officer acting in his or her
38 official capacity, and the person committing the malicious
39 assault knows or has reason to know that the victim is acting
40 in his or her official capacity is guilty of a felony and, upon
41 conviction thereof, shall be confined in a correctional
42 facility for not less than three nor more than fifteen years.

43 (c) *Unlawful assault.* — Any person who unlawfully but
44 not maliciously shoots, stabs, cuts or wounds or by any
45 means causes a government representative, health care
46 worker, utility worker, emergency service personnel,
47 correctional employee or law-enforcement officer acting in
48 his or her official capacity bodily injury with intent to maim,
49 disfigure, disable or kill him or her and the person
50 committing the unlawful assault knows or has reason to
51 know that the victim is acting in his or her official capacity
52 is guilty of a felony and, upon conviction thereof, shall be
53 confined in a correctional facility for not less than two nor
54 more than five years.

55 (d) *Battery.* — Any person who unlawfully, knowingly
56 and intentionally makes physical contact of an insulting or
57 provoking nature with a government representative, health
58 care worker, utility worker, emergency service personnel,
59 correctional employee or law-enforcement officer acting in
60 his or her official capacity and the person committing the
61 battery knows or has reason to know that the victim is acting
62 in his or her official capacity, or unlawfully and
63 intentionally causes physical harm to that person acting in
64 such capacity and the person committing the battery knows
65 or has reason to know that the victim is acting in his or her
66 official capacity, is guilty of a misdemeanor and, upon
67 conviction thereof, shall be fined not more than \$500 or
68 confined in jail not less than one month nor more than
69 twelve months or both fined and confined. If any person
70 commits a second such offense, he or she is guilty of a
71 felony and, upon conviction thereof, shall be fined not more

72 than \$1,000 or imprisoned in a state correctional facility not
73 less than one year nor more than three years, or both fined
74 and imprisoned. Any person who commits a third violation
75 of this subsection is guilty of a felony and, upon conviction
76 thereof, shall be fined not more than \$2,000 or imprisoned
77 in a state correctional facility not less than two years nor
78 more than five years, or both fined and imprisoned.

79 (e) *Assault.* — Any person who unlawfully attempts to
80 commit a violent injury to the person of a government
81 representative, health care worker, utility worker,
82 emergency service personnel, correctional employee or law-
83 enforcement officer, acting in his or her official capacity and
84 the person committing the battery knows or has reason to
85 know that the victim is acting in his or her official capacity,
86 or unlawfully commits an act which places that person
87 acting in his or her official capacity in reasonable
88 apprehension of immediately receiving a violent injury and
89 the person committing the battery knows or has reason to
90 know that the victim is acting in his or her official capacity,
91 is guilty of a misdemeanor and, upon conviction thereof,
92 shall be confined in jail for not less than twenty-four hours
93 nor more than six months, fined not more than \$200, or both
94 fined and confined.

95 (f) Any person convicted of any crime set forth in this
96 section who is incarcerated in a facility operated by the West
97 Virginia Division of Corrections or the West Virginia
98 Regional Jail Authority, or is in the custody of the Division
99 of Juvenile Services and is at least eighteen years of age or
100 subject to prosecution as an adult, at the time of committing
101 the offense and whose victim is a correctional employee
102 may not be sentenced in a manner by which the sentence
103 would run concurrent with any other sentence being served
104 at the time the offense giving rise to the conviction of a
105 crime set forth in this section was committed.

●

CHAPTER 52

(Com. Sub. for S. B. 206 - By Senator Weld)

[Passed April 3, 2017; in effect ninety days from passage.]
[Approved by the Governor on April 11, 2017.]

AN ACT to amend and reenact §61-2-14a of the Code of West Virginia, 1931, as amended, relating generally to the criminal offense of kidnapping; making unlawful the taking, gaining custody of, confining, concealing or restraining of another person by force or threat of force, duress, fraud, deceit, inveiglement, misrepresentation or enticement; and providing penalties.

Be it enacted by the Legislature of West Virginia:

That §61-2-14a of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2. CRIMES AGAINST THE PERSON.

§61-2-14a. Kidnapping; penalty.

1 (a) Any person who unlawfully takes custody of,
2 conceals, confines or restrains another person against his or
3 her will by means of force, threat of force, duress, fraud,
4 deceit, inveiglement, misrepresentation or enticement with
5 the intent:

6 (1) To hold another person for ransom, reward or
7 concession;

8 (2) To transport another person with the intent to inflict
9 bodily injury or to terrorize the victim or another person; or

10 (3) To use another person as a shield or hostage, is guilty
11 of a felony and, upon conviction, shall be punished by

12 confinement by the Division of Corrections for life, and,
13 notwithstanding the provisions of article twelve, chapter
14 sixty-two of this code, is not eligible for parole.

15 (b) The following exceptions apply to the penalty
16 contained in subsection (a):

17 (1) A jury may, in their discretion, recommend mercy,
18 and if the recommendation is added to their verdict, the
19 person is eligible for parole in accordance with the
20 provisions of article twelve, chapter sixty-two of this code;

21 (2) If the person pleads guilty, the court may, in its
22 discretion, provide that the person is eligible for parole in
23 accordance with the provisions of article twelve, chapter
24 sixty-two of this code and, if the court so
25 provides, the person is eligible for parole in accordance
26 with the provisions of said article in the same manner and
27 with like effect as if the person had been found guilty by the
28 verdict of a jury and the jury had recommended mercy;

29 (3) In all cases where the person against whom the
30 offense is committed is returned, or is permitted to return,
31 alive, without bodily harm having been inflicted upon him,
32 but after ransom, money or other thing, or any concession
33 or advantage of any sort has been paid or yielded, the
34 punishment shall be confinement by the Division of
35 Corrections for a definite term of years not less than twenty
36 nor more than fifty; or

37 (4) In all cases where the person against whom the
38 offense is committed is returned, or is permitted to return,
39 alive, without bodily harm having been inflicted upon him
40 or her, but without ransom, money or other thing, or any
41 concession or advantage of any sort having been paid or
42 yielded, the punishment shall be confinement by the
43 Division of Corrections for a definite term of years not less
44 than ten nor more than thirty.

45 (c) For purposes of this section, “to use another as a
46 hostage” means to seize or detain and threaten to kill or
47 injure another in order to compel a third person or a
48 governmental organization to do, or abstain from doing, any
49 legal act as an explicit or implicit condition for the release
50 of the person detained.

51 (d) Notwithstanding any other provision of this section,
52 if a violation of this section is committed by a family
53 member of a minor abducted or held hostage and he or she
54 is not motivated by monetary purposes, but rather intends to
55 conceal, take, remove the child or refuse to return the child
56 to his or her lawful guardian in the belief, mistaken or not,
57 that it is in the child’s interest to do so, he or she is guilty of
58 a felony and, upon conviction thereof, be confined in a
59 correctional facility for not less than one nor more than five
60 years or fined not more than \$1,000, or both confined and
61 fined.

62 (e) Notwithstanding any provision of this code to the
63 contrary, where a law-enforcement agency of this state or a
64 political subdivision thereof receives a complaint that a
65 violation of the provisions of this section has occurred, the
66 receiving law-enforcement agency shall notify any other
67 law-enforcement agency with jurisdiction over the offense,
68 including, but not limited to, the State Police and each
69 agency so notified, shall cooperate in the investigation
70 forthwith.

71 (f) It is a defense to a violation of subsection (d) of this
72 section, that the accused’s action was necessary to preserve
73 the welfare of the minor child and the accused promptly
74 reported his or her actions to a person with lawful custody
75 of the minor, to law enforcement or to the Child Protective
76 Services Division of the Department of Health and Human
77 Resources.

●

CHAPTER 53

**(Com. Sub. for H. B. 2367 - By Delegates R. Miller,
Marcum, Eldridge, Rodighiero, Phillips, Sobonya,
Lovejoy and Hicks)**

[Passed April 8, 2017; in effect ninety days from passage.]
[Approved by the Governor on April 26, 2017.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §61-3A-7, relating to establishing the offenses of organized retail theft and knowing purchase of materials obtained by organized retail theft; establishing elements of offenses; defining terms; establishing criminal penalties; providing for the cumulation of merchandise values; providing for prosecution in any county in which any part of an offense occurs; providing for seizure and forfeiture of cash, assets or other property derived in part or total from any proceeds from participating in a violation of the section; and authorizing a sentencing court to order disgorgement of illegal gains.

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 §61-3A-7, to read as follows:

ARTICLE 3A. SHOPLIFTING.

§61-3A-7. Organized retail theft; offenses; penalties; cumulation; venue; forfeiture.

- 1 (a) Any person who enters into a common scheme or
- 2 plan with two or more other persons to violate the provisions
- 3 of section one of this article involving merchandise of a
- 4 cumulative value of \$2,000 or more with the intent to sell,

5 trade or otherwise distribute the merchandise shall be guilty
6 of a felony, and, upon conviction, shall be imprisoned in a
7 state correctional facility for a determinate term of not less
8 than one nor more than ten years or be fined not less than
9 \$1,000 nor more than \$10,000, or both imprisoned and
10 fined.

11 (b) Notwithstanding the provisions of subsection (a) of
12 this section any person who enters into a common scheme
13 or plan with two or more other persons to violate the
14 provisions of section one of this article involving
15 merchandise of a cumulative value of \$10,000 or more with
16 the intent to sell, trade or otherwise distribute the
17 merchandise shall be guilty of a felony, and, upon
18 conviction, shall be imprisoned in a state correctional
19 facility for a determinate term of not less than two nor more
20 than twenty years fined not less than \$2,000 nor more than
21 \$25,000, or both imprisoned and fined.

22 (c) Any person who purchases, trades or barterers for, or
23 otherwise obtains with any form of consideration,
24 merchandise from persons he knows or has reason to believe
25 was obtained by three or more persons engaged in a
26 common scheme or plan to violate the provisions of section
27 one of this article shall be guilty of a felony.

28 (d) Any person who violates the provisions of
29 subsection (c) of this section by purchasing, trading or
30 bartering for merchandise with a cumulative value of \$2,000
31 or more shall, upon conviction, be imprisoned in a state
32 correctional facility for a determinate term of not less than
33 one year, nor more than ten years or fined not less than
34 \$1,000 nor more than \$10,000, or both imprisoned and
35 fined.

36 (e) Notwithstanding the provisions of subsection (d) of
37 this section, any person who violates the provisions of
38 subsection (c) of this section by purchasing, trading or
39 bartering for merchandise with a cumulative value of
40 \$10,000 or more shall, upon conviction, be imprisoned in a
41 state correctional facility for a determinate term of not less
42 than two years, nor more than twenty years or fined not less

43 than \$2,000 nor more than \$25,000, or both imprisoned and
44 fined.

45 (f) In determining the value of merchandise in a
46 prosecution under this section, it is permissible to cumulate
47 the value of merchandise obtained as part of a common
48 scheme or plan.

49 (g) Violations of subsections (a), (b) and (c) of this
50 section occurring in one or more counties of this state may
51 be prosecuted in any county wherein any part of the offense
52 was committed and the provisions of subsection (f) of this
53 section are applicable to offenses so occurring.

54 (h)(1) Any interest a person has acquired or maintained
55 in any cash, asset or other property of value in any form,
56 derived in part or total from any proceeds obtained from
57 participating in a violation of this section, may be seized and
58 forfeited consistent with the procedures in the West Virginia
59 Contraband Forfeiture Act, as provided in article seven,
60 chapter sixty-a of this code.

61 (2) Notwithstanding subdivision (1) of this subsection,
62 at sentencing for a violation of this section, the court may
63 direct disgorgement to the victim or victims of any cash,
64 asset or other property of value in any form, derived in part
65 or total from any proceeds obtained from such violation.

CHAPTER 54

**(Com. Sub. for S. B. 240 - By Senators Ferns, Boso,
Weld, Cline and Rucker)**

[Passed April 8, 2017; in effect ninety days from passage.]

[Approved by the Governor on April 24, 2017.]

AN ACT to amend the Code of West Virginia, 1931, as amended,
by adding thereto a new section, designated §61-8-28a,

relating to creating the offense of nonconsensual disclosure of privately taken images of another that show intimate parts of the depicted person or show the depicted person engaged in sexually explicit conduct; defining terms; setting forth elements of the crime; providing for criminal penalties; providing circumstances in which this section does not apply; and excluding providers of interactive computer services, information services, and telecommunications services from liability under this section.

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 §61-8-28a, to read as follows:

ARTICLE 8. CRIMES AGAINST CHASTITY, MORALITY AND DECENCY.

§61-8-28a. Nonconsensual disclosure of private intimate images; definitions; and penalties.

1 (a) As used in this section:

2 (1) “Disclose” means to publish, publicly display,
3 distribute, deliver, circulate or disseminate by any means,
4 including, but not limited to, electronic transmission.

5 (2) “Image” means a photograph, videotape, motion
6 picture film, digital recording or any product of any
7 mechanical or electronic recording process or device that
8 can preserve, for later viewing, a visual image.

9 (3) “Intimate parts” means a person’s genitalia, pubic
10 area, anus or female post-pubescent breasts.

11 (4) To “publicly disclose” means to disclose an image
12 to one or more persons other than those persons whom the
13 person depicted understood would view the image at the
14 time it was captured.

15 (b) No person may knowingly and intentionally
16 disclose, cause to be disclosed or threaten to disclose, with

17 the intent to harass, intimidate, threaten, humiliate,
18 embarrass, or coerce, an image of another which shows the
19 intimate parts of the depicted person or shows the depicted
20 person engaged in sexually explicit conduct which was
21 captured under circumstances where the person depicted
22 had a reasonable expectation that the image would not be
23 publicly disclosed.

24 (c) (1) A person convicted of a violation of subsection
25 (b) of this section is guilty of a misdemeanor and, upon
26 conviction thereof, shall be confined in jail for not more
27 than one year, fined not less than \$1,000 nor more than
28 \$5,000, or both confined and fined.

29 (2) Notwithstanding the provisions of subdivision (1) of
30 this subsection, a person convicted of a second or
31 subsequent violation of subsection (b) of this section is
32 guilty of a felony and, upon conviction thereof, shall be
33 imprisoned in a state correctional facility for not more than
34 three years, fined not less than \$2,500 nor more than
35 \$10,000, or both imprisoned and fined.

36 (d) The provisions of this section do not apply to:

37 (1) Images disclosed with the prior written consent of
38 the person depicted;

39 (2) Images depicting the person voluntarily exposing
40 himself or herself in a public or commercial setting; or

41 (3) Disclosures made through the reporting of illegal
42 conduct or the lawful and common practices of law
43 enforcement, criminal reporting, legal proceeding or
44 medical treatment.

45 (e) Nothing in this section shall be construed to impose
46 liability on the provider of an interactive computer service
47 as defined by 47 U. S. C. §230(f)(2), an information service
48 as defined by 47 U. S. C. §153(24), or telecommunications
49 service as defined by 47 U. S. C. §153(53), for content
50 provided by another person.

CHAPTER 55

**(Com. Sub. for S. B. 288 - By Senators Carmichael
(Mr. President) and Stollings)**

[Passed April 7, 2017; in effect ninety days from passage.]
[Approved by the Governor on April 18, 2017.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §61-8D-1a; and to amend and reenact §61-8D-2a of said code, all relating to naming the law and increasing the penalty for death of child by a parent, guardian, custodian or other person by child abuse to an indeterminate term of fifteen years to life.

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 §61-8D-1a; and that §61-8D-2a of said code be amended and reenacted, all to read as follows:

ARTICLE 8D. CHILD ABUSE.

§61-8D-1a. Emmaleigh's law.

1 The amendments made to this article during the 2017
2 legislative session shall be known as Emmaleigh's Law.

§61-8D-2a. Death of a child by a parent, guardian or custodian or other person by child abuse; criminal penalties.

1 (a) If any parent, guardian or custodian maliciously and
2 intentionally inflicts upon a child under his or her care,
3 custody or control substantial physical pain, illness or any
4 impairment of physical condition by other than accidental

5 means, thereby causing the death of such child, then such
6 parent, guardian or custodian is guilty of a felony.

7 (b) If any parent, guardian or custodian knowingly
8 allows any other person to maliciously and intentionally
9 inflict upon a child under the care, custody or control of such
10 parent, guardian or custodian substantial physical pain,
11 illness or any impairment of physical condition by other
12 than accidental means, which thereby causes the death of
13 such child, then such other person and such parent, guardian
14 or custodian are each guilty of a felony.

15 (c) Any person convicted of a felony described in
16 subsection (a) or (b) of this section shall be imprisoned in a
17 state correctional facility for a period of fifteen years to life.
18 A person imprisoned pursuant to the provisions of this
19 section is not eligible for parole prior to having served a
20 minimum of fifteen years of his or her sentence.

21 (d) The provisions of this section are not applicable to
22 any parent, guardian or custodian or other person who,
23 without malice, fails or refuses, or allows another person to,
24 without malice, fail or refuse, to supply a child under the
25 care, custody or control of such parent, guardian or
26 custodian with necessary medical care, when such medical
27 care conflicts with the tenets and practices of a recognized
28 religious denomination or order of which such parent,
29 guardian or custodian is an adherent or member. The
30 provisions of this section are not applicable to any health
31 care provider who fails or refuses, or allows another person
32 to fail or refuse, to supply a child with necessary medical
33 care when such medical care conflicts with the tenets and
34 practices of a recognized religious denomination or order of
35 which the parent, guardian or custodian of the child is an
36 adherent or member, or where such failure or refusal is
37 pursuant to a properly executed do not resuscitate form.

CHAPTER 56

**(Com. Sub. for S. B. 76 - By Senators Jeffries,
Romano, Miller, Ojeda, Woelfel, Beach, Gaunch,
Facemire and Stollings)**

[Passed April 8, 2017; in effect ninety days from passage.]
[Approved by the Governor on April 25, 2017.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §61-11B-1, §61-11B-2, §61-11B-3, §61-11B-4 and §61-11B-5, all relating to establishment of a criminal offense reduction program; creating the criminal offense classification of reduced misdemeanor; setting forth legislative intent; setting forth definitions; allowing persons convicted of certain criminal felony offenses to petition under specified circumstances for reduction of the felony to misdemeanor status; setting forth limitations; providing for reduced offense status to be reflected on criminal records; expressly providing that reduction of felony offense means person shall not be deemed as being convicted of a felony for certain legal purposes or restrictions; clarifying that a reduced misdemeanor may not be expunged; clarifying that criminal offense reduction is in the discretion of the circuit court; establishing procedures for petition to the court; requiring payment of a filing fee when filing petition; directing a fee be paid to the State Police to offset costs associated with facilitating the purposes of this article; setting forth information to be included on the petition; providing for notification of petition to certain persons; requiring prosecuting attorney to contact identified victims; providing for notice of opposition to the petition by certain persons; establishing burden and standard of proof for petitions; providing for a hearing and setting forth procedures; providing for entry of an order by the court; authorizing court to enter an order directing certain records to reflect reduction

of a felony offense to the status of reduced misdemeanor; requiring certification of compliance to the court; providing for disclosure requirements; and granting employers limited civil immunity for hiring of convicted felons and persons in reduced misdemeanor status and exceptions thereto.

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 §61-11B-1, §61-11B-2, §61-11B-3, §61-11B-4 and §61-11B-5, all to read as follows:

ARTICLE 11B. CRIMINAL OFFENSE REDUCTION.

§61-11B-1. Legislative intent.

1 It is the Legislature's intention in enacting this article
2 to establish a procedure whereby individuals convicted of
3 certain criminal offenses may, pursuant to the provisions of
4 this article, obtain a reduced offense of conviction. In
5 enacting this article, it is also the Legislature's intent to
6 improve the employment possibilities of certain persons
7 while allowing the public notice of their actual conduct and
8 prior transgressions without further penalty or diminution of
9 employment opportunities.

§61-11B-2. Definitions.

1 (a) As used in this article, the following words and
2 phrases shall have the meanings given to them in this section
3 unless the context clearly indicates otherwise:

4 (1) "Criminal offense reduction" means the reduction
5 of a qualifying felony offense to a misdemeanor offense
6 pursuant to this article.

7 (2) "Excluded offense" means:

8 (A) An offense which involves the infliction of serious
9 physical injury;

10 (B) A sexual offense, including, but not limited to, a
11 violation of the felony provisions of article eight, eight-b,
12 eight-c or eight-d of this chapter;

13 (C) An offense which involves the use or exhibition of
14 a deadly weapon or dangerous instrument;

15 (D) A felony violation of the provisions of section nine,
16 article two of this chapter;

17 (E) A felony violation of the provisions of section
18 twenty-eight, article two of this chapter;

19 (F) A felony violation of article four, chapter seventeen-
20 b of this code; or

21 (G) A felony, the facts and circumstances of which the
22 circuit court finds to be inconsistent with the purposes of
23 this article.

24 (3) “Nonviolent felony” means a felony conviction in a
25 circuit court of this state, which the circuit court finds is not:
26 (i) An excluded offense as defined in subdivision (2) of this
27 article; and (ii) which does not involve violence or potential
28 violence to another person or the public.

29 (4) “Petitioner” means a person who has filed a petition
30 seeking a criminal offense reduction under the provisions of
31 this article.

32 (5) “Qualifying felony offense” means a nonviolent
33 felony offense that is not excluded from relief under this
34 article.

35 (6) “Reduced misdemeanor” means a legal status
36 representing that a person previously convicted of a
37 nonviolent qualifying felony has successfully petitioned a
38 circuit court to have the felony conviction reduced to the
39 status of a misdemeanor.

40 (7) “Requisite time period” means ten years after
41 completion of any sentence or period of supervision or
42 probation, whichever is later, during which time there has
43 been no commission and conviction for a violation of law
44 by the petitioner other than for a minor traffic offense.

§61-11B-3. Criminal offense reduction.

1 (a) Subject to the limitations and procedures set forth in
2 this article, a person convicted of a nonviolent felony
3 offense may seek a criminal offense reduction by petition to
4 the circuit court. If granted, the petitioner’s felony
5 conviction shall be vacated and the petitioner’s status will
6 thereafter be designated on all records relating to the offense
7 as a “reduced misdemeanor”. The petitioner’s criminal
8 record shall also reflect that he or she be granted such legal
9 status as is associated with being convicted of a
10 misdemeanor and, except as provided by the provisions of
11 this article, the person shall not be deemed to have been
12 convicted of a felony for any legal purpose or restriction.

13 (b) Notwithstanding any provision of law to the
14 contrary, the reduced misdemeanor provided for under this
15 article may not be expunged as part of this petition or by
16 subsequent legal proceeding or petition.

17 (c) There shall be no entitlement to a criminal offense
18 reduction and the granting of the petition shall remain in the
19 discretion of the circuit court.

20 (d) Nothing in the section may be construed to allow a
21 person obtaining relief pursuant to this article to be eligible
22 for reinstatement of any retirement or employment benefit
23 which he or she lost or forfeited due to the felony conviction
24 or convictions vacated and reduced to the status of a
25 misdemeanor.

§61-11B-4. Petition for reduction.

1 (a) A person seeking a criminal offense reduction under
2 this article shall file with the circuit court a petition, in a

3 form and manner set forth by the West Virginia Supreme
4 Court of Appeals.

5 (b) Any person filing a petition pursuant to the
6 provisions of this article shall pay the filing fee set by the
7 provisions of subdivision (1), subsection (a), section eleven,
8 article one, chapter fifty-nine of this code: *Provided*, That in
9 addition to the fee required by the provisions of this
10 subsection a petitioner shall pay a fee of \$100 which shall
11 be deposited into a nonappropriated special revenue account
12 within the State Treasurer's office to be known as the West
13 Virginia State Police Criminal History Account, said fee to
14 be used to offset costs to the State Police for actions to
15 facilitate the operation of this article.

16 (c) Each petition for criminal offense reduction filed
17 pursuant to this section shall be verified under oath and
18 include the following information:

19 (1) Petitioner's current name and all other legal names
20 or aliases by which the petitioner has been known at any
21 time;

22 (2) All of petitioner's addresses from the date of the
23 offense for which a criminal offense reduction order is
24 sought to the date of the filing of the petition;

25 (3) Petitioner's date of birth and Social Security
26 number;

27 (4) Petitioner's date of arrest, the court of jurisdiction
28 and criminal case number;

29 (5) The offense or offenses with which petitioner was
30 charged and of which petitioner was convicted and the
31 statutory citations therefor;

32 (6) The names of any victim or victims, or where there
33 are no identifiable victims such shall be stated;

34 (7) Whether there is any current order for restitution,
35 protection, restraining order or other no-contact order
36 prohibiting the petitioner from contacting the victims or
37 whether there has ever been a prior order for restitution,
38 protection or restraining order prohibiting the petitioner
39 from contacting the victim. If there is such a current order,
40 petitioner shall attach a copy of that order to his or her
41 petition;

42 (8) The court's disposition of the matter and sentence
43 imposed;

44 (9) The reasons a criminal offense reduction is sought,
45 such as, but not limited to, employment or licensure
46 purposes, and arguments in support thereof;

47 (10) The date upon which he or she completed any
48 sentence or period of supervision or probation;

49 (11) An express averment by the petitioner that he or
50 she has neither committed nor been convicted of a violation
51 of law;

52 (12) The action the petitioner has taken since the time
53 of the offense or offenses toward personal rehabilitation,
54 including treatment, work or other personal history that
55 demonstrates rehabilitation;

56 (13) Whether petitioner has ever been granted criminal
57 offense reduction, expungement or similar relief regarding
58 a criminal conviction by any court in this state, any other
59 state or by any federal court; and

60 (14) Any supporting documents, sworn statements,
61 affidavits or other information supporting the petition to
62 reduce criminal offense.

63 (d) A copy of the petition, with any supporting
64 documentation, shall be served by petitioner pursuant to the
65 West Virginia Rules of Civil Procedure upon the
66 Superintendent of the State Police; the prosecuting attorney

67 of the county of conviction; the chief of police or other
68 executive head of the municipal police department wherein
69 the offense was committed; the chief law-enforcement
70 officer of any other law-enforcement agency which
71 participated in the arrest of the petitioner; the circuit court
72 of conviction, if the petition is filed in another circuit; the
73 superintendent or warden of any state correctional facility
74 in which the petitioner was imprisoned; and any state and
75 local government agencies the records of which would be
76 affected by the proposed criminal offense reduction.

77 (e) The prosecuting attorney of the county in which the
78 petition is filed shall serve by first class mail the petition for
79 criminal offense reduction, accompanying documentation
80 and any proposed criminal offense reduction order to any
81 identified victims.

82 (f) Upon receipt of a petition for criminal offense
83 reduction, the Superintendent of the State Police, the
84 prosecuting attorney of the county of conviction, the chief
85 of police or other executive head of the municipal police
86 department wherein the offense was committed, the chief
87 law-enforcement officer of any other law-enforcement
88 agency which participated in the arrest of the petitioner, the
89 superintendent or warden of any institution in which the
90 petitioner was confined, the circuit court of conviction, if
91 the petition is filed in another circuit, any state and local
92 government agencies the records of which would be
93 affected by the proposed criminal offense reduction and any
94 interested individual or agency that desires to oppose the
95 criminal offense reduction shall, within thirty days of
96 receipt of the petition, file a notice of opposition with the
97 court with supporting documentation and sworn statements
98 setting forth the reasons for resisting the petition for
99 criminal offense reduction. A copy of any notice of
100 opposition with supporting documentation and sworn
101 statements shall be served upon the petitioner or his or her
102 counsel in accordance with West Virginia Rules of Civil
103 Procedure. The petitioner may file a reply no later than

104 fifteen days after service of any notice of opposition to the
105 petition for criminal offense reduction.

106 (g) The burden of proof shall be on the petitioner to
107 prove by clear and convincing evidence that:

108 (1) The conviction or convictions for which criminal
109 offense reduction is sought are qualifying offenses and are
110 the only convictions against petitioner;

111 (2) That the requisite time period has passed since the
112 conviction or convictions or end of the completion of any
113 sentence of incarceration or probation;

114 (3) That the petitioner has neither committed nor been
115 convicted of a violation of law in the preceding ten years;

116 (4) That petitioner has no criminal charges pending
117 against him or her;

118 (5) That the criminal offense reduction is consistent
119 with the public welfare;

120 (6) That petitioner has, by his or her behavior since the
121 conviction or convictions, evidenced that he or she has been
122 rehabilitated and has remained law-abiding; and

123 (7) Any other matter deemed appropriate or necessary
124 by the court to make a determination regarding the petition
125 for criminal offense reduction.

126 (h) Within one hundred eighty days of the filing of a
127 petition for criminal offense reduction or as soon thereafter
128 as is practicable the circuit court shall:

129 (1) Summarily grant the petition;

130 (2) Set the matter for hearing; or

131 (3) Summarily deny the petition, if the court determines
132 that the petition is insufficient, or based upon supporting
133 documentation and sworn statements filed in opposition to

134 the petition, the court determines that the petitioner, as a
135 matter of law, is not entitled to reduction.

136 (i) If the court sets the matter for hearing, all interested
137 parties who have filed a notice of opposition shall be
138 notified. At the hearing, the court may inquire into the
139 background of the petitioner and shall have access to any
140 reports or records relating to the petitioner that are on file
141 with any law-enforcement authority, the institution of
142 confinement, if any, and parole authority or other agency
143 which was in any way involved with the petitioner's arrest,
144 conviction, sentence and post-conviction supervision,
145 including any record of arrest or conviction in any other
146 state or federal court. The court may hear testimony of
147 witnesses and evidence of any other matter the court deems
148 proper and relevant to its determination regarding the
149 petition. The court shall enter an order reflecting its ruling
150 on the petition for criminal offense reduction with
151 appropriate findings of fact and conclusions of law.

152 (j) If the court grants the petition for criminal offense
153 reduction, it shall order any records in the custody of the
154 court, and of any other agency or official, including law-
155 enforcement records, to reflect reduction of the felony
156 offense to the status of reduced misdemeanor. Every agency
157 with records relating to the arrest, charge or other matters
158 arising out of the arrest or conviction that is ordered to
159 reflect the criminal offense reduction in its records shall
160 certify to the court within ninety days of the entry of the
161 criminal offense reduction order that the required reduction
162 has been completed: *Provided*, That upon inquiry by a
163 prospective employer or on an application for employment,
164 credit or other type of application, he or she shall disclose
165 the existence of the reduced misdemeanor and
166 acknowledgement of the prior conviction if asked about
167 prior convictions or crimes.

168 (k) Upon granting of criminal offense reduction, the
169 person whose felony offense has been reduced under the
170 provisions of this article shall not have to disclose the fact

171 of the record or any matter relating thereto on an application
172 for employment, credit or other type of application that he
173 or she has a felony conviction.

§61-11B-5. Employer protections.

1 (a) A cause of action may not be brought against an
2 employer, general contractor, premises owner or other third
3 party solely based on the employer, general contractor,
4 premises owner or other third party employing a person or
5 independent contractor who has been convicted of a
6 nonviolent, nonsexual offense or a person who has had his
7 or her conviction reduced pursuant to this article.

8 (b) In a negligent hiring action against an employer,
9 general contractor, premises owner or other third party for
10 the acts of an employee or independent contractor that is
11 based on a theory of liability other than that described by
12 subsection (a) of this section, the fact that the employee or
13 independent contractor was convicted of a nonviolent,
14 nonsexual offense or had his or her conviction reduced
15 pursuant to this article before the employee or independent
16 contractor's employment or contractual obligation with the
17 employer, general contractor, premises owner or other third
18 party, as applicable, may not be introduced into evidence.

19 (c) This section does not preclude any existing cause of
20 action for failure of an employer or other person to provide
21 adequate supervision of an employee or independent
22 contractor, except that the fact that the employee or
23 independent contractor has been convicted of a nonviolent,
24 nonsexual criminal offense or had his or her conviction
25 reduced pursuant to this article may be introduced into
26 evidence in the suit only if the employer:

27 (1) Knew of the conviction or was grossly negligent in
28 not knowing of the conviction or reduced offense; and

29 (2) The conviction or reduced offense was directly
30 related to the nature of the employee's or independent

31 contractor's work and the conduct that gave rise to the
32 alleged injury that is the basis of the suit.

33 (d) This section shall not be interpreted as implying a
34 cause of action exists for negligent hiring of a person based
35 upon his or her criminal record in factual situations not
36 covered by the provisions of this section.

CHAPTER 57

**(Com. Sub. for H. B. 2585 - By Delegates Storch,
Arvon, R. Romine, A. Evans, Gearheart, Moore,
Atkinson, Zatezalo, Shott, Hanshaw and Lewis)**

[Passed April 8, 2017; in effect ninety days from passage.]
[Approved by the Governor on April 26, 2017.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §61-15-1, §61-15-2, §61-15-3 and §61-15-4, all relating to laundering of proceeds from specified criminal activities generally; defining terms; creating misdemeanor and felony offenses of conducting financial transactions involving proceeds of criminal activity; distinguishing between offenses based on monetary value of transaction; providing for penalties; providing for seizure and forfeiture of property or monetary instruments; establishing the burden of proof in a forfeiture proceeding; authorizing sentencing court to order disgorgement at disposition; and clarifying conduct that constitutes separate offenses.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §61-15-1, §61-15-2, §61-15-3 and §61-15-4, all to read as follows:

ARTICLE 15. MONEY LAUNDERING.**§61-15-1. Definitions.**

1 As used in this article, unless the context clearly
2 indicates otherwise:

3 (1) “Conducts” includes, but is not limited to, initiating,
4 concluding, participating in, or assisting in a transaction.

5 (2) “Criminal activity” means a violation of:

6 (A) The felony provisions of section eleven, article
7 forty-one, chapter thirty-three of this code;

8 (B) Felony violations of chapter sixty-a of this code;

9 (C) Felony violations of article two of this chapter;

10 (D) The provisions of sections one, two, three, four,
11 five, eleven, twelve, subsection (a), section thirteen,
12 fourteen, eighteen, nineteen, twenty, twenty-a, twenty-two,
13 twenty-four, twenty-four-a, twenty-four-b and twenty-four-
14 d, article three of this chapter;

15 (E) Felony provisions of article three-c, three-e and four
16 of this chapter;

17 (F) The provisions of section eight, article eight of this
18 chapter; and

19 (G) The felony provisions of articles eight-a, eight-c and
20 fourteen of this chapter.

21 (3) “Cryptocurrency” means digital currency in which
22 encryption techniques are used to regulate the generation of
23 units of currency and verify the transfer of funds, and which
24 operate independently of a central bank.

25 (4) “Financial institution” means a financial institution
26 as defined in 31 U.S.C. §5312 which institution is located
27 in this state.

28 (5) “Financial transaction” means a transaction which
29 effects intrastate, interstate or foreign commerce, and:

30 (A) Involves the movement of funds by wire or other
31 means;

32 (B) Involves the use of a monetary instrument;

33 (C) Involves the transfer of title to real or personal
34 property; or

35 (D) Involves the use of a financial institution which is
36 engaged in, or the activities of which effect intrastate,
37 interstate or foreign commerce.

38 (6) “Gift card” means a card, voucher or certificate
39 which contains or represents a specific amount of money
40 issued by a retailer or financial institution to be used as an
41 alternative to cash purposes.

42 (7) “Knowing” means actual knowledge. For purposes
43 of this article, a person may be considered to have actual
44 knowledge if the belief is based upon representations of a
45 law-enforcement officer engaged in his or her official duties
46 while acting in an undercover capacity or a person acting at
47 the direction of a law-enforcement officer engaged in his or
48 her official duties.

49 (8) “Monetary instruments” means coin or currency of
50 the United States or of any other country, travelers’ checks,
51 personal checks, bank checks, gift cards, prepaid credit
52 cards, money orders, cryptocurrency, investment securities
53 in bearer form or otherwise in such form that title thereto
54 passes upon delivery, and negotiable instruments in bearer
55 form or otherwise in such form that title thereto passes upon
56 delivery.

57 (9) “Proceeds” means property or monetary instrument
58 acquired or derived, directly or indirectly, from, produced
59 through, realized through, or caused by an act or omission
60 and includes property, real or personal, of any kind.

61 (10) “Property” means anything of value, and includes
62 any interest therein, including any benefit, privilege, claim
63 or right with respect to anything of value, whether real or
64 personal, and monetary instruments.

65 (11) “Transaction” means a purchase, sale, loan, pledge,
66 gift, transfer, delivery, or other disposition. With respect to
67 a financial institution, “transaction” includes a deposit,
68 withdrawal, transfer between accounts, exchange of
69 currency, loan, extension of credit, purchase or sale of any
70 stock, bond, certificate of deposit, or other monetary
71 instrument, use of a safety deposit box, or any other
72 payment, transfer, or delivery by, through or to a financial
73 institution, by whatever means effected.

§61-15-2. Laundering through financial transactions.

1 (a) It is unlawful for any person to conduct or attempt to
2 conduct a financial transaction involving the proceeds of
3 criminal activity knowing that the property involved in the
4 financial transaction represents the proceeds of, or is
5 derived directly or indirectly from the proceeds of, criminal
6 activity:

7 (1) With the intent to promote the carrying on of the
8 criminal activity; or

9 (2) Knowing that the transaction is designed in whole or
10 part:

11 (i) To conceal or disguise the nature, location, source,
12 ownership, or control of the proceeds of the criminal
13 activity; or

14 (ii) To avoid any transaction reporting requirement
15 imposed by law.

16 (b) Any person violating the provisions of subsection (a)
17 of this section where the amount involved in the transaction
18 is less than \$1,000 is guilty of a misdemeanor and, upon
19 conviction, shall be confined in jail for not more than one
20 year or fined not more than \$1,000, or both confined and
21 fined.

22 (c) Any person violating the provisions of subsection (a)
23 of this section where the amount involved in the transaction
24 is not less than \$1,000 nor more than \$20,000 is guilty of a
25 felony and, upon conviction, shall be imprisoned in a state
26 correctional facility for not less than one nor more than five
27 years, or fined not less than \$1,000 nor more than \$10,000,
28 or both imprisoned and fined.

29 (d) Any person violating the provisions of subsection (a)
30 of this section where the amount involved in the transaction
31 in excess of \$20,000 is guilty of a felony and, upon
32 conviction, shall be imprisoned in a state correctional
33 facility for not less than two nor more than ten years, or
34 fined not less than \$5,000 nor more than \$25,000, or both
35 imprisoned and fined.

§61-15-3. Forfeiture; disgorgement.

1 (a) Any property or monetary instruments involved in a
2 violation of this article, and any property or monetary
3 instruments traceable to the violation, may be seized and
4 forfeited consistent with the procedures in the West Virginia
5 Contraband Forfeiture Act, as provided in article seven,
6 chapter sixty-a of this code: *Provided*, That in any forfeiture
7 proceeding pursuant to this section, the burden of proof
8 shall be by clear and convincing evidence.

9 (b) Notwithstanding subsection (a) of this section, the
10 court, as part of sentencing for a violation under this article,
11 may direct the disgorgement to a victim of any property or
12 monetary instruments involved in the violation and any
13 property or monetary instruments traceable to the violation.

§61-15-4. Distinguishing transactions for prosecution purposes.

1 (a) Notwithstanding any other provision to the contrary,
2 each transaction committed in violation of this article
3 constitutes a separate offense.

CHAPTER 58

(Com. Sub. for S. B. 233 - By Senator Trump)

[Passed April 1, 2017; in effect ninety days from passage.]
[Approved by the Governor on April 11, 2017.]

AN ACT to amend and reenact §62-1D-2 of the Code of West Virginia, 1931, as amended, relating generally to the Wiretapping and Electronic Surveillance Act; excluding from protection under the act oral communications uttered in a child care center where there are written notices posted informing persons that their oral communications are subject to being intercepted; and defining “child care center”.

Be it enacted by the Legislature of West Virginia:

That §62-1D-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 1D. WIRETAPPING AND ELECTRONIC SURVEILLANCE ACT.

§62-1D-2. Definitions.

1 As used in this article, unless the context in which used
2 clearly requires otherwise, the following terms have the
3 meanings indicated:

4 (a) “Aggrieved person” means a person who was a party
5 to any intercepted wire, oral or electronic communication or
6 a person against whom the interception was directed.

7 (b) “Child care center” means a facility maintained by
8 the state or any county or municipality thereof, or any
9 agency or facility maintained by an individual, firm,
10 corporation, association or organization, public or private,

11 that is licensed by Department of Health and Human
12 Resources for the care of children in any setting.

13 (c) "Communications common carrier" means any
14 telegraph company or telephone company and any radio
15 common carrier.

16 (d) "Contents" when used with respect to any wire, oral
17 or electronic communication, includes any information
18 concerning the substance, purport or meaning of that
19 communication.

20 (e) "Electronic, mechanical or other device" means any
21 device or apparatus: (i) Which can be used to intercept a
22 wire, oral or electronic communication; or (ii) the design of
23 which renders it primarily useful for the surreptitious
24 interception of any such communication. There is excepted
25 from this definition:

26 (1) Any telephone or telegraph instrument, equipment
27 or facility or any component thereof: (a) Furnished to the
28 subscriber or user by a provider of wire or electronic
29 communication service in the ordinary course of its business
30 and being used by the subscriber or user in the ordinary
31 course of its business; or furnished by the subscriber or user
32 for connection to the facilities of the service and used in the
33 ordinary course of its business; or (b) being used by a
34 communications common carrier in the ordinary course of
35 its business or by an investigative or law-enforcement
36 officer in the ordinary course of his or her duties; or

37 (2) A hearing aid or similar device being used to correct
38 subnormal hearing to not better than normal; or

39 (3) Any device used in a lawful consensual monitoring
40 including, but not limited to, tape recorders, telephone
41 induction coils, answering machines, body transmitters and
42 pen registers.

43 (f) "Intercept" means the aural or other acquisition of
44 the contents of any wire, electronic or oral communication

45 through the use of any electronic, mechanical or other
46 device.

47 (g) “Designated judge” means a circuit court judge
48 designated by the Chief Justice of the West Virginia
49 Supreme Court of Appeals to hear and rule on applications
50 for the interception of wire, oral or electronic
51 communications.

52 (h) “Investigative or law-enforcement officer” means a
53 member or members of the West Virginia State Police who
54 is or are empowered by law to conduct investigations of or
55 to make arrest for offenses enumerated in this chapter.

56 (i) “Oral communication” means any oral
57 communication uttered by a person exhibiting an
58 expectation that the communication is not subject to
59 interception under circumstances justifying the expectation.
60 The term does not include:

61 (A) An electronic communication; or

62 (B) An oral communication uttered in any child care
63 center where there are written notices posted informing
64 persons that their oral communications are subject to being
65 intercepted.

66 (j) “Pen register” means a device which records or
67 decodes electronic or other impulses which identify the
68 numbers dialed or otherwise transmitted on the telephone
69 line to which the device is attached, but the term does not
70 include any device used by a provider or customer of a wire
71 or electronic communication service for billing, or
72 recording as an incident to billing, for communications
73 services provided by the provider or any device used by a
74 provider or customer of a wire communication service for
75 cost accounting or other like purposes in the ordinary course
76 of its business.

77 (k) “Person” means any person, individual, partnership,
78 association, joint stock company, trust or corporation and

79 includes any police officer, employee or agent of this state
80 or of a political subdivision thereof.

81 (l) "Wire communication" means any aural transfer
82 made in whole or in part through the use of facilities for the
83 transmission of communications by the aid of wire, cable or
84 other like connection between the point of origin and the
85 point of reception (including the use of the connection in a
86 switching station) furnished or operated by any person
87 engaged in providing or operating the facilities for the
88 transmission of interstate or foreign communications or
89 communications affecting interstate or foreign commerce
90 and the term includes any electronic storage of the
91 communication, but the term does not include the radio
92 portion of a cordless telephone communication that is
93 transmitted between the cordless telephone handset and the
94 base unit.

95 (m) "Electronic communication" means any transfer of
96 signs, signals, writing, images, sounds, data or intelligence
97 of any nature transmitted in whole or in part by a wire, radio,
98 electro-magnetic, photoelectronic or photooptical system
99 but does not include:

100 (1) The radio portion of a cordless telephone
101 communication that is transmitted between the cordless
102 telephone handset and the base unit;

103 (2) Any wire or oral communication; or

104 (3) Any combination made through a tone-only paging
105 device.

106 (n) "User" means any person or entity who or which
107 uses an electronic communication service and is duly
108 authorized by the provider of the service to engage in the
109 use.

110 (o) "Electronic communications system" means any wire,
111 radio, electromagnetic, photooptical or photoelectronic facilities
112 for the transmission of electronic communications, and any

113 computer facilities or related electronic equipment for the
114 electronic storage of the communications.

115 (p) “Electronic communication service” means any
116 service which provides to users thereof the ability to send or
117 receive wire or electronic communications.

118 (q) “Aural transfer” means a transfer containing the
119 human voice at any point between and including the point
120 of origin and the point of reception.

121 (r) “Trap and trace device” means a device which
122 captures the incoming electronic or other impulses which
123 identify the originating number of an instrument or device
124 from which a wire or electronic communication was
125 transmitted.



CHAPTER 59

**(Com. Sub. for S. B. 455 - By Senators Trump, Weld,
Miller and Gaunch)**

[Passed April 1, 2017; in effect ninety days from passage.]
[Approved by the Governor on April 11, 2017.]

AN ACT to amend and reenact §62-7-10 of the Code of West Virginia, 1931, as amended, relating generally to commitment of persons to the custody of the Commissioner of Corrections; updating the commitment order form sentencing courts are required to complete when committing a person to the custody of the Commissioner of Corrections; requiring that the commitment order contain certain information; and clarifying that the circuit clerk of the court is required to transmit certified copies of the commitment order to the Commissioner of the Division of Corrections and the West Virginia Regional Jail Authority upon entry.

Be it enacted by the Legislature of West Virginia:

That §62-7-10 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 7. EXECUTION OF SENTENCES; STAYS.

§62-7-10. Commitment paper.

1 The clerk of a court in which a person is sentenced to
2 serve a period of incarceration in a state correctional facility
3 shall transmit to the Commissioner of the Division of
4 Corrections and the West Virginia Regional Jail Authority
5 a certified commitment order same as, or similar to, the form
6 provided in this section. If a commitment order in a form
7 other than the one provided in this section is issued, the
8 commitment order is required, at a minimum, to contain the
9 same information.

10 IN THE CIRCUIT COURT OF
11 _____ COUNTY, WEST VIRGINIA

12 State of West Virginia

13 v. circuit court Case No. _____

14 Defendant: _____

15 DOB: _____ SSN: XXX-XX-_____

16 Gender: _____ Male/_____ Female

17 WEST VIRGINIA DIVISION OF CORRECTIONS
18 CERTIFIED COMMITMENT ORDER

19 On the _____ day of _____, 20____, the
20 State of West Virginia, by _____, and the
21 defendant appeared in person and with
22 counsel, _____.

23 The defendant has been convicted of the following
24 offense(s):

25 _____

26 The defendant is committed to the custody of the
27 Commissioner of Corrections for a period of:
28 _____.

29 Conviction Date: _____ Sentence Date: _____

30 Effective Sentence Date: _____ Resentence Date: _____

31 Consecutive to: ____ Concurrent with:
32 _____

33 Credit for Jail/Prison Time Served: _____ days Credit for
34 Home Incarceration: _____ days

35 Credit for Home Incarceration Parole: _____ days Other
36 NonPenal Credit: _____ days

37 Additionally, the court finds:
38 _____

39 The defendant shall be transported to and held in a West
40 Virginia Regional Jail Authority facility until transfer into
41 the physical custody of the Commissioner. The court further
42 orders that the cost of incarceration in the regional jail
43 pending transfer shall be paid by the Commissioner from
44 the date of entry of this order forward.

45 Special Instructions: _____

46 It is further ordered that the Circuit Clerk shall forthwith
47 transmit a certified copy of this commitment order to the
48 West Virginia Regional Jail Authority and to the Central
49 Office Inmate Records Manager of the Division of
50 Corrections by facsimile at (fax number) or by mail at (street
51 address).

52 Enter this ____ day of _____, 2____.
53 _____

54 Circuit Judge


CHAPTER 60

(Com. Sub. for H. B. 2726 - By Delegates Shott, R. Miller, Kessinger, Lane, Byrd, Isner, Frich and Lovejoy)

[Passed April 5, 2017; in effect ninety days from passage.]
[Approved by the Governor on April 26, 2017.]

AN ACT to amend and reenact §62-11B-9 of the Code of West Virginia, 1931, as amended, relating generally to authorizing home incarceration officers to arrest a participant for violating the terms and conditions of his or her supervision without a court order.

Be it enacted by the Legislature of West Virginia:

That §62-11B-9 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 11B. HOME INCARCERATION ACT.

§62-11B-9. Violation of order of home incarceration procedures; penalties.

1 (a) If, at any time during the period of home
2 incarceration, there is reasonable cause to believe that a
3 participant in a home incarceration program has violated the
4 terms and conditions of the circuit court's home
5 incarceration order, he or she is subject to the procedures
6 and penalties set forth in section ten, article twelve of this
7 chapter.

8 (b) If, at any time during the period of home
9 incarceration, there is reasonable cause to believe that a
10 participant sentenced to home incarceration by the circuit

11 court has violated the terms and conditions of the court's
12 order of home incarceration and the participant's
13 participation was imposed as an alternative sentence to
14 another form of incarceration, the participant is subject to
15 the same procedures involving confinement and revocation
16 as would a probationer charged with a violation of the order
17 of home incarceration. Any participant under an order of
18 home incarceration is subject to the same penalty or
19 penalties, upon the circuit court's finding of a violation of
20 the order of home incarceration, as he or she could have
21 received at the initial disposition hearing: *Provided*, That
22 the participant shall receive credit towards any sentence
23 imposed after a finding of violation for the time spent in
24 home incarceration.

25 (c) If, at any time during the period of home
26 incarceration, there is reasonable cause to believe that a
27 participant sentenced to home incarceration by a magistrate
28 has violated the terms and conditions of the magistrate's
29 order of home incarceration as an alternative sentence to
30 incarceration in jail, the supervising authority may arrest the
31 participant and take the offender before a magistrate within
32 the county of the offense. The magistrate shall then conduct
33 a prompt and summary hearing on whether the participant's
34 home incarceration should be revoked. If it appears to the
35 satisfaction of the magistrate that any condition of home
36 incarceration has been violated, the magistrate may revoke
37 the home incarceration and order that the sentence of
38 incarceration in jail be executed. Any participant under an
39 order of home incarceration is subject to the same penalty
40 or penalties, upon the magistrate's finding of a violation of
41 the order of home incarceration, as the participant could
42 have received at the initial disposition hearing: *Provided*,
43 That the participant shall receive credit towards any
44 sentence imposed after a finding of violation for the time
45 spent in home incarceration.

CHAPTER 61

(S. B. 41 - By Senators Woelfel, Trump and Ojeda)

[Passed March 31, 2017; in effect ninety days from passage.]
[Approved by the Governor on April 11, 2017.]

AN ACT to amend and reenact §62-12-11 of the Code of West Virginia, 1931, as amended, relating to extending the total number of years that a person may be subject to a period of probation.

Be it enacted by the Legislature of West Virginia:

That §62-12-11 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 12. PROBATION AND PAROLE.

§62-12-11. Probation period.

1 The period of probation together with any extension
2 thereof shall not exceed seven years. Upon the termination
3 of the probation period, the probation officer shall report to
4 the court the conduct of the probationer during the period of
5 his or her probation, and the court may thereupon discharge
6 the probationer or extend the probation period. Whenever,
7 before the end of the probation period, the probationer has
8 satisfactorily complied with all the conditions of his or her
9 probation and it appears to the court that it is no longer
10 necessary to continue his or her supervision, the court may
11 discharge him or her. All orders extending the probation
12 period and all orders of discharge shall be entered in the
13 records of the court, and a copy of all such orders shall be
14 sent by the clerk of the court to the board within five days
15 after the making of the order.

CHAPTER 62

(Com. Sub. for S. B. 515 - By Senator Trump)

[Passed April 7, 2017; in effect ninety days from passage.]
[Approved by the Governor on April 25, 2017.]

AN ACT to amend and reenact §62-12-13 and §62-12-23 of the Code of West Virginia, 1931, as amended, all relating generally to parole; eliminating redundant and outdated reporting requirements regarding parolees; and modifying notice requirements to certain persons for parole hearings and inmate release.

Be it enacted by the Legislature of West Virginia:

That §62-12-13 and §62-12-23 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 12. PROBATION AND PAROLE.

§62-12-13. Powers and duties of board; eligibility for parole; procedure for granting parole.

1 (a) The Parole Board, whenever it is of the opinion that
2 the best interests of the state and of the inmate will be
3 served, and subject to the limitations provided in this
4 section, shall release any inmate on parole for terms and
5 upon conditions provided by this article.

6 (b) Any inmate of a state correctional institution is
7 eligible for parole if he or she:

8 (1) (A) Has served the minimum term of his or her
9 indeterminate sentence or has served one fourth of his or her
10 definite term sentence, as the case may be; or

11 (B) He or she has applied for and been accepted by the
12 Commissioner of Corrections into an accelerated parole
13 program. To be eligible to participate in an accelerated
14 parole program, the commissioner must determine that the
15 inmate:

16 (i) Does not have a prior criminal conviction for a felony
17 crime of violence against the person, a felony offense
18 involving the use of a firearm or a felony offense where the
19 victim was a minor child;

20 (ii) Is not serving a sentence for a crime of violence
21 against the person, or more than one felony for a controlled
22 substance offense for which the inmate is serving a
23 consecutive sentence, a felony offense involving the use of
24 a firearm or a felony offense where the victim was a minor
25 child; and

26 (iii) Has successfully completed a rehabilitation
27 treatment program created with the assistance of a
28 standardized risk and needs assessment.

29 (C) Notwithstanding any provision of this code to the
30 contrary, any inmate who committed, or attempted to
31 commit, a felony with the use, presentment or brandishing
32 of a firearm is not eligible for parole prior to serving a
33 minimum of three years of his or her sentence or the
34 maximum sentence imposed by the court, whichever is less:
35 *Provided*, That any inmate who committed, or attempted to
36 commit, any violation of section twelve, article two, chapter
37 sixty-one of this code, with the use, presentment or
38 brandishing of a firearm, is not eligible for parole prior to
39 serving a minimum of five years of his or her sentence or
40 one third of his or her definite term sentence, whichever is
41 greater. Nothing in this paragraph applies to an accessory
42 before the fact or a principal in the second degree who has
43 been convicted as if he or she were a principal in the first
44 degree if, in the commission of or in the attempted
45 commission of the felony, only the principal in the first
46 degree used, presented or brandished a firearm. An inmate

47 is not ineligible for parole under the provisions of this
48 paragraph because of the commission or attempted
49 commission of a felony with the use, presentment or
50 brandishing of a firearm unless that fact is clearly stated and
51 included in the indictment or presentment by which the
52 person was charged and was either: (i) Found guilty by the
53 court at the time of trial upon a plea of guilty or nolo
54 contendere; (ii) found guilty by the jury upon submitting to
55 the jury a special interrogatory for such purpose if the matter
56 was tried before a jury; or (iii) found guilty by the court if
57 the matter was tried by the court without a jury.

58 (D) The amendments to this subsection adopted in the
59 year 1981:

60 (i) Apply to all applicable offenses occurring on or after
61 August 1 of that year;

62 (ii) Apply with respect to the contents of any indictment
63 or presentment returned on or after August 1 of that year
64 irrespective of when the offense occurred;

65 (iii) Apply with respect to the submission of a special
66 interrogatory to the jury and the finding to be made thereon
67 in any case submitted to the jury on or after August 1 of that
68 year or to the requisite findings of the court upon a plea of
69 guilty or in any case tried without a jury: *Provided*, That the
70 state gives notice in writing of its intent to seek such finding
71 by the jury or court, as the case may be. The notice shall
72 state with particularity the grounds upon which the finding
73 will be sought as fully as the grounds are otherwise required
74 to be stated in an indictment, unless the grounds upon which
75 the finding will be sought are alleged in the indictment or
76 presentment upon which the matter is being tried;

77 (iv) Does not apply with respect to cases not affected by
78 the amendments and in those cases the prior provisions of
79 this section apply and are construed without reference to the
80 amendments; and

81 (v) Insofar as the amendments relate to mandatory
82 sentences restricting the eligibility for parole, all matters
83 requiring a mandatory sentence shall be proved beyond a
84 reasonable doubt in all cases tried by the jury or the court.

85 (E) As used in this section, “felony crime of violence
86 against the person” means felony offenses set forth in article
87 two, three-e, eight-b or eight-d, chapter sixty-one of this
88 code.

89 (F) As used in this section, “felony offense where the
90 victim was a minor child” means any felony crime of
91 violence against the person and any felony violation set
92 forth in article eight, eight-a, eight-c or eight-d, chapter
93 sixty-one of this code.

94 (G) For the purpose of this section, the term “firearm”
95 means any instrument which will, or is designed to, or may
96 readily be converted to expel a projectile by the action of an
97 explosive, gunpowder or any other similar means.

98 (2) Is not in punitive segregation or administrative
99 segregation as a result of disciplinary action;

100 (3) Has prepared and submitted to the Parole Board a
101 written parole release plan setting forth proposed plans for
102 his or her place of residence, employment and, if
103 appropriate, his or her plans regarding education and post-
104 release counseling and treatment: *Provided*, That an
105 inmate’s application for parole may be considered by the
106 board without the prior submission of a home plan, but the
107 inmate shall have a home plan approved by the board prior
108 to his or her release on parole. The Commissioner of
109 Corrections or his or her designee shall review and
110 investigate the plan and provide recommendations to the
111 board as to the suitability of the plan: *Provided, however*,
112 That in cases in which there is a mandatory thirty-day
113 notification period required prior to the release of the
114 inmate, pursuant to section twenty-three of this article, the
115 board may conduct an initial interview and deny parole

116 without requiring the development of a plan. In the event
117 the board believes parole should be granted, it may defer a
118 final decision pending completion of an investigation and
119 receipt of recommendations. Upon receipt of the plan
120 together with the investigation and recommendation, the
121 board, through a panel, shall make a final decision regarding
122 the granting or denial of parole; and

123 (4) Has satisfied the board that if released on parole he
124 or she will not constitute a danger to the community.

125 (c) Except in the case of an inmate serving a life
126 sentence, a person who has been previously twice convicted
127 of a felony may not be released on parole until he or she has
128 served the minimum term provided by law for the crime for
129 which he or she was convicted. An inmate sentenced for life
130 may not be paroled until he or she has served ten years, and
131 an inmate sentenced for life who has been previously twice
132 convicted of a felony may not be paroled until he or she has
133 served fifteen years: *Provided*, That an inmate convicted of
134 first degree murder for an offense committed on or after
135 June 10, 1994, is not eligible for parole until he or she has
136 served fifteen years.

137 (d) In the case of an inmate sentenced to a state
138 correctional facility regardless of the inmate's place of
139 detention or incarceration, the Parole Board, as soon as that
140 inmate becomes eligible, shall consider the advisability of
141 his or her release on parole.

142 (e) If, upon consideration, parole is denied, the board
143 shall promptly notify the inmate of the denial. The board
144 shall, at the time of denial, notify the inmate of the month
145 and year he or she may apply for reconsideration and
146 review. The board shall at least once a year reconsider and
147 review the case of every inmate who was denied parole and
148 who is still eligible: *Provided*, That the board may
149 reconsider and review parole eligibility any time within
150 three years following the denial of parole of an inmate
151 serving a life sentence with the possibility of parole.

152 (f) Any inmate in the custody of the commissioner for
153 service of a sentence who reaches parole eligibility is
154 entitled to a timely parole hearing without regard to the
155 location in which he or she is housed.

156 (g) The board shall, with the approval of the Governor,
157 adopt rules governing the procedure in the granting of
158 parole. No provision of this article and none of the rules
159 adopted under this article are intended or may be construed
160 to contravene, limit or otherwise interfere with or affect the
161 authority of the Governor to grant pardons and reprieves,
162 commute sentences, remit fines or otherwise exercise his or
163 her constitutional powers of executive clemency.

164 (h) (1) The Division of Corrections shall promulgate
165 policies and procedures for developing a rehabilitation
166 treatment plan created with the assistance of a standardized
167 risk and needs assessment. The policies and procedures
168 shall provide for, at a minimum, screening and selecting
169 inmates for rehabilitation treatment and development, using
170 standardized risk and needs assessment and substance abuse
171 assessment tools, and prioritizing the use of residential
172 substance abuse treatment resources based on the results of
173 the standardized risk and needs assessment and a substance
174 abuse assessment. The results of all standardized risk and
175 needs assessments and substance abuse assessments are
176 confidential.

177 (2) An inmate shall not be paroled under paragraph (B),
178 subdivision (1), subsection (b) of this section solely due to
179 having successfully completed a rehabilitation treatment
180 plan, but completion of all the requirements of a
181 rehabilitation treatment plan along with compliance with the
182 requirements of subsection (b) of this section creates a
183 rebuttable presumption that parole is appropriate. The
184 presumption created by this subdivision may be rebutted by
185 a Parole Board finding that, according to the standardized
186 risk and needs assessment, at the time parole release is
187 sought the inmate still constitutes a reasonable risk to the
188 safety or property of other persons if released. Nothing in

189 subsection (b) of this section or in this subsection may be
190 construed to create a right to parole.

191 (i) Notwithstanding the provisions of subsection (b) of
192 this section, the Parole Board may grant or deny parole to
193 an inmate against whom a detainer is lodged by a
194 jurisdiction other than West Virginia for service of a
195 sentence of incarceration, upon a written request for parole
196 from the inmate. A denial of parole under this subsection
197 precludes consideration for parole for a period of one year
198 or until the provisions of subsection (b) of this section are
199 applicable.

200 (j) If an inmate is otherwise eligible for parole pursuant
201 to subsection (b) of this section and has completed the
202 rehabilitation treatment program required under subdivision
203 (1), subsection (h) of this section, the Parole Board may not
204 require the inmate to participate in an additional program,
205 but may determine that the inmate must complete an
206 assigned task or tasks prior to actual release on parole. The
207 board may grant parole contingently, effective upon
208 successful completion of the assigned task or tasks, without
209 the need for a further hearing.

210 (k) (1) The Division of Corrections shall supervise all
211 probationers and parolees whose supervision may have been
212 undertaken by this state by reason of any interstate compact
213 entered into pursuant to the Uniform Act for Out-of-State
214 Parolee Supervision.

215 (2) The Division of Corrections shall provide
216 supervision, treatment/recovery and support services for all
217 persons released to mandatory supervision under section
218 twenty-seven, article five, chapter twenty-eight of this code.

219 (l) (1) When considering an inmate of a state
220 correctional facility for release on parole, the Parole Board
221 panel considering the parole shall have before it an authentic
222 copy of or report on the inmate's current criminal record as
223 provided through the West Virginia State Police, the United

224 States Department of Justice or any other reliable criminal
225 information sources and written reports of the warden or
226 superintendent of the state correctional institution to which
227 the inmate is sentenced:

228 (A) On the inmate's conduct record while in custody,
229 including a detailed statement showing any and all
230 infractions of disciplinary rules by the inmate and the nature
231 and extent of discipline administered for the infractions;

232 (B) On the inmate's industrial record while in custody
233 which shall include: The nature of his or her work,
234 occupation or education, the average number of hours per
235 day he or she has been employed or in class while in custody
236 and a recommendation as to the nature and kinds of
237 employment which he or she is best fitted to perform and in
238 which the inmate is most likely to succeed when he or she
239 leaves the state correctional institution; and

240 (C) On any physical, mental, psychological or
241 psychiatric examinations of the inmate.

242 (2) The Parole Board panel considering the parole may
243 waive the requirement of any report when not available or
244 not applicable as to any inmate considered for parole but, in
245 every case, shall enter in its record its reason for the waiver:
246 *Provided*, That in the case of an inmate who is incarcerated
247 because the inmate has been found guilty of, or has pleaded
248 guilty to, a felony under the provisions of section twelve,
249 article eight, chapter sixty-one of this code or under the
250 provisions of article eight-b or eight-c of said chapter, the
251 Parole Board panel may not waive the report required by
252 this subsection. The report shall include a study and
253 diagnosis of the inmate, including an on-going treatment
254 plan requiring active participation in sexual abuse
255 counseling at an approved mental health facility or through
256 some other approved program: *Provided, however*, That
257 nothing disclosed by the inmate during the study or
258 diagnosis may be made available to any law-enforcement
259 agency, or other party without that inmate's consent, or

260 admissible in any court of this state, unless the information
261 disclosed indicates the intention or plans of the parolee to
262 do harm to any person, animal, institution or to property.
263 Progress reports of outpatient treatment are to be made at
264 least every six months to the parole officer supervising the
265 parolee. In addition, in such cases, the Parole Board shall
266 inform the prosecuting attorney of the county in which the
267 person was convicted of the parole hearing and shall request
268 that the prosecuting attorney inform the Parole Board of the
269 circumstances surrounding a conviction or plea of guilty,
270 plea bargaining and other background information that
271 might be useful in its deliberations.

272 (m) Before releasing any inmate on parole, the Parole
273 Board shall arrange for the inmate to appear in person before
274 a Parole Board panel and the panel may examine and
275 interrogate him or her on any matters pertaining to his or her
276 parole, including reports before the Parole Board made
277 pursuant to the provisions of this section: *Provided*, That an
278 inmate may appear by video teleconference if the members
279 of the Parole Board panel conducting the examination are
280 able to contemporaneously see the inmate and hear all of his
281 or her remarks and if the inmate is able to
282 contemporaneously see each of the members of the panel
283 conducting the examination and hear all of the members'
284 remarks: *Provided, however*, That the requirement that an
285 inmate personally appear may be waived where a physician
286 authorized to do so by the Commissioner of Corrections
287 certifies that the inmate, due to a medical condition or
288 disease, is too debilitated, either physically or cognitively,
289 to appear. The panel shall reach its own written conclusions
290 as to the desirability of releasing the inmate on parole and
291 the majority of the panel considering the release must
292 concur in the decision. The warden or superintendent shall
293 furnish all necessary assistance and cooperate to the fullest
294 extent with the Parole Board. All information, records and
295 reports received by the Parole Board shall be kept on
296 permanent file.

297 (n) The Parole Board and its designated agents are at all
298 times to have access to inmates imprisoned in any state
299 correctional facility or in any jail in this state and may obtain
300 any information or aid necessary to the performance of its
301 duties from other departments and agencies of the state or
302 from any political subdivision of the state.

303 (o) The Parole Board shall, if requested by the
304 Governor, investigate and consider all applications for
305 pardon, reprieve or commutation and shall make
306 recommendation on the applications to the Governor.

307 (p) Prior to making a recommendation for pardon,
308 reprieve or commutation, the board shall notify the
309 sentencing judge and prosecuting attorney at least ten days
310 before the recommendation.

311 (q) A parolee shall participate as a condition of parole
312 in the litter control program of the county to which he or she
313 is released to the extent directed by the Parole Board, unless
314 the board specifically finds that this alternative service
315 would be inappropriate.

§62-12-23. Notification of parole hearing; victim's right to be heard; notification of release on parole.

1 (a) Following the sentencing of a person who has been
2 convicted of murder, aggravated robbery, sexual assault in
3 the first or second degree, kidnapping, child abuse resulting
4 in injury, child neglect resulting in injury, arson or a sexual
5 offense against a minor, the prosecuting attorney who
6 prosecuted the offender shall prepare a parole hearing
7 notification form. This form shall contain the following
8 information:

9 (1) The name of the county in which the offender was
10 prosecuted and sentenced;

11 (2) The name of the court in which the offender was
12 prosecuted and sentenced;

13 (3) The name of the prosecuting attorney or assistant
14 prosecuting attorney who prosecuted the offender;

15 (4) The name of the judge who presided over the
16 criminal case and who sentenced the offender;

17 (5) The names of the law-enforcement agencies and
18 officers who were primarily involved with the investigation
19 of the crime for which the offender was sentenced; and

20 (6) The names, addresses and telephone numbers of the
21 victims of the crime for which the offender was sentenced
22 or the names, addresses and telephone numbers of the
23 immediate family members of each victim of the crime,
24 including, but not limited to, each victim's spouse, father,
25 mother, brothers, sisters and any adult household member
26 residing with the victim.

27 (b) The prosecuting attorney shall retain the original of
28 the parole hearing notification form and shall provide copies
29 of it to the circuit court which sentenced the offender, the
30 Parole Board, the Commissioner of Corrections and to all
31 persons whose names and addresses are listed on the form.

32 (c) At least forty-five days prior to the date of a parole
33 hearing, the Parole Board shall notify all persons who are
34 listed on the parole hearing notification form, including the
35 circuit court which sentenced the offender, the prosecuting
36 attorney's office that prosecuted the offender and the law-
37 enforcement agency and officer primarily involved in the
38 offense underlying the sentence, of the date, time and place
39 of the hearing. Such notice shall be sent by regular mail,
40 properly addressed and postage prepaid, by electronic mail,
41 or by facsimile. Notice to the victims of the crime for which
42 the offender was sentenced or the immediate family
43 members of each victim of the crime shall be sent by
44 certified mail, return receipt requested. The notice shall
45 state that the victims of the crime have the right to submit a
46 written statement to the Parole Board and to attend the
47 parole hearing to be heard regarding the propriety of
48 granting parole to the prisoner. The notice shall also state
49 that only the victims may submit written statements and

50 speak at the parole hearing unless a victim is deceased, is a
51 minor or is otherwise incapacitated.

52 (d) The panel considering the parole shall inquire during
53 the parole hearing as to whether the victims of the crime or
54 their representatives, as provided in this section, are present.
55 If so, the panel shall permit those persons to speak at the
56 hearing regarding the propriety of granting parole for the
57 prisoner.

58 (e) If the panel grants parole, it shall immediately set a
59 date on which the prisoner will be released. Such date shall
60 be no earlier than thirty days after the date on which parole
61 is granted. On the date on which parole is granted, the Parole
62 Board shall notify all persons listed on the parole hearing
63 notification form, including the circuit court which
64 sentenced the offender and office of the prosecuting
65 attorney that prosecuted the offender, that parole has been
66 granted and the date of release. This notice shall be sent by
67 the method prescribed in subsection (c) of this section. A
68 written statement of reasons for releasing the prisoner,
69 prepared pursuant to subsection (b), section thirteen of this
70 article, shall be provided upon request to all persons listed
71 on the parole hearing notification form, including the circuit
72 court which sentenced the offender and office of the
73 prosecuting attorney that prosecuted the offender.

CHAPTER 63

**(H. B. 2766 - By Delegates Shott, R. Miller, Kessinger,
Lane, Byrd, Isner and Frich)
[By Request of the West Virginia Supreme Court of Appeals]**

[Passed March 22, 2017; in effect ninety days from passage.]
[Approved by the Governor on March 30, 2017.]

AN ACT to amend the Code of West Virginia, 1931, as amended,
by adding thereto a new section, designated §62-15-9a,
relating to establishing a new special revenue fund, designated

the Adult Drug Court Participation Fund, for the purpose of collecting and remitting moneys to the State Treasury for participation in an adult drug court program administered by the Supreme Court of Appeals.

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 §62-15-9a, to read as follows:

ARTICLE 15. DRUG OFFENDER ACCOUNTABILITY AND TREATMENT ACT.

§62-15-9a. Adult Drug Court Participation Fund created.

1 (a) There is created within the State Treasury a special
2 revenue fund designated the Adult Drug Court Participation
3 Fund to be administered by the West Virginia Supreme
4 Court of Appeals.

5 (b) The fund shall consist of moneys received from
6 individuals participating in an adult drug court program.

7 (c) All moneys deposited into the State Treasury and
8 credited to the Adult Drug Court Participation Fund shall be
9 used to pay the costs associated with maintaining and
10 administering the court's adult drug court programs.

11 (d) All moneys collected by the Administrator of the
12 Supreme Court of Appeals for participation in the court's
13 adult drug court program shall be deposited into the Adult
14 Drug Court Participation Fund. Expenditures from the fund
15 shall be for the purpose set forth in subsection (c) of this
16 section and are not authorized from collections but are to be
17 made only in accordance with appropriation by the
18 Legislature and in accordance with article three, chapter
19 twelve of this code and upon fulfillment of the requirements
20 of article two, chapter eleven-b of this code: *Provided*, That
21 for the fiscal year ending June 30, 2017, expenditures are
22 authorized from collections rather than pursuant to
23 appropriation by the Legislature.



CHAPTER 64

**(Com. Sub. for H. B. 2674 - By Delegates Shott,
Hanshaw, Arvon, Zatezalo, Sobonya, O'Neal,
Fleischauer, Kessinger, Isner and Frich)**

[Passed April 8, 2017; in effect ninety days from passage.]
[Approved by the Governor on April 24, 2017.]

AN ACT to amend and reenact §27-3-1 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto two new sections, designated §44A-3-17 and §44A-3-18, all relating to the disclosure of certain confidential information relating to protected persons in guardianship; access to and receipt of certain information regarding a protected person by certain relatives of the protected person; authorizing relatives of a protected person to petition the circuit court for access and information about a protected person; defining “relative”; providing a relative may petition the court for an order granting access to a protected person; setting forth time standards in which to conduct a hearing after a petition is filed; providing for an emergency hearing under particular circumstances; providing for service of a petition upon a guardian and setting time standards for service thereof; providing for the entry of an order by the court following notice and hearing conducted thereon; providing standards for a court to observe and implement in issuing a ruling on a petition; providing the court may award attorney’s fees and costs be paid to a prevailing party; setting forth particular duties for a guardian to provide relatives notice about a protected person’s condition and circumstances; authorizing court to retain jurisdiction; regarding dissemination of information about a protected person to relatives; and providing a guardian method whereby one may be relieved of responsibility for providing information regarding a protected person to a relative.

Be it enacted by the Legislature of West Virginia:

That §27-3-1 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and to amend code be amended by adding thereto two new sections, designated §44A-3-17 and §44A-3-18, all to read as follows:

CHAPTER 27. MENTALLY ILL PERSONS.

ARTICLE 3. CONFIDENTIALITY.

***§27-3-1. Definition of confidential information; disclosure.**

1 (a) Communications and information obtained in the
2 course of treatment or evaluation of any client or patient are
3 confidential information. Such confidential information
4 includes the fact that a person is or has been a client or
5 patient, information transmitted by a patient or client or
6 family thereof for purposes relating to diagnosis or
7 treatment, information transmitted by persons participating
8 in the accomplishment of the objectives of diagnosis or
9 treatment, all diagnoses or opinions formed regarding a
10 client's or patient's physical, mental or emotional condition,
11 any advice, instructions or prescriptions issued in the course
12 of diagnosis or treatment, and any record or characterization
13 of the matters hereinbefore described. It does not include
14 information which does not identify a client or patient,
15 information from which a person acquainted with a client or
16 patient would not recognize such client or patient and
17 uncoded information from which there is no possible means
18 to identify a client or patient.

19 (b) Confidential information shall not be disclosed,
20 except:

***NOTE:** This section was also amended by S. B. 187 (Chapter 196), which passed prior to this act.

21 (1) In a proceeding under section four, article five of this
22 chapter to disclose the results of an involuntary examination
23 made pursuant to section two, three or four of said article;

24 (2) In a proceeding under article six-a of this chapter to
25 disclose the results of an involuntary examination made
26 pursuant thereto;

27 (3) Pursuant to an order of any court based upon a
28 finding that the information is sufficiently relevant to a
29 proceeding before the court to outweigh the importance of
30 maintaining the confidentiality established by this section;

31 (4) To provide notice to the federal National Instant
32 Criminal Background Check System, established pursuant
33 to section 103(d) of the Brady Handgun Violence
34 Prevention Act, 18 U.S.C. §922, in accordance with article
35 seven-a, chapter sixty-one of this code;

36 (5) To protect against a clear and substantial danger of
37 imminent injury by a patient or client to himself, herself or
38 another;

39 (6) For treatment or internal review purposes, to staff of
40 the mental health facility where the patient is being cared
41 for or to other health professionals involved in treatment of
42 the patient;

43 (7) Without the patient's consent as provided for under
44 the Privacy Rule of the federal Health Insurance Portability
45 and Accountability Act of 1996, 45 C.F.R. §164.506, for
46 thirty days from the date of admission to a mental health
47 facility if: (i) The provider makes a good faith effort to
48 obtain consent from the patient or legal representative prior
49 to disclosure; (ii) the minimum information necessary is
50 released for a specifically stated purpose; and (iii) prompt
51 notice of the disclosure, the recipient of the information and
52 the purpose of the disclosure is given to the patient or legal
53 representative; and

54 (8) In a proceeding held under section seventeen, or as
55 required by section eighteen, of article three of chapter
56 forty-four-a of this code.

CHAPTER 44A. WEST VIRGINIA GUARDIANSHIP AND CONSERVATORSHIP ACT.

ARTICLE 3. GUARDIANSHIP AND CONSERVATORSHIP ADMINISTRATION.

§44A-3-17. Petition by certain persons for access to persons in guardianship; hearing and court order.

1 (a) As used in this section, unless the context otherwise
2 requires, “relative” means a spouse, parent, grandparent,
3 stepparent, child, grandchild, sibling or half sibling. The
4 term includes said relationships that are created as a result
5 of adoption.

6 (b) A relative may file a petition in circuit court seeking
7 access to and information about a protected person which
8 may include the opportunity to have visitation and contact
9 with the protected person. The petition may be filed in the
10 circuit court of the county in which the protected person
11 resides or if the protected person has been admitted to a
12 health care facility in a county other than that in which he
13 or she resides in the circuit court of the county in which the
14 health care facility is located.

15 (c) The court shall schedule a hearing on the petition
16 within sixty days of the petition being filed: *Provided*, That
17 if the petition alleges that the protected person’s health is in
18 recent significant decline or he or she is at imminent risk of
19 death, an emergency hearing shall be scheduled as soon as
20 practicable. The court may continue a hearing for good
21 cause shown.

22 (d) Service of process upon the guardian shall be by
23 personal service, consistent with the West Virginia Rules of
24 Civil Procedure. Service of the petition shall be effected at
25 least ten days prior to the scheduled hearing date: *Provided*,

26 That where an emergency hearing is sought pursuant to
27 subsection (c) of this section, service of process upon the
28 guardian shall be as far in advance of the scheduled hearing
29 date as possible.

30 (e) Upon notice and hearing the court may:

31 (1) Deny the petition;

32 (2) Order the guardian to allow the petitioner access to
33 the protected person upon finding, by a preponderance of
34 the evidence, that the guardian is preventing access by the
35 petitioner to the protected person, and that contact with the
36 petitioner is in the best interests of the protected person.

37 (f) The court may, in its discretion, order the disclosure
38 to the petitioner of such confidential information, as
39 delineated in section one of article three of chapter twenty-
40 seven of this code, as it may deem appropriate.

41 (g) The court may, in its discretion, award the prevailing
42 party in an action brought under this section court costs and
43 reasonable attorney's fees. Court costs and attorney's fees
44 awarded under this subsection may not be paid from the
45 protected person's estate, unless the court orders otherwise.

46 (h) If the court grants the petition it may, in its
47 discretion, retain jurisdiction over the matter and modify its
48 order consistent with the best interests of the protected
49 person.

50 (i) The provisions of this section apply to all
51 guardianship of protected persons regardless of the date
52 guardianship was established.

**§44A-3-18. Guardian's duty to inform certain relatives about
protected person's health and residence.**

1 (a) The provisions of this section apply to relatives who
2 have been granted access to a protected person under section
3 seventeen of this article.

4 (b) Except as provided by subsection (d) of this section,
5 the guardian of a protected person shall as soon as
6 practicable inform such relatives if:

7 (1) The protected person dies;

8 (2) The protected person is admitted to a medical facility
9 for a period of three days or more;

10 (3) The protected person's residence has changed; or

11 (4) The protected person is staying at a location other
12 than his or her usual place of residence for a period that
13 exceeds two calendar weeks.

14 (c) In the case of the death of the protected person, the
15 guardian shall inform the relative of any funeral
16 arrangements and the location of the protected person's
17 final resting place.

18 (d) A relative entitled to receive information regarding
19 a protected person under this section may waive the notice
20 required thereof by this section by providing a written
21 waiver to the guardian. A guardian shall file any such
22 written waiver with the court.

CHAPTER 65

(Com. Sub. for S. B. 225 - By Senators Trump and Blair)

[Passed April 3, 2017; in effect from passage.]
[Approved by the Governor on April 11, 2017.]

AN ACT to amend and reenact §48-27-402 of the Code of West Virginia, 1931, as amended, relating to including custody cases in those types of cases in which a magistrate may only

enter certain types of relief if a family court has previously entered a temporary order.

Be it enacted by the Legislature of West Virginia:

That §48-27-402 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 27. PREVENTION AND TREATMENT OF DOMESTIC VIOLENCE.

PART IV. COORDINATION WITH PENDING COURT ACTIONS.

§48-27-402. Proceedings in magistrate court when temporary divorce, annulment, separate maintenance or custody order is in effect.

1 (a) The provisions of this section apply where a
2 temporary order has been entered by a family court in an
3 action for divorce, annulment, separate maintenance or
4 custody, notwithstanding the provisions of subsection 27-
5 401(c) of this article.

6 (b) A person who is a party to an action for divorce,
7 annulment, separate maintenance or custody in which a
8 temporary order has been entered pursuant to section 5-501
9 of this chapter may petition the magistrate court for a
10 temporary emergency protective order pursuant to this
11 section for any violation of the provisions of this article
12 occurring after the date of entry of the temporary order
13 pursuant to section 5-501 of this chapter.

14 (c) The only relief that a magistrate may award pursuant
15 to this section is a temporary emergency protective order:

16 (1) Directing the respondent to refrain from abusing the
17 petitioner or minor children, or both;

18 (2) Ordering the respondent to refrain from entering the
19 school, business or place of employment of the petitioner or
20 household members or family members for the purpose of
21 violating the protective order; and

22 (3) Ordering the respondent to refrain from contacting,
23 telephoning, communicating with, harassing or verbally
24 abusing the petitioner.

25 (d) A temporary emergency protective order may
26 modify an award of custody or visitation only upon a
27 showing, by clear and convincing evidence, of the
28 respondent's abuse of a child, as abuse is defined in section
29 27-202 of this article. An order of modification shall clearly
30 state which party has custody and describe why custody or
31 visitation arrangements were modified.

32 (e) (1) The magistrate shall forthwith transmit a copy of
33 any temporary emergency protective order, together with a
34 copy of the petition, by mail or by facsimile machine to the
35 family court in which the action is pending and to law-
36 enforcement agencies. The family court shall set a hearing
37 on the matter to be held no later than ten days following the
38 entry of the order by magistrate. The family court shall give
39 notice of the hearing date, time and place to the parties and
40 shall advise them of their opportunity to appear and
41 participate in a hearing to determine whether the order
42 entered by the magistrate should be extended by the family
43 court to a date certain or should be vacated. The notice shall
44 also provide that a party's failure to appear may result in the
45 entry of an order extending the order entered by the
46 magistrate to a date certain or vacating the order of the
47 magistrate. Subsequent to the hearing, the family court shall
48 forthwith enter an order and cause the same to be served on
49 the parties and transmitted by mail or by facsimile machine
50 to the issuing magistrate. The magistrate court clerk shall
51 forward a copy of the family court order to law-enforcement
52 agencies.

53 (2) If no temporary order has been entered in the
54 pending action for divorce, annulment, separate
55 maintenance or custody, the family court shall forthwith
56 return the order with such explanation to the issuing
57 magistrate. The magistrate who issued the order shall vacate
58 the order, noting thereon the reason for termination. The

59 magistrate court clerk shall transmit a copy of the vacated
60 order to the parties and law-enforcement agencies.

61 (f) Notwithstanding any other provision of this code, if
62 the family court extends the temporary emergency
63 protective order entered by the magistrate or if, pursuant to
64 the provisions of section 5-509, the family court enters a
65 protective order as temporary relief in an action for divorce,
66 the family court order shall be treated and enforced as a
67 protective order issued under the provisions of this article.

CHAPTER 66

**(Com. Sub. for H. B. 2479 - By Delegates Storch,
Ferro, Longstreth, McGeehan, Fleischauer,
Canestraro, Isner, Lovejoy, Pushkin and Frich)**

[Passed April 8, 2017; in effect ninety days from passage.]
[Approved by the Governor on April 24, 2017.]

AN ACT to repeal §48-1-233.3, §48-1-233.4 and §48-9-404 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new article, designated §48-31-101, §48-31-102, §48-31-103, §48-31-104, §48-31-105, §48-31-106, §48-31-107, §48-31-201, §48-31-202, §48-31-203, §48-31-204, §48-31-205, §48-31-301, §48-31-302, §48-31-303, §48-31-304, §48-31-305, §48-31-306, §48-31-307, §48-31-308, §48-31-309, §48-31-310, §48-31-401, §48-31-402, §48-31-403, §48-31-404, §48-31-501, §48-31-502 and §48-31-503, all relating to adoption of the Uniform Deployed Parents Custody and Visitation Act; providing a short title; defining terms; providing for enforcement through assessment of attorney fees and costs; defining jurisdiction; providing that the residence of deploying parent is not changed by reason of deployment for purposes of the Uniform Child Custody Jurisdiction and Enforcement Act; providing for emergency

jurisdiction; providing notification requirements; providing notification requirements for change of address; establishing procedures to determine matters of child custody and visitation when parents are deployed in military or other national service; requiring notices from deployed parent; providing for out-of-court agreements and establishing minimum requirements therefor; providing that an agreement under this article is temporary and terminates after the deploying parent returns from deployment, unless terminated prior to by court order; a deploying parent, by power of attorney, may delegate all or part of custodial responsibilities to an certain persons under certain circumstances; providing that the power of attorney may be revoked; prohibiting consideration of past or future deployments in determining the best interest of the child; authorizing orders for payment of child support during deployment; providing that a court may issue a temporary order granting custodial responsibilities under certain circumstances; providing that parents may file a motion regarding custodial responsibility of a child during deployment; providing for expediting hearings; providing that testimony and evidence may be accepted by electronic means; providing effect to prior judicial orders or agreements; providing that a court may grant caretaking authority to certain nonparent individuals; providing for a court's grant of limited contact upon motion of a deploying parent; providing requirements for an order granting custodial responsibility; providing that the court may enter a temporary order for child support under certain circumstances; providing for modification and termination of orders and agreements and the procedures thereof; providing that the court shall issue a temporary order granting the deploying parent reasonable contact with the child under certain circumstances; and giving guidance for interpretation and construction in conjunction with other laws and orders.

Be it enacted by the Legislature of West Virginia:

That §48-1-233.3, §48-1-233.4 and §48-9-404 of the Code of West Virginia, 1931, as amended, be repealed; and that said code be amended by adding thereto a new article, designated §48-31-

101, §48-31-102, §48-31-103, §48-31-104, §48-31-105, §48-31-106, §48-31-107, §48-31-201, §48-31-202, §48-31-203, §48-31-204, §48-31-205, §48-31-301, §48-31-302, §48-31-303, §48-31-304, §48-31-305, §48-31-306, §48-31-307, §48-31-308, §48-31-309, §48-31-310, §48-31-401, §48-31-402, §48-31-403, §48-31-404, §48-31-501, §48-31-502 and §48-31-503, all to read as follows:

ARTICLE 31. UNIFORM DEPLOYED PARENTS CUSTODY AND VISITATION ACT.

§48-31-101. Short title.

1 This article may be cited as the Uniform Deployed
2 Parents Custody and Visitation Act.

§48-31-102. Definitions.

1 In this article:

2 (1) “Adult” means an individual who has attained
3 eighteen years of age or an emancipated minor.

4 (2) “Caretaking authority” means the right to live with
5 and care for a child on a day-to-day basis. The term includes
6 physical custody, parenting time, right to access, and
7 visitation.

8 (3) “Child” means:

9 (A) An unemancipated individual who has not attained
10 eighteen years of age; or

11 (B) An adult son or daughter by birth or adoption, or
12 under law of this state other than this article, who is the
13 subject of a court order concerning custodial responsibility.

14 (4) “Close and substantial relationship” means a
15 relationship in which a significant bond exists between a
16 child and a nonparent.

17 (5) “Court” means a tribunal, authorized under law of
18 this state other than this article to make, enforce, or modify
19 a decision regarding custodial responsibility.

20 (6) “Custodial responsibility” has the same meaning as
21 in section two hundred nineteen, article one of this chapter.

22 (7) “Decision-making authority” means the power to
23 make important decisions regarding a child, including
24 decisions regarding the child’s education, religious training,
25 health care, extracurricular activities, and travel. The term
26 does not include the power to make decisions that
27 necessarily accompany a grant of caretaking authority.

28 (8) “Deploying parent” means a service member, who is
29 deployed or has been notified of impending deployment and
30 is:

31 (A) A parent of a child under law of this state other than
32 this article; or

33 (B) An individual who has custodial responsibility for a
34 child under law of this state other than this article;

35 (9) “Deployment” means the movement or mobilization
36 of a service member for more than ninety days but less than
37 eighteen months pursuant to uniformed service orders that:

38 (A) Are designated as unaccompanied;

39 (B) Do not authorize dependent travel; or

40 (C) Otherwise do not permit the movement of family
41 members to the location to which the service member is
42 deployed.

43 (10) “Family member” means a sibling, aunt, uncle,
44 cousin, step-parent or grandparent of a child or an individual
45 recognized to be in a familial relationship with a child under
46 law of this state other than this article.

47 (11) “Limited contact” means the authority of a
48 nonparent to visit a child for a limited time. The term
49 includes authority to take the child to a place other than the
50 residence of the child.

51 (12) “Nonparent” means an individual other than a
52 deploying parent or other parent.

53 (13) “Other parent” means an individual who, in
54 common with a deploying parent, is:

55 (A) A parent of a child under law of this state other than
56 this article; or

57 (B) An individual who has custodial responsibility for a
58 child under law of this state other than this article.

59 (14) “Record” means information that is inscribed on a
60 tangible medium or that is stored in an electronic or other
61 medium and is retrievable in perceivable form.

62 (15) “Return from deployment” means the conclusion
63 of a service member’s deployment as specified in uniformed
64 service orders.

65 (16) “Service member” means a member of a uniformed
66 service.

67 (17) “Sign” means, with present intent to authenticate or
68 adopt a record:

69 (A) To execute or adopt a tangible symbol; or

70 (B) To attach to or logically associate with the record an
71 electronic symbol, sound or process.

72 (18) “State” means a state of the United States, the
73 District of Columbia, Puerto Rico, the United States Virgin
74 Islands or any territory or insular possession subject to the
75 jurisdiction of the United States.

76 (19) “Uniformed service” means:

77 (A) Active and reserve components of the Army, Navy,
78 Air Force, Marine Corps or Coast Guard of the United
79 States;

80 (B) The United States Merchant Marine;

81 (C) The commissioned corps of the United States Public
82 Health Service;

83 (D) The commissioned corps of the National Oceanic
84 and Atmospheric Administration of the United States; or

85 (E) The National Guard of a state.

§48-31-103. Remedies for noncompliance.

1 In addition to other remedies under law of this state
2 other than this article, if a court finds that a party to a
3 proceeding under this article has acted in bad faith or
4 intentionally failed to comply with this article or a court
5 order issued under this article, the court may assess
6 reasonable attorney's fees and costs against the party and
7 order other appropriate relief.

§48-31-104. Jurisdiction.

1 (a) A court may issue an order regarding custodial
2 responsibility under this article only if the court has
3 jurisdiction under the Uniform Child Custody Jurisdiction
4 and Enforcement Act.

5 (b) If a court has issued a temporary order regarding
6 custodial responsibility pursuant to this article, the
7 residence of the deploying parent is not changed by reason
8 of the deployment for the purposes of the Uniform Child
9 Custody Jurisdiction and Enforcement Act during the
10 deployment.

11 (c) If a court has issued a permanent order regarding
12 custodial responsibility before notice of deployment and the
13 parents modify that order temporarily by agreement
14 pursuant to the provisions of this article, the residence of the

15 deploying parent is not changed by reason of the
16 deployment for the purposes of the Uniform Child Custody
17 Jurisdiction and Enforcement Act.

18 (d) If a court in another state has issued a temporary
19 order regarding custodial responsibility as a result of
20 impending or current deployment, the residence of the
21 deploying parent is not changed because of the deployment
22 for the purposes of the Uniform Child Custody Jurisdiction
23 and Enforcement Act.

24 (e) This section does not prevent a court from exercising
25 temporary emergency jurisdiction under the Uniform Child
26 Custody Jurisdiction and Enforcement Act.

§48-31-105. Notification required of deploying parent.

1 (a) Except as otherwise provided in subsection (c) or (d)
2 of this section, a deploying parent shall notify in a record
3 the other parent of a pending deployment not later than
4 seven days after receiving notice of deployment unless
5 reasonably prevented from doing so by the circumstances of
6 service. If the circumstances of service prevent giving
7 notification within the seven days, the deploying parent
8 shall give the notification as soon as reasonably possible.

9 (b) Except as otherwise provided in subsection (c) or (d)
10 of this section, each parent shall provide in a record the other
11 parent with a plan for fulfilling that parent's share of
12 custodial responsibility during deployment. Each parent
13 shall provide the plan as soon as reasonably possible after
14 notification of deployment is given under subsection (a) of
15 this section.

16 (c) If a court order currently in effect prohibits
17 disclosure of the address or contact information of the other
18 parent, notification of deployment under subsection (a) of
19 this section, or notification of a plan for custodial
20 responsibility during deployment under subsection (b) of
21 this section, may be made only to the issuing court. If the
22 address of the other parent is available to the issuing court,

23 the court shall forward the notification to the other parent.
24 The court shall keep confidential the address or contact
25 information of the other parent.

26 (d) Notification in a record under subsection (a) or (b)
27 of this section is not required if the parents are living in the
28 same residence and both parents have actual notice of the
29 deployment or plan.

30 (e) In a proceeding regarding custodial responsibility, a
31 court may consider the reasonableness of a parent's efforts
32 to comply with this section.

§48-31-106. Duty to notify of change of address.

1 (a) Except as otherwise provided in subsection (b) of
2 this section, an individual to whom custodial responsibility
3 has been granted during deployment pursuant to the
4 provisions of this article shall notify the deploying parent
5 and any other individual with custodial responsibility of a
6 child of any change of the individual's mailing address or
7 residence until the grant is terminated. The individual shall
8 provide the notice to any court that has issued a custody or
9 child support order concerning the child which is in effect.

10 (b) If a court order currently in effect prohibits
11 disclosure of the address or contact information of an
12 individual to whom custodial responsibility has been
13 granted, a notification under subsection (a) of this section
14 may be made only to the court that issued the order. The
15 court shall keep confidential the mailing address or
16 residence of the individual to whom custodial responsibility
17 has been granted.

§48-31-107. General consideration in custody proceeding of parent's military service.

1 In a proceeding for custodial responsibility of a child of
2 a service member, a court may not consider a parent's past
3 deployment or possible future deployment in itself in
4 determining the best interest of the child but may consider

5 any significant impact on the best interest of the child of the
6 parent's past or possible future deployment.

**§48-31-201. Form of agreement addressing custodial
responsibility during deployment.**

1 (a) The parents of a child may enter into a temporary
2 agreement under this article granting custodial
3 responsibility during deployment.

4 (b) An agreement under subsection (a) of this section
5 shall be:

6 (1) In writing; and

7 (2) Signed by both parents and any nonparent to whom
8 custodial responsibility is granted.

9 (c) Subject to subsection (d) of this section, an
10 agreement under subsection (a), if feasible, shall:

11 (1) Identify the destination, duration, and conditions of
12 the deployment that is the basis for the agreement;

13 (2) Specify the allocation of caretaking authority among
14 the deploying parent, the other parent, and any nonparent;

15 (3) Specify any decision-making authority that
16 accompanies a grant of caretaking authority;

17 (4) Specify any grant of limited contact to a nonparent;

18 (5) If under the agreement custodial responsibility is
19 shared by the other parent and a nonparent, or by other
20 nonparents, provide a process to resolve any dispute that
21 may arise;

22 (6) Specify the frequency, duration and means,
23 including electronic means, by which the deploying parent
24 will have contact with the child, any role to be played by the
25 other parent in facilitating the contact, and the allocation of
26 any costs of contact;

27 (7) Specify the contact between the deploying parent
28 and child during the time the deploying parent is on leave or
29 is otherwise available;

30 (8) Acknowledge that any party's child-support
31 obligation cannot be modified by the agreement, and that
32 changing the terms of the obligation during deployment
33 requires modification in the appropriate court;

34 (9) Provide that the agreement will terminate according
35 to the procedures specified in this article after the deploying
36 parent returns from deployment; and

37 (10) If the agreement must be filed pursuant to section
38 two hundred five of this article, specify which parent is
39 required to file the agreement.

40 (d) The omission of any of the items specified in
41 subsection (c) of this section does not invalidate an
42 agreement under this section.

§48-31-202. Nature of authority created by agreement.

1 (a) An agreement under this article is temporary and
2 terminates pursuant to the provisions of this article after the
3 deploying parent returns from deployment, unless the
4 agreement has been terminated before that time by court
5 order or modification under section two hundred three of
6 this article. The agreement does not create an independent,
7 continuing right to caretaking authority, decision-making
8 authority or limited contact in an individual to whom
9 custodial responsibility is given.

10 (b) A nonparent who has caretaking authority, decision-
11 making authority or limited contact by an agreement under
12 this article has standing to enforce the agreement until it has
13 been terminated by court order, by modification under
14 section two hundred three of this article, or under other
15 provisions of this article.

§48-31-203. Modification of agreement.

1 (a) By mutual consent, the parents of a child may
2 modify an agreement regarding custodial responsibility
3 made pursuant to this article.

4 (b) If an agreement is modified under subsection (a) of
5 this section before deployment of a deploying parent, the
6 modification shall be in writing and signed by both parents
7 and any nonparent who will exercise custodial
8 responsibility under the modified agreement.

9 (c) If an agreement is modified under subsection (a) of
10 this section during deployment of a deploying parent, the
11 modification shall be agreed to in a record by both parents
12 and any nonparent who will exercise custodial
13 responsibility under the modified agreement.

§48-31-204. Power of attorney.

1 A deploying parent, by power of attorney, may delegate
2 all or part of custodial responsibility to an adult nonparent
3 for the period of deployment if no other parent possesses
4 custodial responsibility under law of this state other than
5 this article, or if a court order currently in effect prohibits
6 contact between the child and the other parent. The
7 deploying parent may revoke the power of attorney by
8 signing a revocation of the power.

§48-31-205. Filing agreement or power of attorney with court.

1 An agreement or power of attorney under this article
2 shall be filed within a reasonable time with any court that
3 has entered an order on custodial responsibility or child
4 support that is in effect concerning the child who is the
5 subject of the agreement or power. The case number and
6 heading of the pending case concerning custodial
7 responsibility or child support shall be provided to the court
8 with the agreement or power.

§48-31-301. Proceeding for temporary custody order.

1 (a) After a deploying parent receives notice of
2 deployment and until the deployment terminates, a court
3 may issue a temporary order granting custodial
4 responsibility unless prohibited by the Service Members
5 Civil Relief Act, 50 U.S.C. §3931 and §3932. A court may
6 not issue a permanent order granting custodial responsibility
7 without the consent of the deploying parent.

8 (b) At any time after a deploying parent receives notice
9 of deployment, either parent may file a motion regarding
10 custodial responsibility of a child during deployment. The
11 motion shall be filed in a pending proceeding for custodial
12 responsibility in a court with jurisdiction under section one
13 hundred four of this article or, if there is no pending
14 proceeding in a court with jurisdiction under section one
15 hundred four of this article, in a new action for granting
16 custodial responsibility during deployment.

§48-31-302. Expedited hearing.

1 If a motion to grant custodial responsibility is filed
2 under subsection (b) of section three hundred one of this
3 article before a deploying parent deploys, the court shall
4 conduct an expedited hearing.

§48-31-303. Testimony by electronic means.

1 In a proceeding under this article, a party or witness who
2 is not reasonably available to appear personally may appear,
3 provide testimony and present evidence by electronic means
4 unless the court finds good cause to require a personal
5 appearance.

§48-31-304. Effect of prior judicial order or agreement.

1 In a proceeding for a grant of custodial responsibility
2 pursuant to this article, the following rules apply:

3 (1) A prior judicial order, designating custodial
4 responsibility if there is deployment, is binding on the court
5 unless the circumstances meet the requirements of law of
6 this state other than this article for modifying a judicial order
7 regarding custodial responsibility.

8 (2) The court shall enforce a prior written agreement
9 between the parents for designating custodial responsibility
10 if there is deployment, including an agreement executed
11 under section two hundred one of this article, unless the
12 court finds that the agreement is contrary to the best interest
13 of the child.

**§48-31-305. Grant of caretaking or decision-making authority
to nonparent.**

1 (a) On motion of a deploying parent and in accordance
2 with law of this state other than this article, if it is in the best
3 interest of the child, a court may grant caretaking authority
4 to a nonparent who is an adult family member of the child
5 or an adult with whom the child has a close and substantial
6 relationship.

7 (b) Unless a grant of caretaking authority to a nonparent
8 under subsection (a) of this section is agreed to by the other
9 parent, the grant is limited to an amount of time not greater
10 than:

11 (1) The amount of time granted to the deploying parent
12 under a permanent custody order, but the court may add
13 unusual travel time necessary to transport the child; or

14 (2) In the absence of a permanent custody order that is
15 currently in effect, the amount of time that the deploying
16 parent habitually cared for the child before being notified of
17 deployment, but the court may add unusual travel time
18 necessary to transport the child.

19 (c) A court may grant part of a deploying parent's
20 decision-making authority, if the deploying parent is unable
21 to exercise that authority, to a nonparent who is an adult

22 family member of the child or an adult with whom the child
23 has a close and substantial relationship. If a court grants the
24 authority to a nonparent, the court shall specify the decision-
25 making powers granted, including decisions regarding the
26 child's education, religious training, health care,
27 extracurricular activities and travel.

§48-31-306. Grant of limited contact.

1 On motion of a deploying parent, and in accordance
2 with law of this state other than this article, unless the court
3 finds that the contact would be contrary to the best interest
4 of the child, a court shall grant limited contact to a nonparent
5 who is a family member of the child or an individual with
6 whom the child has a close and substantial relationship.

§48-31-307. Nature of authority created by temporary custody order.

1 (a) A grant of authority under this article is temporary
2 and terminates under the provisions of this article after the
3 return from deployment of the deploying parent, unless the
4 grant has been terminated before that time by court order.
5 The grant does not create an independent, continuing right
6 to caretaking authority, decision-making authority or
7 limited contact in an individual to whom it is granted.

8 (b) A nonparent granted caretaking authority, decision-
9 making authority or limited contact under this article may
10 enforce the grant until it is terminated by court order or
11 under other provisions of this article.

§48-31-308. Content of temporary custody order.

1 (a) An order granting custodial responsibility under this
2 article shall:

3 (1) Designate the order as temporary; and

4 (2) Identify to the extent feasible the destination,
5 duration and conditions of the deployment.

6 (b) If applicable, an order for custodial responsibility
7 under this article shall:

8 (1) Specify the allocation of caretaking authority,
9 decision-making authority or limited contact among the
10 deploying parent, the other parent, and any nonparent;

11 (2) If the order divides caretaking or decision-making
12 authority between individuals, or grants caretaking
13 authority to one individual and limited contact to another,
14 provide a process to resolve any dispute that may arise;

15 (3) Provide for liberal communication between the
16 deploying parent and the child during deployment,
17 including through electronic means, unless contrary to the
18 best interest of the child, and allocate any costs of
19 communications;

20 (4) Provide for liberal contact between the deploying
21 parent and the child during the time the deploying parent is
22 on leave or otherwise available, unless contrary to the best
23 interest of the child;

24 (5) Provide for reasonable contact between the
25 deploying parent and the child after return from deployment
26 until the temporary order is terminated, even if the time of
27 contact exceeds the time the deploying parent spent with the
28 child before entry of the temporary order; and

29 (6) Provide that the order will terminate pursuant to the
30 provisions of this article after the deploying parent returns
31 from deployment.

§48-31-309. Order for child support.

1 If a court has issued an order granting caretaking
2 authority under this article, or an agreement granting
3 caretaking authority has been executed under section two
4 hundred one of this article, the court may enter a temporary
5 order for child support consistent with law of this state other

6 than this article if the court has jurisdiction under the
7 Uniform Interstate Family Support Act.

§48-31-310. Modifying or terminating grant of custodial responsibility to nonparent.

1 (a) Except for an order under section three hundred four
2 of this article, except as otherwise provided in subsection
3 (b) of this section, and consistent with the Service Members
4 Civil Relief Act, 50 U.S.C. §3931 and §3932, on motion of
5 a deploying or other parent or any nonparent to whom
6 caretaking authority, decision-making authority, or limited
7 contact has been granted, the court may modify or terminate
8 the grant if the modification or termination is consistent
9 with this article and it is in the best interest of the child. A
10 modification is temporary and terminates pursuant to the
11 provisions of this article after the deploying parent returns
12 from deployment, unless the grant has been terminated
13 before that time by court order.

14 (b) On motion of a deploying parent, the court shall
15 terminate a grant of limited contact.

§48-31-401. Procedure for terminating temporary grant of custodial responsibility established by agreement.

1 (a) At any time after return from deployment, a
2 temporary agreement granting custodial responsibility
3 under section two hundred one of this article may be
4 terminated by an agreement to terminate signed by the
5 deploying parent and the other parent.

6 (b) A temporary agreement under section two hundred
7 one of this article granting custodial responsibility
8 terminates:

9 (1) If an agreement to terminate under subsection (a) of
10 this section specifies a date for termination, on that date; or

11 (2) If the agreement to terminate does not specify a date,
12 on the date the agreement to terminate is signed by the
13 deploying parent and the other parent.

14 (c) In the absence of an agreement under subsection (a)
15 of this section to terminate, a temporary agreement granting
16 custodial responsibility terminates under this article sixty
17 days after the deploying parent gives notice to the other
18 parent that the deploying parent returned from deployment.

19 (d) If a temporary agreement granting custodial
20 responsibility was filed with a court pursuant to section two
21 hundred five of this article, an agreement to terminate the
22 temporary agreement also shall be filed with that court
23 within a reasonable time after the signing of the agreement.
24 The case number and heading of the case concerning
25 custodial responsibility or child support shall be provided to
26 the court with the agreement to terminate.

§48-31-402. Consent procedure for terminating temporary grant of custodial responsibility established by court order.

1 At any time after a deploying parent returns from
2 deployment, the deploying parent and the other parent may
3 file with the court an agreement to terminate a temporary
4 order for custodial responsibility. After an agreement has
5 been filed, the court shall issue an order terminating the
6 temporary order effective on the date specified in the
7 agreement. If a date is not specified, the order is effective
8 immediately.

§48-31-403. Visitation before termination of temporary grant of custodial responsibility.

1 After a deploying parent returns from deployment until
2 a temporary agreement or order for custodial responsibility
3 established under this article is terminated, the court shall
4 issue a temporary order granting the deploying parent
5 reasonable contact with the child unless it is contrary to the

6 best interest of the child, even if the time of contact exceeds
7 the time the deploying parent spent with the child before
8 deployment.

§48-31-404. Termination by operation of law of temporary grant of custodial responsibility established by court order.

1 (a) If an agreement between the parties to terminate a
2 temporary order for custodial responsibility under this
3 article has not been filed, the order terminates sixty days
4 after the deploying parent gives notice to the other parent
5 and any nonparent granted custodial responsibility that the
6 deploying parent has returned from deployment.

7 (b) A proceeding seeking to prevent termination of a
8 temporary order for custodial responsibility is governed by
9 law of this state other than this article: *Provided*, That no
10 agreement of the parties made pursuant to the provisions of
11 this article shall be the basis for a modification of the
12 parents' permanent parenting plan made pursuant to section
13 four hundred two, article nine of this chapter.

§48-31-501. Uniformity of application and construction.

1 In applying and construing this uniform act,
2 consideration shall be given to the need to promote
3 uniformity of the law with respect to its subject matter
4 among states that enact it.

§48-31-502. Relation to Electronic Signatures in Global and National Commerce Act.

1 This article modifies, limits, or supersedes the
2 Electronic Signatures in Global and National Commerce
3 Act, 15 U.S.C. Section 7001 *et seq.*, but does not modify,
4 limit, or supersede Section 101(c) of that Act, 15 U.S.C.
5 Section 7001(c), or authorize electronic delivery of any of

6 the notices described in Section 103(b) of that Act, 15
7 U.S.C. Section 7003(b).

§48-31-503. Savings clause.

1 This article does not affect the validity of a temporary
2 court order concerning custodial responsibility during
3 deployment which was entered before the effective date of
4 this article.

CHAPTER 67

**(H. B. 2856 - By Delegates O'Neal, Cooper, Ambler,
C. Miller, Boggs, Fast, Kessinger, White, Sobonya, C.
Romine and Rohrbach)**

[Passed April 4, 2017; in effect ninety days from passage.]
[Approved by the Governor on April 11, 2017.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §5B-2-9a, relating to declaring it the public policy of the State and the Legislature's intent to improve the marketing, quality and frequency of passenger rail service of the Cardinal Passenger Train operated by the National Railroad Passenger Corporation, doing business as AMTRAK, along the route crossing the south-central region of the state from Huntington eastward to White Sulphur Springs; establishing the powers and duties of the Commissioner of the Division of Tourism and the Tourism Commission to achieve such policy; directing the West Virginia Department of Transportation and the West Virginia State Rail Authority to cooperate with the Tourism Commission to achieve such policy; authorizing the Commissioner of Tourism to cooperate with other states and the National Railroad Passenger Corporation to achieve such policy; authorizing the Commissioner of Tourism to

participate in an interstate body to achieve such policy; and creating a special revenue account, the Cardinal Passenger Train Enhancement Fund, for receipt of certain gifts, grants, bequests, transfers, appropriations or other donations which may be received.

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-2-9a, to read as follows:

ARTICLE 2. WEST VIRGINIA DEVELOPMENT OFFICE.

§5B-2-9a. Powers and duties of Commissioner of the Division of Tourism and Tourism Commission for improving Cardinal Passenger Train Service; declaration of public policy and legislative intent.

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

18 (b) Notwithstanding any other provision of this code to
19 the contrary, the Commissioner of the Division of Tourism,
20 with the advice of the tourism commission, and under the
21 supervision of the Secretary of the West Virginia

22 Department of Commerce, is authorized and directed to
23 coordinate and supervise the activities of the state, to
24 coordinate and cooperate with the political subdivisions and
25 municipalities of the state, to cooperate with the National
26 Railroad Passenger Corporation and with the other states
27 served by the Cardinal Passenger Train to achieve the public
28 policy set forth in subsection (a) of this section. The
29 commissioner is authorized to conduct such studies, and
30 make such investigations, as may be reasonable and
31 appropriate to advance the public policy set forth in
32 subsection (a) of this section.

33 (c) The commissioner is hereby authorized to enter into
34 contracts and memoranda of understanding with the
35 National Railroad Passenger Corporation, with the other
36 states served by the Cardinal Passenger Train, and with the
37 political subdivisions and municipalities of this state, to
38 achieve the public policy set forth in subsection (a) of this
39 section. The commissioner is further authorized to
40 cooperate with the aforesaid other states and National
41 Railroad Passenger Corporation in the formation of an
42 interstate committee for the purpose of achieving the public
43 policy set forth in subsection (a) of this section, to
44 participate in said committee and appoint other designees
45 thereto.

46 (d) In the exercise of their powers and duties under this
47 section, the commissioner and tourism commission shall
48 consult with the West Virginia Department of
49 Transportation and the West Virginia State Rail Authority.
50 The West Virginia Department of Transportation and the
51 West Virginia State Rail Authority shall cooperate with the
52 commissioner and the tourism commission, and shall
53 provide the commissioner and tourism commission with
54 such reasonable and necessary assistance as may be possible
55 based on available staff and funds to achieve the public
56 policy set forth in subsection (a) of this section.

57 (e) There is hereby created a special revenue account,
58 designated the "Cardinal Passenger Train Enhancement

59 Fund” into which all moneys intended to advance the
60 purposes of this section shall be deposited. Moneys in this
61 account shall be expended solely for the public policy and
62 purposes set forth in this section. Funds paid into this
63 account may also be derived from the following sources: (1)
64 All interest or return on investment accruing to this account;
65 (2) any gifts, grants, bequests, transfers, appropriations or
66 other donations which may be received from any
67 governmental entity or unit or any person, firm, foundation,
68 or corporation; and (3) any appropriations by the
69 Legislature which may be made for the purposes of this
70 section. Any balance including accrued interest and other
71 earnings at the end of any fiscal year shall not revert to the
72 general fund but shall remain in the fund for the purposes
73 set forth in this section. The moneys in the fund shall be
74 paid out, at the sole discretion and direction of the
75 commissioner, to advance the purposes of this section.

CHAPTER 68

(S. B. 231 - By Senator Hall)

[Passed March 15, 2017; in effect July 1, 2017.]
[Approved by the Governor on March 24, 2017.]

AN ACT to amend and reenact §18-2-5b of the Code of West Virginia, 1931, as amended, relating to providing that a county board of education is not required to seek Medicaid reimbursement if it determines there is not a net benefit after consideration of costs and time involved with seeking the reimbursement for eligible services and that the billing process detracts from the educational program.

Be it enacted by the Legislature of West Virginia:

That §18-2-5b of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2. STATE BOARD OF EDUCATION.

§18-2-5b. Medicaid-eligible children; school health services advisory committee.

1 (a) The state board shall become a Medicaid provider
2 and seek out Medicaid-eligible students for the purpose of
3 providing Medicaid and related services to students eligible
4 under the Medicaid program and to maximize federal
5 reimbursement for all services available under the Omnibus
6 Budget Reconciliation Act of 1989, as it relates to Medicaid
7 expansion and any future expansions in the Medicaid
8 program for Medicaid and related services for which state
9 dollars are or will be expended.

10 (b) The state board may delegate this provider status and
11 subsequent reimbursement to regional education service
12 agencies, county boards or both: *Provided*, That a county
13 board is not required to seek reimbursement if it determines
14 there is not a net benefit after consideration of costs and time
15 involved with seeking the reimbursement for eligible
16 services and that the billing process detracts from the
17 educational program.

18 (c) Annually, no later than January 1, the state board
19 shall report on a county by county basis to the Legislature:

20 (1) The number and age of children eligible for
21 Medicaid;

22 (2) The number and age of children with Medicaid
23 coverage;

24 (3) The types of Medicaid-eligible services provided;

25 (4) The frequency of services provided;

26 (5) The Medicaid dollars reimbursed; and

27 (6) The problems encountered in the implementation of
28 this system.

29 (d) The state board shall appoint and convene a school
30 health services advisory committee to advise the Secretary
31 of Health and Human Resources and the state
32 superintendent on ways to improve the ability of regional
33 education service agencies, local school boards and
34 Department of Health and Human Resources employees to
35 provide Medicaid-eligible children with all the school-
36 based Medicaid services for which they are eligible and to
37 ensure that the school-based Medicaid service providers bill
38 for and receive all the Medicaid reimbursement to which
39 they are entitled.

40 (e) The committee shall consist of at least the following
41 individuals:

42 (1) The person within the Department of Education
43 responsible for coordinating the provision of and billing for
44 school-based Medicaid services in schools throughout the
45 state, who shall provide secretarial, administrative and
46 technical support to the advisory committee;

47 (2) The person within the Department of Health and
48 Human Resources responsible for coordinating the
49 enrollment of Medicaid-eligible school children throughout
50 the state;

51 (3) Two representatives of regional education service
52 agencies who are experienced with the process of billing
53 Medicaid for school-based health services;

54 (4) Two Department of Health and Human Resources
55 employees responsible for supervising employees;

56 (5) Two persons jointly appointed by the Secretary of
57 Health and Human Resources and the state superintendent;
58 and

59 (6) One representative of the Governor's task force on
60 school health.

61 (f) The school health services advisory committee shall
62 meet in the first instance at the direction of the state
63 superintendent, select a chairperson from among its
64 members, and meet thereafter at the direction of the
65 chairperson. The committee shall report its findings and
66 recommendations to the state board and Department of
67 Health and Human Resources, which findings shall then be
68 included in the report to the Legislature by the state board
69 and Department of Health and Human Resources provided
70 in subsection (c) of this section.

71 (g) All actual and necessary travel expenses of the
72 members of the committee shall be reimbursed by the
73 member's employing agency, for those members not
74 employed by a state agency, the member's actual and
75 necessary travel expenses shall be paid by the state board.
76 All such expenses shall be reimbursed in the same manner
77 as the expenses of state employees are reimbursed.



CHAPTER 69

**(Com. Sub. for H. B. 2195 - By Delegates Rohrbach,
Cooper, Rowan, Hornbuckle, Ambler, Hicks,
Sobonya, Frich and Thompson)**

[Passed April 6, 2017; in effect ninety days from passage.]
[Approved by the Governor on April 26, 2017.]

AN ACT to amend and reenact §18-2-7b of the Code of West Virginia, 1931, as amended, relating to requiring comprehensive drug awareness and prevention program in all public schools; requiring county boards to implement no later than 2018-2019 school year; specifying purposes of program;

requiring county boards to coordinate delivery of instruction to meet program purposes with educators, drug rehabilitation specialists and law-enforcement agencies; requiring instruction relating to interactions with law-enforcement officers; and requiring instruction in any of the grades six through twelve in the subject of health on dangers, and addictive nature of opioid use and safer alternatives to treat pain.

Be it enacted by the Legislature of West Virginia:

That §18-2-7b of the Code of West Virginia, 1931, as amended, be amended and reenacted, to read as follows:

ARTICLE 2. STATE BOARD OF EDUCATION.

§18-2-7b. Programs in drug prevention and violence reduction.

1 (a) In order for the schools to become healthy learning
2 environments and to provide a strong defense against drug
3 use and violence, the State Board of Education shall
4 prescribe programs within the existing health and physical
5 education program which teach resistance and life skills to
6 counteract societal and peer pressure to use drugs, alcohol
7 and tobacco, and shall include counselors, teachers and staff
8 in full implementation of the program. The board shall also
9 prescribe programs to coordinate violence reduction efforts
10 in schools and between schools and their communities and
11 to train students, teachers, counselors and staff in conflict
12 resolution skills. The program shall be comprehensive,
13 interdisciplinary and shall begin in elementary school.

14 (b) No later than the start of the 2018-2019 school year,
15 a county board shall implement comprehensive drug
16 awareness and prevention programs for students in grades
17 K through 12 to receive instruction regarding the dangers of
18 substance abuse. The purpose of the drug awareness and
19 prevention program is to:

20 (1) Keep students from illegally using alcohol, tobacco
21 or other drugs;

22 (2) Reduce or eliminate the incidence and prevalence of
23 student's alcohol, tobacco and other drug abuse;

24 (3) Reduce the factors that place students at risk of
25 abusing alcohol, tobacco or other drugs through school and
26 a community based planning processes;

27 (4) Contribute to the development of school
28 environments and alternative activities that are alcohol,
29 tobacco and drug-free;

30 (5) Increase the knowledge and skills of students, staff
31 and community members for avoiding the harmful effects
32 of alcohol, tobacco and drug use, and of blood borne
33 pathogens;

34 (6) Actively involve staff, students, parents and
35 community members in the development and
36 implementation of the drug awareness and prevention
37 program plans;

38 (7) Facilitate an understanding and appreciation of the
39 risks to, duties of, and likely actions by law-enforcement
40 officers when conducting investigations; and

41 (8) Instruct how to respond to an officer during a
42 vehicular or other stop or police interaction, including
43 problematic or dangerous action and behaviors that could
44 result in a person being detained or arrested.

45 (c) The county board shall coordinate the delivery of
46 instruction to meet the purposes of subsection (b) of this
47 section with educators, drug rehabilitation specialists and
48 law-enforcement agencies to periodically provide age
49 appropriate student education on their experiences with the
50 impacts of illegal alcohol and drug use.

51 (d) Beginning with the 2018-2019 school year,
52 instruction required pursuant to section nine of this article
53 in the subject of health education in any of the grades six
54 through twelve as considered appropriate by the county
55 board shall include at least sixty minutes of instruction for
56 each student on the dangers of opioid use, the additive
57 characteristics of opioids, and safer alternatives to treat
58 pain.

CHAPTER 70

**(Com. Sub. for H. B. 3080 - By Mr. Speaker (Mr.
Armstead), Delegates Maynard, Cooper, Overington
and Moye)**

[Passed April 8, 2017; in effect ninety days from passage.]
[Approved by the Governor on April 26, 2017.]

AN ACT to amend and reenact §18-2-9 of the Code of West Virginia, 1931, as amended, relating to recognition of “Celebrate Freedom Week” in all public, private, parochial and denominational schools; stating purpose; providing for instructional elements; exempting from state accountability measures; requiring administration to public school students of civics portion of test the same or substantially similar to certain naturalization test in any grades nine through twelve beginning 2018-2019 school year; report of aggregate results to county board; and exempting from state accountability measures.

Be it enacted by the Legislature of West Virginia:

That §18-2-9 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2. STATE BOARD OF EDUCATION.**§18-2-9. Required courses of instruction.**

1 (a) In all public, private, parochial and denominational
2 schools located within this state there shall be given prior to
3 the completion of the eighth grade at least one year of
4 instruction in the history of the State of West Virginia. The
5 schools shall require regular courses of instruction by the
6 completion of the twelfth grade in the history of the United
7 States, in civics, in the Constitution of the United States and
8 in the government of the State of West Virginia for the
9 purpose of teaching, fostering and perpetuating the ideals,
10 principles and spirit of political and economic democracy in
11 America and increasing the knowledge of the organization
12 and machinery of the government of the United States and
13 of the State of West Virginia. The state board shall, with the
14 advice of the state superintendent, prescribe the courses of
15 study covering these subjects for the public schools. It shall
16 be the duty of the officials or boards having authority over
17 the respective private, parochial and denominational
18 schools to prescribe courses of study for the schools under
19 their control and supervision similar to those required for
20 the public schools. To further such study, every high school
21 student eligible by age for voter registration shall be
22 afforded the opportunity to register to vote pursuant to
23 section twenty-two, article two, chapter three of this code.

24 (b) The state board shall cause to be taught in all of the
25 public schools of this state the subject of health education,
26 including instruction in any of the grades six through twelve
27 as considered appropriate by the county board, on: (1) The
28 prevention, transmission and spread of acquired immune
29 deficiency syndrome and other sexually transmitted
30 diseases; (2) substance abuse, including the nature of
31 alcoholic drinks and narcotics, tobacco products and other
32 potentially harmful drugs, with special instruction as to their
33 effect upon the human system and upon society in general;
34 (3) the importance of healthy eating and physical activity to
35 maintaining healthy weight; and (4) education concerning

36 cardiopulmonary resuscitation and first aid, including
37 instruction in the care for conscious choking, and
38 recognition of symptoms of drug or alcohol overdose. The
39 course curriculum requirements and materials for the
40 instruction shall be adopted by the state board by rule in
41 consultation with the Department of Health and Human
42 Resources. The state board shall prescribe a standardized
43 health education assessment to be administered within
44 health education classes to measure student health
45 knowledge and program effectiveness.

46 (c) An opportunity shall be afforded to the parent or
47 guardian of a child subject to instruction in the prevention,
48 transmission and spread of acquired immune deficiency
49 syndrome and other sexually transmitted diseases to
50 examine the course curriculum requirements and materials
51 to be used in the instruction. The parent or guardian may
52 exempt the child from participation in the instruction by
53 giving notice to that effect in writing to the school principal.

54 (d) After July 1, 2015, the required instruction in
55 cardiopulmonary resuscitation in subsection (b) of this
56 section shall include at least thirty minutes of instruction for
57 each student prior to graduation on the proper
58 administration of cardiopulmonary resuscitation (CPR) and
59 the psychomotor skills necessary to perform
60 cardiopulmonary resuscitation. The term “psychomotor
61 skills” means the use of hands-on practicing to support
62 cognitive learning. Cognitive-only training does not qualify
63 as “psychomotor skills”. The CPR instruction must be based
64 on an instructional program established by the American
65 Heart Association or the American Red Cross or another
66 program which is nationally recognized and uses the most
67 current national evidence-based Emergency Cardiovascular
68 Care guidelines and incorporates psychomotor skills
69 development into the instruction. A licensed teacher is not
70 required to be a certified trainer of cardiopulmonary
71 resuscitation to facilitate, provide or oversee such
72 instruction. The instruction may be given by community

73 members, such as emergency medical technicians,
74 paramedics, police officers, firefighters, licensed nurses and
75 representatives of the American Heart Association or the
76 American Red Cross. These community members are
77 encouraged to provide necessary training and instructional
78 resources such as cardiopulmonary resuscitation kits and
79 other material at no cost to the schools. The requirements of
80 this subsection are minimum requirements. A local school
81 district may offer CPR instruction for longer periods of time
82 and may enhance the curriculum and training components,
83 including, but not limited to, incorporating into the
84 instruction the use of an automated external defibrillator
85 (AED): *Provided*, That any instruction that results in a
86 certification being earned must be taught by an authorized
87 CPR/AED instructor.

88 (e) The full week of classes during the week within
89 which September 11 falls shall be recognized as “Celebrate
90 Freedom Week.” The purpose of Celebrate Freedom Week
91 is to educate students about the sacrifices made for freedom
92 in the founding of this country and the values on which this
93 country was founded.

94 Celebrate Freedom Week must include appropriate
95 instruction in each social studies class which:

96 (1) Includes an in-depth study of the intent, meaning and
97 importance of the Declaration of Independence and the
98 Constitution of the United States with an emphasis on the
99 Bill of Rights;

100 (2) Uses the historical, political and social environments
101 surrounding each document at the time of its initial passage
102 or ratification; and

103 (3) Includes the study of historical documents to firmly
104 establish the historical background leading to the
105 establishment of the provisions of the Constitution and Bill
106 of Rights by the founding fathers for the purposes of
107 safeguarding our Constitutional republic.

108 The requirements of this subsection are applicable to all
109 public, private, parochial and denominational schools
110 located within this state. Nothing in this subsection creates
111 a standard or requirement subject to state accountability
112 measures.

113 (f) Beginning the 2018-2019 school year, students in the
114 public schools shall be administered a test the same as or
115 substantially similar to the civics portion of the
116 naturalization test used by the United States Citizenship and
117 Immigration Services between their ninth and twelfth grade
118 years as an indicator of student achievement in the area of
119 civics education. The test results may be reported in the
120 aggregate to the county board for evaluation by the board's
121 curriculum director and reported to the board members.
122 Nothing in this subsection creates a standard or requirement
123 subject to state accountability measures.



CHAPTER 71

**(Com. Sub. for S. B. 40 - By Senators Stollings, Ojeda
and Jeffries)**

[Passed April 8, 2017; in effect August 1, 2017.]
[Approved by the Governor on April 26, 2017.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §18-2-25b, relating to emergency action plans for athletics; providing that the West Virginia Secondary Athletics Commission promulgate rules to establish guidelines for emergency action plans by August 1, 2017; establishing parameters for said rules; requiring all member schools to submit emergency action plans to the commission and their county boards of education by December 31, 2017; providing that a copy of the plan be provided to local response agencies identified in the

plan; setting forth a limit of liability; and providing for an effective date.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §18-2-25b, to read as follows:

ARTICLE 2. STATE BOARD OF EDUCATION.

§18-2-25b. Emergency action plans for athletics.

1 (a) No later than August 1, 2017, the West Virginia
2 Secondary Schools Athletics Commission shall promulgate
3 rules to establish guidelines for emergency action plans for
4 athletics designed to respond to athletic injuries that occur
5 on school property during school-sponsored athletic events.
6 The rules shall address, at a minimum:

7 (1) Protocols for practices and for games;

8 (2) Directives for personnel or equipment which should
9 be available on sports fields or in school buildings for both
10 girls' and boys' teams; and

11 (3) Training needed for school or volunteer personnel
12 on an as-needed basis.

13 (b) All member schools shall submit an emergency
14 action plan for athletics to the West Virginia Secondary
15 Schools Athletics Commission and their county boards of
16 education by December 31, 2017: *Provided*, That the
17 county boards shall keep the emergency plan of each school
18 in the county on file and, unless otherwise provided for,
19 provide a copy of each school's emergency action plan for
20 athletics to each local emergency response agency that has
21 a role in the plan.

22 (c) Any person licensed by, or certified or registered in,
23 this state to provide health care or professional health care
24 services who renders services of a medical nature to

25 students under this section, who has an agreement with a
26 county board of education that defines the scope of his or
27 her duties as such, and for which no remuneration is
28 demanded or received, is not liable for any civil damages as
29 a result of rendering such services, or as a result of any act
30 or failure to act in providing or arranging further medical
31 treatment.

32 (1) The limitation of liability only applies if the services
33 are provided in accordance with acceptable standards of
34 care and the licensed health care provider is not grossly
35 negligent or does not demonstrate willful misconduct.

36 (2) Any liability is limited to the applicable limits of the
37 professional liability insurance provided by the State Board
38 of Risk and Insurance Management in effect at the time.

39 (3) Nothing in this subsection nullifies the immunity
40 from civil liability as granted pursuant to section fifteen,
41 article seven, chapter fifty-five of this code or federal law
42 except to the extent to which the actions are covered within
43 the applicable limits of the professional liability insurance
44 provided by the State Board of Risk and Insurance
45 Management pursuant to this section and in effect at the
46 time.

CHAPTER 72

**(Com. Sub. for H. B. 2711 - By Mr. Speaker (Mr.
Armstead) and Delegate Miley)
[By Request of the Executive]**

[Passed April 8, 2017; in effect ninety days from passage.]
[Approved by the Governor on April 26, 2017.]

AN ACT to repeal §18-2-26a of the Code of West Virginia, 1931,
as amended; to amend and reenact §18-2-26 of said code; to

amend and reenact §18-2E-1a and §18-2E-5 of said code; to amend and reenact §18-5-13 and §18-5-45 of said code; to further amend said code by adding thereto two new sections designated §18-5-13b and §18-5-13c; to amend and reenact §18-5A-5 of said code; to amend and reenact §18-9A-8a of said code; and to amend and reenact §18A-4-14 of said code, all relating generally to education; repealing requirement for biennial meetings of county boards by region; providing for dissolving regional educational service agencies by certain date; allowing for modification and dissolving by cooperative agreement before said date; providing for the transfer, liquidation or disbursement of property and records; requiring state board to constructively engage with the legislative oversight commission on education accountability prior to adopting certain standards and prior to adoption of a new statewide summative assessment; requiring certain state board actions before full implementation of a new accountability system; modifying state board prohibitions and duties as part of its on-going responsibility for developing and implementing a program of standards, assessments and a program of accountability; clarifying responsibilities and authority of Legislature and state board with respect to process for improving education and purposes and intent of system of accountability; modifying areas for which the state board is required to adopt high-quality education standards; modifying statewide assessment program; modifying annual performance measures for accreditation; requiring county board use of statewide electronic information system; modifying process for assessing school and school system performance; eliminating office of education performance audits and authorizing employment of experienced education professionals with certain duties; modifying school accreditation and removing authorization for state board intervention in school operations; modifying school system approval and processes for state board intervention; modifying processes for improving capacity; modifying process for building leadership capacity of system during intervention; expanding county board authority for entering into cooperative agreements; establishing the County

Superintendents' Advisory Council; setting forth the council's authority and responsibilities, including the formation of four geographic quadrants to carry out the work of the council; requiring certain meetings and reports; authorizing county board agreements to establish educational services cooperatives; providing references to regional education service agencies means cooperatives; providing priorities for transfer, liquidation and disbursement of regional education service agency property, equipment and records upon dissolution; providing for governing council of educational services cooperatives; providing for powers and duties; providing for cooperative annual plan and optional programs and services; providing for selection of fiscal agent county board and annual audit; providing for staff and member expenses; providing for member compensation; defining minimum length of instructional day; defining instruction delivered through alternative methods; allowing equivalent instructional time alternative to one hundred eighty separate instructional days; authorizing county board to increase length of instructional day by certain amount and use instructional time gained for certain purposes; authorizing delivery of instruction through alternative methods upon plan approved by state board and counting as instructional and employment days; designating one noninstructional day for teachers as a preparation day for opening school and another for teachers as a preparation day for closing school; allowing teacher preparation days to be used for certain other purposes at teacher's discretion; increasing number of two-hour blocks for faculty senate meetings from four to six; removing requirement that faculty senate meetings be held once every forty-five days; modifying requirement for rescheduling days to be used for instruction to reflect instructional time gained by lengthening instructional day; exempting certain days from rescheduling when instructional day lengthened; authorizing decrease of instructional term in county subject to emergency or disaster declaration by Governor; reducing foundation allowance for regional education service agencies; removing requirement for planning period to be within instructional day; requiring educators to receive uninterrupted time for planning

periods each day; prohibiting administrators from requiring a teacher to use the planning period time to complete duties beyond instructional planning; and making technical improvements and removing obsolete provisions.

Be it enacted by the Legislature of West Virginia:

That §18-2-26a of the Code of West Virginia, 1931, as amended, be repealed; that §18-2-26 of said code be amended and reenacted; that §18-2E-1a and §18-2E-5 of said code be amended and reenacted; that §18-5-13 and §18-5-45 of said code be amended and reenacted; that said code be further amended by adding thereto two new sections designated, §18-5-13b and §18-5-13c; that §18-5A-5 of said code be amended and reenacted; that §18-9A-8a of said code be amended and reenacted; and that §18A-4-14 of said code be amended and reenacted, all to read as follows:

CHAPTER 18. EDUCATION.

ARTICLE 2. STATE BOARD OF EDUCATION.

§18-2-26. Abolishment and transition of regional education service agencies.

1 (a) The regional education service agencies previously
2 established by this section and W. Va. 126CSR72, filed
3 October 15, 2015, and effective November 16, 2015, shall
4 remain and may continue to operate in accordance with the
5 provisions of this section prior to its amendment and
6 reenactment at the Regular Session of the Legislature, 2017,
7 and with said rule, unless and until modified by a
8 cooperative agreement entered into by county boards within
9 the agency boundaries or dissolved by said county boards:
10 *Provided*, That on July 1, 2018, the regional education
11 service agencies as provided under prior provisions of this
12 section are dissolved.

13 (b) On July 1, 2018, all property, equipment and records
14 held by the regional education service agencies necessary to
15 effectuate the purposes of this article shall be transferred or

16 liquidated or disbursed in accordance with section thirteen-
17 c, article five of this chapter.

ARTICLE 2E. HIGH QUALITY EDUCATIONAL PROGRAMS.

§18-2E-1a. Standards, assessment and accountability programs; duties of the state board.

1 (a) Prior to adoption or revision of academic standards
2 in mathematics, English language arts, science and social
3 studies, the state board shall constructively engage with the
4 legislative oversight commission on education
5 accountability as outlined in subsection (b). Prior to
6 adoption of a new statewide summative assessment, the
7 state board shall constructively engage with the legislative
8 oversight commission on education accountability on the
9 assessment program it intends to adopt to measure the
10 progress of public school students in attaining a high quality
11 education. Prior to the full implementation of a new
12 accountability system, state board shall develop and
13 recommend to the legislative oversight commission on
14 education accountability an accountability program to help
15 ensure a thorough and efficient system of schools. In
16 developing the standards, assessment program and the
17 accountability program, the state board shall take into
18 consideration recommendations arising from any legislative
19 interim study undertaken at the direction of the joint
20 committee on government and finance and also shall take
21 into consideration any recommendations made by the
22 legislative oversight commission on education
23 accountability.

24 (b) As part of their on-going responsibility for
25 developing and implementing a program of standards,
26 assessments and a program of accountability, the state
27 board:

28 (1) Is prohibited from implementing the Common Core
29 academic standards;

30 (2) Shall allow West Virginia educators the opportunity
31 to participate in the development of the academic standards;

32 (3) Shall provide by rule for a cyclical review, by West
33 Virginia educators, of any academic standards that are
34 proposed by the state board;

35 (4) Shall review assessment tools, including tests of
36 student performance and measures of school and school
37 system performance, and determine when any
38 improvements or additions are necessary;

39 (5) Shall consider multiple assessments, including, but
40 not limited to, a state testing program developed in
41 conjunction with the state's professional educators with
42 assistance from such knowledgeable consultants as may be
43 necessary, which may include criterion referenced tests;

44 (6) Is prohibited from adopting the Smarter Balanced
45 Assessment system or the PARCC assessment system as the
46 statewide summative assessment;

47 (7) Shall review all accountability measures, such as the
48 accreditation and personnel evaluation systems and
49 consider any improvements or additions deemed necessary;
50 and

51 (8) Shall ensure that all statewide assessments of student
52 performance are secure.

53 (c) The state board shall not adopt any national or
54 regional testing program tied to federal funding, or national
55 or regional academic standards tied to federal funding,
56 without oversight by the legislative oversight commission
57 on education accountability.

§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.

1 (a) *Legislative findings, purpose and intent.* — The
2 Legislature makes the following findings with respect to the
3 process for improving education and its purpose and intent
4 in the enactment of this section:

5 (1) The process for improving education includes four
6 primary elements, these being:

7 (A) Standards which set forth the knowledge and skills
8 that students should know and be able to perform as the
9 result of a thorough and efficient education that prepares
10 them for the twenty-first century, including measurable
11 criteria to evaluate student performance and progress;

12 (B) Assessments of student performance and progress
13 toward meeting the standards;

14 (C) A system of accountability for continuous
15 improvement articulated by a rule promulgated by the state
16 board that will build capacity in and ensure the efficiency of
17 schools and districts to meet rigorous outcomes that assure
18 student performance and progress toward obtaining the
19 knowledge and skills intrinsic to a high-quality education,
20 rather than monitoring for compliance with specific laws
21 and regulations; and

22 (D) A method for building the capacity and improving
23 the efficiency of schools and school systems to improve
24 student performance and progress;

25 (2) As the constitutional body charged with the general
26 supervision of schools as provided by general law, the state
27 board has the authority following constructive engagement
28 of the Legislature as provided in section one, article two-h
29 of this chapter and as delegated by the Legislature by
30 general law to establish the standards and assess the
31 performance and progress of students against the standards,
32 and to exercise its supervisory responsibility to hold schools
33 and school systems accountable and assist schools and
34 school systems to build capacity and improve efficiency so
35 that the standards are met, including, when necessary,

36 seeking additional resources in consultation with the
37 Legislature and the Governor;

38 (3) As the constitutional body charged with providing
39 for a thorough and efficient system of schools, the
40 Legislature has the authority and the responsibility to
41 establish and be engaged constructively in the determination
42 of the knowledge and skills that students should know and
43 be able to do as the result of a thorough and efficient
44 education. This determination is made by using the process
45 for improving education to determine when school
46 improvement is needed by evaluating the results and the
47 efficiency of the system of schools, by ensuring
48 accountability and by providing for the necessary capacity
49 and its efficient use;

50 (4) In consideration of these findings, the purpose of this
51 section is to establish a process for improving education that
52 includes the four primary elements as set forth in
53 subdivision (1) of this subsection to provide assurances that
54 the high-quality standards are, at a minimum, being met and
55 that a thorough and efficient system of schools is being
56 provided for all West Virginia public school students on an
57 equal education opportunity basis; and

58 (5) The intent of the Legislature in enacting this section
59 is to establish a process through which the Legislature, the
60 Governor and the state board will constructively consult on
61 any measures affecting standards, assessments and
62 accountability prior to their adoption, examine the
63 performance and progress of students, schools and school
64 systems and, when necessary, consider alternative measures
65 to ensure that all students continue to receive the thorough
66 and efficient education to which they are entitled. However,
67 nothing in this section requires any specific level of funding
68 by the Legislature.

69 (b) *Electronic county and school strategic improvement*
70 *plans.* — The state board shall promulgate a rule consistent
71 with this section and in accordance with article three-b,

72 chapter twenty-nine-a of this code establishing an electronic
73 county strategic improvement plan for each county board
74 and an electronic school strategic improvement plan for
75 each public school in this state. Each respective plan shall
76 be for a period of no more than five years and shall include
77 the mission and goals of the school or school system to
78 improve student, school or school system performance and
79 progress, as applicable. The strategic plan shall be revised
80 annually in each area in which the school or system is below
81 the standard on the annual performance measures. The plan
82 shall be revised when required pursuant to this section to
83 include each annual performance measure upon which the
84 school or school system fails to meet the standard for
85 performance and progress, the action to be taken to meet
86 each measure, a separate time line and a date certain for
87 meeting each measure, a cost estimate and, when applicable,
88 the assistance to be provided by the department and other
89 education agencies to improve student, school or school
90 system performance and progress to meet the annual
91 performance measure.

92 The department shall make available to all public
93 schools through its website or the West Virginia Education
94 Information System an electronic school strategic
95 improvement plan boilerplate designed for use by all
96 schools to develop an electronic school strategic
97 improvement plan which incorporates all required aspects
98 and satisfies all improvement plan requirements of the
99 Every Student Succeeds Act or subsequent federal law.

100 (c) *High-quality education standards and efficiency*
101 *standards.* — In accordance with article three-b, chapter
102 twenty-nine-a of this code, the state board shall adopt and
103 periodically review and update high-quality education
104 standards for student, school and school system
105 performance and processes in the following areas:

106 (1) Academic standards;

107 (2) Workplace readiness skills;

- 108 (3) Finance;
- 109 (4) Transportation;
- 110 (5) Special education;
- 111 (6) Facilities;
- 112 (7) Administrative practices;
- 113 (8) Training of county board members and
114 administrators;
- 115 (9) Personnel qualifications;
- 116 (10) Professional development and evaluation;
- 117 (11) Student performance, progress and attendance;
- 118 (12) Professional personnel, including principals and
119 central office administrators, and service personnel
120 attendance;
- 121 (13) School and school system performance and
122 progress;
- 123 (14) A code of conduct for students and employees;
- 124 (15) Indicators of efficiency;
- 125 (16) Digital literacy skills; and
- 126 (17) Any other areas determined by the state board.
- 127 (d) *Comprehensive statewide student assessment*
128 *program.* — The state board shall establish a comprehensive
129 statewide student assessment program to assess student
130 performance and progress in grades three through twelve. The
131 assessment program is subject to the following:
- 132 (1) The state board shall promulgate a rule in
133 accordance with article three-b, chapter twenty-nine-a of

134 this code establishing the comprehensive statewide student
135 assessment program;

136 (2) Prior to the testing window of the 2017-2018 school
137 year, the state board shall align the comprehensive statewide
138 student assessment for all grade levels in which the test is
139 given with the college-readiness standards adopted pursuant
140 to section thirty-nine, article two of this chapter or develop
141 other aligned tests to be required in grades three through
142 eight and administered once during the grade span of nine
143 through twelve to assess progress toward college and career
144 readiness in English/language arts and math. The
145 assessment in science shall be administered once in grade
146 spans three through five, once in grade spans six through
147 eight, and once in grade spans nine through twelve;

148 (3) In accordance with articles two and two-e, chapter
149 eighteen of this code, the state board shall review or
150 develop, and adopt a college and career readiness
151 assessment to be administered in grade eleven: *Provided,*
152 That the adopted college and career readiness assessment
153 administered in grade eleven counts toward the statewide
154 student assessment and must be used by a significant
155 number of regionally accredited higher education
156 institutions for determining college admissions;

157 (4) The comprehensive statewide student assessment
158 shall be administered to students in accordance with the
159 requirements of the Every Student Succeeds Act or
160 subsequent federal law;

161 (5) The state board may provide, through the statewide
162 assessment program, other optional testing or assessment
163 instruments applicable to grade levels kindergarten through
164 grade twelve which may be used by each school to promote
165 student achievement. The state board annually shall publish
166 and make available, electronically or otherwise, to school
167 curriculum teams and teacher collaborative processes the
168 optional testing and assessment instruments. For any online
169 assessment, the state board shall provide online assessment

170 preparation to ensure that students have the requisite digital
171 literacy skills to be successful on the assessment;

172 (6) The state board may adopt a career readiness
173 assessment that measures and documents foundational
174 workplace skills and leads to a nationally recognized work
175 readiness certificate for students that meet minimum
176 proficiency requirements; and

177 (7) The comprehensive statewide student assessment
178 adopted prior to the testing window of the 2017-2018 school
179 year shall continue to be used for at least a total of four
180 consecutive years;

181 (8) No summative assessment approved by the state
182 board may take more than two percent of a student's
183 instructional time;

184 (9) No student may be required to complete a greater
185 number of summative assessments than is required by the
186 Every Student Succeeds Act except as otherwise required
187 by this subsection; and

188 (10) Collection of personal data as part of the
189 assessment process except for what is necessary for the
190 student's instruction, academic and college and career
191 search needs is prohibited.

192 (e) *State annual performance measures for school and*
193 *school system accreditation.* —

194 The state board shall promulgate a rule in accordance
195 with article three-b, chapter twenty-nine-a of this code that
196 establishes a system that is based in multiple measures and
197 meets the requirements of any federal law to assess and
198 weigh annual performance measures to assure that schools
199 and school systems are providing a thorough and efficient
200 education to their students. State accreditation shall be
201 reviewed and approved in a balanced manner that gives fair
202 credit to all measures affecting students and subgroups of
203 students in the schools and school systems. The state board

204 also may establish performance incentives for schools and
205 school systems as part of the state accreditation system. On
206 or before December 1, 2018, the state board shall report to
207 the Governor and to the Legislative Oversight Commission
208 on Education Accountability the proposed rule for
209 establishing the measures and incentives of accreditation
210 and the estimated cost therefore, if any. Thereafter, the state
211 board shall provide an annual report to the Governor and to
212 the Legislative Oversight Commission on Education
213 Accountability on the impact and effectiveness of the
214 accreditation system. The rule for school and school system
215 accreditation proposed by the board may include, but is not
216 limited to, the following measures:

217 (1) Student proficiency and growth in English and
218 language arts, math, science and other subjects determined
219 by the board;

220 (2) Graduation and attendance rate;

221 (3) Students taking and passing AP tests;

222 (4) Students completing a career and technical
223 education class;

224 (5) Closing achievement gaps within subgroups of a
225 school's student population; and

226 (6) Students scoring at or above average attainment on
227 SAT or ACT tests.

228 (f) *Indicators of efficiency.* — In accordance with article
229 three-b, chapter twenty-nine-a of this code, the state board
230 shall adopt by rule and periodically review and update
231 indicators of efficiency for use by the appropriate divisions
232 within the department to ensure efficient management and
233 use of resources in the public schools in the following areas:

234 (1) Curriculum delivery including, but not limited to,
235 the use of distance learning;

236 (2) Transportation;

237 (3) Facilities;

238 (4) Administrative practices;

239 (5) Personnel; and

240 (6) Any other indicators as determined by the state
241 board.

242 Each county board of education shall use the statewide
243 electronic information system established by the state board
244 for data collection and reporting to the state Department of
245 Education.

246 (g) *Assessment and accountability of school and school*
247 *system performance and processes.* — In accordance with
248 article three-b, chapter twenty-nine-a of this code, the state
249 board shall establish by rule a system of education
250 performance measures to evaluate the quality of education
251 and the preparation of students based on the annual
252 measures of student, school and school system performance
253 and progress. The system of education performance
254 measures shall provide information to the state board, the
255 Legislature and the Governor, upon which they may
256 determine whether a thorough and efficient system of
257 schools is being provided. The system of education
258 performance measures shall include:

259 (1) The assessment of student, school and school system
260 performance and progress based on the annual measures
261 established pursuant to subsection (e) of this section;

262 (2) The evaluation of records, reports and other
263 documents that provide information on the quality of
264 education and compliance with statutes, policies and
265 standards; and

266 (3) The review of school and school system electronic
267 strategic improvement plans.

268 (h) *Uses of school and school system assessment*
269 *information.* — The state board shall use information from
270 the system of education performance measures to assist it in
271 ensuring that a thorough and efficient system of schools is
272 being efficiently provided and to improve student, school
273 and school system performance and progress. Information
274 from the system of education performance measures further
275 shall be used by the state board for these purposes,
276 including, but not limited to, the following:

277 (1) Determining accountability and accreditation for
278 schools and school system approval status as required by
279 state board rule and any federal law or regulations; and

280 (2) Holding schools and school systems accountable for
281 the efficient use of existing resources to meet or exceed the
282 standards; and

283 (3) Targeting additional resources when necessary to
284 improve performance and progress.

285 The state board shall make the performance measures
286 information available to the Legislature, the Governor, the
287 general public and to any individual who requests the
288 information, subject to the provisions of any act or rule
289 restricting the release of information.

290 (i) *Early detection and intervention programs.* — Based
291 on the assessment of student, school and school system
292 performance and progress, the state board shall establish
293 early detection and intervention programs using the
294 available resources of the Department of Education, or other
295 resources as appropriate, to assist underachieving schools
296 and school systems to improve performance before
297 conditions become so grave as to warrant more substantive
298 state intervention. Assistance shall include, but is not
299 limited to, providing additional technical assistance and
300 programmatic, professional staff development, and
301 providing monetary, staffing and other resources where
302 appropriate.

303 (j) The state board may employ experienced education
304 professionals, who serve at the will and pleasure of the state
305 board, to coordinate on site and school system improvement
306 efforts with staff at the State Department of Education to
307 support schools and school systems in improving education
308 performance measures.

309 (k) *School accreditation.* —

310 (1) The state board shall establish levels of accreditation
311 to be assigned to schools. The establishment of levels of
312 accreditation shall be subject to the following:

313 (A) The levels will be designed to demonstrate school
314 performance on multiple measures as established by the
315 state board by legislative rule in accordance with article
316 three-b, chapter twenty-nine-a of this code and consistent
317 with the applicable state laws, policies and standards, which
318 include standards for performance-based accountability,
319 high-quality education, and continuous improvement; and

320 (B) Will ensure compliance with federal law and
321 applicable state laws, policies and standards at a minimum.

322 (2) The state board annually shall review the
323 information from the system of education performance
324 measures submitted for each school and shall accredit each
325 school as designated in the rule, and consistent with the
326 applicable state laws, policies and standards; and

327 (3) Exercise other powers and actions the state board
328 determines necessary to fulfill its duties of general
329 supervision of the schools and school systems of West
330 Virginia.

331 (l) *School system approval.* — The state board annually
332 shall review the information submitted for each school
333 system from the system of education performance measures
334 and issue to each county board an approval status in
335 compliance with federal law and established by state board
336 rule.

337 (m) Nonapproval for extraordinary circumstances.

338 (1) The state board shall establish and adopt additional
339 standards to identify school systems in which the program
340 may be nonapproved and the state board may issue
341 nonapproval status whenever extraordinary circumstances
342 exist as defined by the state board.

343 (2) When extraordinary circumstances exist, but do not
344 rise to the level of immediate intervention as described in
345 subsection (n) of this section, the state board may declare a
346 state of emergency in the school system and shall direct
347 designees to provide recommendations within sixty days of
348 appointment for correcting the extraordinary circumstances.
349 When the state board approves the recommendations, they
350 shall be communicated to the county board. If progress in
351 correcting the extraordinary circumstances, as determined
352 by the state board, is not made within six months from the
353 time the county board receives the recommendations, the
354 state board shall intervene in the operation of the school
355 system to cause improvements to be made that will provide
356 assurances that a thorough and efficient system of schools
357 will be provided. This intervention may include, but is not
358 limited to, the following:

359 (A) Limiting the authority of the county board in areas
360 that compromise the delivery of a thorough and efficient
361 education to its students as designated by the state board by
362 rule, which may include delegating decision-making
363 authority regarding these matters to the state superintendent
364 who may:

365 (B) Declare that the office of the county superintendent
366 is vacant;

367 (C) Declare that the positions of personnel who serve at
368 the will and pleasure of the county superintendent as
369 provided in section one, article two, chapter eighteen-a of
370 this code, are vacant, subject to application and
371 reemployment;

372 (D) Fill the declared vacancies during the period of
373 intervention; and

374 (E) Take any direct action necessary to correct the
375 extraordinary circumstance.

376 (n) Notwithstanding any other provision of this section,
377 the state board may intervene immediately in the operation
378 of the county school system with all the powers, duties and
379 responsibilities contained in subsection (m) of this section,
380 if the state board finds any of the following:

381 (1) A county board fails to act on a statutory obligation
382 which would interrupt the day-to- day operations of the
383 school system;

384 (2) That the conditions precedent to intervention exist
385 as provided in this section; and that delaying intervention
386 for any period of time would not be in the best interests of
387 the students of the county school system; or

388 (3) That the conditions precedent to intervention exist
389 as provided in this section and that the state board had
390 previously intervened in the operation of the same school
391 system and had concluded that intervention within the
392 preceding five years.

393 (o) *Capacity*. — The process for improving education
394 includes a process for targeting resources strategically to
395 improve the teaching and learning process. Development of
396 electronic school and school system strategic improvement
397 plans, pursuant to subsection (b) of this section, is intended,
398 in part, to provide mechanisms to target resources
399 strategically to the teaching and learning process to improve
400 student, school and school system performance. When
401 deficiencies are detected through the assessment and
402 accountability processes, the revision and approval of
403 school and school system electronic strategic improvement
404 plans shall ensure that schools and school systems are
405 efficiently using existing resources to correct the

406 deficiencies. When the state board determines that schools
407 and school systems do not have the capacity to correct
408 deficiencies, the state board shall take one or more of the
409 following actions:

410 (1) Work with the county board to develop or secure the
411 resources necessary to increase the capacity of schools and
412 school systems to meet the standards and, when necessary,
413 seek additional resources in consultation with the
414 Legislature and the Governor;

415 (2) Recommend to the appropriate body including, but
416 not limited to, the Legislature, county boards, schools and
417 communities methods for targeting resources strategically
418 to eliminate deficiencies identified in the assessment and
419 accountability processes. When making determinations on
420 recommendations, the state board shall include, but is not
421 limited to, the following methods:

422 The state board, or its designee, the West Virginia
423 Department of Education, and county school systems, shall
424 work collaboratively in:

425 (1) Examining reports and electronic strategic
426 improvement plans regarding the performance and progress
427 of students, schools and school systems relative to the
428 standards and identifying the areas in which improvement
429 is needed;

430 (2) Determining the areas of weakness and of
431 ineffectiveness that appear to have contributed to the
432 substandard performance and progress of students or the
433 deficiencies of the school or school system;

434 (3) Determining the areas of strength that appear to have
435 contributed to exceptional student, school and school
436 system performance and progress and promoting their
437 emulation throughout the system;

438 (4) Requesting technical assistance from the School
439 Building Authority in assessing or designing comprehensive
440 educational facilities plans;

441 (5) Recommending priority funding from the School
442 Building Authority based on identified needs;

443 (6) Recommending special staff development programs
444 from county boards based on identified needs;

445 (7) Submitting requests to the Legislature for
446 appropriations to meet the identified needs for improving
447 education;

448 (8) Directing educational expertise and support services
449 strategically toward alleviating deficiencies;

450 (9) Ensuring that the need for facilities in counties with
451 increased enrollment are appropriately reflected and
452 recommended for funding;

453 (10) Ensuring that the appropriate person or entity is
454 held accountable for eliminating deficiencies; and

455 (11) Ensuring that the needed capacity is available from
456 the state and local level to assist the school or school system
457 in achieving the standards and alleviating the deficiencies.

458 (p) *Building leadership capacity.* — To help build the
459 governance and leadership capacity of a county board
460 during an intervention in the operation of its school system,
461 and to help assure sustained success following return of
462 control to the county board, the county board shall establish
463 goals and action plans, subject to approval of the state
464 superintendent, to improve performance sufficiently to end
465 the intervention within a period of not more than five years.
466 The state superintendent shall maintain oversight and
467 provide assistance and feedback to the county board on
468 development and implementation of the goals and action
469 plans. At a minimum, the goals and action plans shall
470 include:

471 (1) An analysis of the training and development
472 activities needed by the county board and leadership of the
473 school system for effective governance and school
474 improvement;

475 (2) Support for the training and development activities
476 identified which may include those made available through
477 the state superintendent, West Virginia School Board
478 Association, and other sources identified in the goals and
479 action plans; and

480 (3) Active involvement by the county board in the
481 improvement process, working in tandem with the county
482 superintendent to gather, analyze and interpret data, write
483 time-specific goals to correct deficiencies, prepare and
484 implement action plans and allocate or request from the
485 Department of Education the resources, including board
486 development training and coaching, necessary to achieve
487 approved goals and action plans and sustain system and
488 school improvement.

489 At least once each year during the period of
490 intervention, the state board shall appoint a designee to
491 assess the readiness of the county board to accept the return
492 of control of the system or school from the state board and
493 sustain the improvements, and shall make a report and
494 recommendations to the state board supported by
495 documented evidence of the progress made on the goals and
496 action plans. The state board may return any portion of
497 control of the operations of the school system or end the
498 intervention in its entirety by a majority vote. If the state
499 board determines at the fifth annual assessment that the
500 county board is still not ready to accept return of control by
501 the state board and sustain the improvements, the state
502 board shall hold a public hearing in the affected county at
503 which the attendance by all members of the county board is
504 requested so that the reasons for continued intervention and
505 the concerns of the citizens of the county may be heard. The
506 state board may continue the intervention only after it holds
507 the public hearing and may require revision of the goals and

508 action plans. The state board must thereafter hold a public
509 hearing after each annual assessment beyond the fifth year.
510 If a school system is in intervention status on the effective
511 date of this provision, the total years of intervention shall be
512 calculated from the date of initial intervention.

513 Following the termination of an intervention in the
514 operation of a school system and return of full control by
515 the state board, the support for governance education and
516 development shall continue as needed for up to three years.
517 If at any time within this three years, the state board
518 determines that intervention in the operation of the school
519 system is again necessary, the state board shall again hold a
520 public hearing in the affected county so that the reasons for
521 the intervention and the concerns of the citizens of the
522 county may be heard prior to intervening.

ARTICLE 5. COUNTY BOARD OF EDUCATION.

§18-5-13. Authority of boards generally.

1 Subject to the provisions of this chapter and the rules of
2 the state board, each county board may:

3 (a) Control and manage all of the schools and school
4 interests for all school activities and upon all school
5 property owned or leased by the county, including:

6 (1) Requiring schools to keep records regarding funds
7 connected with the school or school interests, including all
8 receipts and disbursements of all funds collected or received
9 by:

10 (A) Any principal, teacher, student or other person in
11 connection with the schools and school interests;

12 (B) Any program, activity or other endeavor of any
13 nature operated or conducted by or in the name of the
14 school; and

15 (C) Any organization or body directly connected with
16 the school;

17 (2) Allowing schools to expend funds for student,
18 parent, teacher and community recognition programs. A
19 school may use only funds it generates through a fund-
20 raising or donation-soliciting activity. Prior to commencing
21 the activity, the school shall:

22 (A) Publicize the activity as intended for this purpose;
23 and

24 (B) Designate for this purpose the funds generated;

25 (3) Auditing the records and conserving the funds,
26 including securing surety bonds by expending board
27 moneys. The funds described in this subsection are
28 quasipublic funds, which means the moneys were received
29 for the benefit of the school system as a result of curricular
30 or noncurricular activities;

31 (b) Establish:

32 (1) Schools, from preschool through high school;

33 (2) Vocational schools; and

34 (3) Schools and programs for post-high school
35 instruction, subject to approval of the state board;

36 (c) Close any school:

37 (1) Which is unnecessary and assign the students to
38 other schools. The closing shall occur pursuant to official
39 action of the county board. Except in emergency situations
40 when the timing and manner of notification are subject to
41 approval by the state superintendent, the county board shall
42 notify the affected teachers and service personnel of the
43 county board action not later than the first Monday in April.
44 The board shall provide notice in the same manner as set
45 forth in section four of this article; or

46 (2) Pursuant to subsection (e) of this section;

47 (d) Consolidate schools;

48 (e) Close any elementary school whose average daily
49 attendance falls below twenty students for two consecutive
50 months. The county board may assign the students to other
51 schools in the district or to schools in adjoining districts. If
52 the teachers in the closed school are not transferred or
53 reassigned to other schools, they shall receive one month's
54 salary;

55 (f) Provide transportation according to rules established
56 by the county board, as follows:

57 (1) To provide at public expense adequate means of
58 transportation:

59 (A) For all children of school age who live more than
60 two-miles distance from school by the nearest available
61 road;

62 (B) For school children participating in county board-
63 approved curricular and extracurricular activities;

64 (C) Across county lines for students transferred from
65 one district to another by mutual agreement of both county
66 boards. The agreement shall be recorded in the meeting
67 minutes of each participating county board and is subject to
68 subsection (h) of this section; and

69 (D) Within available revenues, for students within two-
70 miles distance of the school; and

71 (2) To provide transportation for participants in projects
72 operated, financed, sponsored or approved by the Bureau of
73 Senior Services. This transportation shall be provided at no
74 cost to the county board. All costs and expenses incident in
75 any way to this transportation shall be borne by the bureau
76 or the local or county affiliate of the bureau;

77 (3) Any school bus owned by the county board may be
78 operated only by a bus operator regularly employed by the
79 county board, except as provided in subsection (g) of this
80 section;

81 (4) Pursuant to rules established by the state board, the
82 county board may provide for professional employees to be
83 certified to drive county board-owned vehicles that have a
84 seating capacity of fewer than ten passengers. These
85 employees may use the vehicles to transport students for
86 school-sponsored activities, but may not use the vehicles to
87 transport students between school and home. Not more than
88 one of these vehicles may be used for any school-sponsored
89 activity;

90 (5) Students may not be transported to a school-
91 sponsored activity in any county-owned or leased vehicle
92 that does not meet school bus or public transit ratings. This
93 section does not prohibit a parent from transporting ten or
94 fewer students in a privately-owned vehicle;

95 (6) Students may be transported to a school-sponsored
96 activity in a vehicle that has a seating capacity of sixteen or
97 more passengers which is not owned and operated by the
98 county board only as follows:

99 (A) The state board shall promulgate a rule to establish
100 requirements for:

101 (i) Automobile insurance coverage;

102 (ii) Vehicle safety specifications;

103 (iii) School bus or public transit ratings; and

104 (iv) Driver training, certification and criminal history
105 record check; and

106 (B) The vehicle owner shall provide to the county board
107 proof that the vehicle and driver satisfy the requirements of
108 the state board rule; and

109 (7) Buses shall be used for extracurricular activities as
110 provided in this section only when the insurance coverage
111 required by this section is in effect;

112 (g) Lease school buses pursuant to rules established by
113 the county board.

114 (1) Leased buses may be operated only by bus operators
115 regularly employed by the county board, except that these
116 buses may be operated by bus operators regularly employed
117 by another county board in this state if bus operators from
118 the owning county are unavailable.

119 (2) The lessee shall bear all costs and expenses incurred
120 by, or incidental to the use of, the bus.

121 (3) The county board may lease buses to:

122 (A) Public and private nonprofit organizations and
123 private corporations to transport school-age children for
124 camps or educational activities;

125 (B) Any college, university or officially recognized
126 campus organization for transporting students, faculty and
127 staff to and from the college or university. Only college and
128 university students, faculty and staff may be transported
129 pursuant to this paragraph. The lease shall include
130 provisions for:

131 (i) Compensation for bus operators;

132 (ii) Consideration for insurance coverage, repairs and
133 other costs of service; and

134 (iii) Any rules concerning student behavior;

135 (C) Public and private nonprofit organizations,
136 including education employee organizations, for
137 transportation associated with fairs, festivals and other
138 educational and cultural events. The county board may

139 charge fees in addition to those charges otherwise required
140 by this subsection;

141 (h) To provide at public expense for insurance coverage
142 against negligence of the drivers of school buses, trucks or
143 other vehicles operated by the county board. Any
144 contractual agreement for transportation of students shall
145 require the vehicle owner to maintain insurance coverage
146 against negligence in an amount specified by the county
147 board;

148 (i) Provide for the full cost or any portion thereof for
149 group plan insurance benefits not provided or available
150 under the West Virginia Public Employees Insurance Act.
151 Any of these benefits shall be provided:

152 (1) Solely from county board funds; and

153 (2) For all regular full-time employees of the county
154 board;

155 (j) Employ teacher aides; to provide in-service training
156 for the aides pursuant to rules established by the state board;
157 and, prior to assignment, to provide a four-clock-hour
158 program of training for a service person assigned duties as
159 a teacher aide in an exceptional children program. The four-
160 clock-hour program shall consist of training in areas
161 specifically related to the education of exceptional children;

162 (k) Establish and operate a self-supporting dormitory
163 for:

164 (1) Students attending a high school or participating in
165 a post high school program; and

166 (2) Persons employed to teach in the high school or post
167 high school program;

168 (l) At the county board's discretion, employ, contract
169 with or otherwise engage legal counsel in lieu of using the
170 services of the prosecuting attorney to advise, attend to,

171 bring, prosecute or defend, as the case may be, any matters,
172 actions, suits and proceedings in which the county board is
173 interested;

174 (m) Provide appropriate uniforms for school service
175 personnel;

176 (n) Provide at public expense for payment of traveling
177 expenses incurred by any person invited to appear to be
178 interviewed concerning possible employment by the county
179 board, subject to rules established by the county board;

180 (o) Allow designated employees to use publicly
181 provided carriage to travel from their residences to their
182 workplace and return. The use:

183 (1) Is subject to the supervision of the county board; and

184 (2) Shall be directly connected with, required by and
185 essential to the performance of the employee's duties and
186 responsibilities;

187 (p) Provide at public expense adequate public liability
188 insurance, including professional liability insurance, for
189 county board employees;

190 (q) (1) Enter into cooperative agreements with one or
191 more county boards or educational services cooperative to
192 provide improvements to the instructional needs of each
193 district. The cooperative agreements may be used to employ
194 specialists in a field of academic study or for support
195 functions or services for the field.

196 (2) Enter into cooperative agreements with one or more
197 county boards to facilitate coordination and cooperation in
198 areas of service to reduce administrative and/or operational
199 costs, including the consolidation of administrative,
200 coordinating, and other county level functions into shared
201 functions to promote the efficient administration and
202 operation of the public school systems including, but not
203 limited to:

204 (A) Purchasing;

205 (B) Operation of specialized programs for exceptional
206 children;

207 (C) Employment of any school personnel as defined in
208 section one, article one, chapter eighteen-a of this code;

209 (D) Professional development;

210 (E) Technology including, but not limited to WVEIS;
211 and

212 (F) Billing for school-based Medicaid services in
213 schools throughout the state.

214 Each such cooperative agreement shall be in writing and
215 agreed to by each county board participating in the
216 cooperative agreement. Each cooperative agreement that is
217 an employment agreement may be entered into on a case-
218 by-case basis. Notwithstanding the geographic quadrants as
219 provided in section thirteen-b of this article, school systems
220 may enter into cooperative agreements with any school
221 system in the state.

222 (3) Enter into a cooperative agreement with other
223 county boards to establish educational services cooperatives
224 as provided in section thirteen-c of this article.

225 (r) Provide information about vocational and higher
226 education opportunities to exceptional students. The county
227 board shall provide in writing to the students and their
228 parents or guardians information relating to programs of
229 vocational education and to programs available at state
230 institutions of higher education. The information may
231 include sources of available funding, including grants,
232 mentorships and loans for students who wish to attend
233 classes at institutions of higher education;

234 (s) Enter into agreements with other county boards for
235 the transfer and receipt of any funds determined to be fair

236 when students are permitted or required to attend school in
237 a district other than the district of their residence. These
238 agreements are subject to the approval of the state board;
239 and

240 (t) Enter into job-sharing arrangements, as defined in
241 section one, article one, chapter eighteen-a of this code, with
242 its employees, subject to the following provisions:

243 (1) A job-sharing arrangement shall meet all the
244 requirements relating to posting, qualifications and
245 seniority, as provided in article four, chapter eighteen-a of
246 this code;

247 (2) Notwithstanding any contrary provision of this code
248 or legislative rule and specifically article sixteen, chapter
249 five of this code, a county board that enters into a job-
250 sharing arrangement:

251 (A) Shall provide insurance coverage to the one
252 employee mutually agreed upon by the employees
253 participating in that arrangement; and

254 (B) May not provide insurance benefits of any type to
255 more than one of the job-sharing employees, including any
256 group plan available under the State Public Employees
257 Insurance Act;

258 (3) Each job-sharing agreement shall be in writing on a
259 form prescribed and furnished by the county board. The
260 agreement shall designate specifically one employee only
261 who is entitled to the insurance coverage. Any employee
262 who is not designated is not eligible for state public
263 employees insurance coverage regardless of the number of
264 hours he or she works;

265 (4) All employees involved in the job-sharing
266 agreement shall meet the requirements of subdivision (3),
267 section two, article sixteen, chapter five of this code; and

268 (5) When entering into a job-sharing agreement, the
269 county board and the participating employees shall consider
270 issues such as retirement benefits, termination of the job-
271 sharing agreement and any other issue the parties consider
272 appropriate. Any provision in the agreement relating to
273 retirement benefits may not cause any cost to be incurred by
274 the retirement system that is more than the cost that would
275 be incurred if a single employee were filling the position;
276 and

277 (u) Under rules it establishes for each child, expend an
278 amount not to exceed the proportion of all school funds of
279 the district that each child would be entitled to receive if all
280 the funds were distributed equally among all the children of
281 school age in the district upon a per capita basis.

**§18-5-13b. County Superintendents' Advisory Council,
purpose, reports.**

1 (a) The County Superintendents' Advisory Council,
2 ("the Council") is hereby established. The purpose of the
3 council is to promote collaboration among county districts
4 and to provide input to the State Board of Education and
5 state superintendent on issues facing school systems.

6 (b) After the effective date of this section, but no later
7 than June 1, 2017, all fifty-five county superintendents shall
8 convene to divide the state into four geographic quadrants
9 for the purpose of carrying out the work of the council as
10 described herein.

11 (c) County superintendents' responsibilities –

12 (1) County superintendents belonging to the same
13 geographic quadrant shall meet to select a county
14 superintendent to represent the geographic quadrant. The
15 method of selection of the representative is at the discretion
16 of each geographic quadrant. The representative of each
17 geographic quadrant will represent the council at the state
18 level.

19 (2) County superintendents of each geographic quadrant
20 shall meet as necessary to identify coordination and
21 cooperation in areas of service to reduce administrative
22 and/or operational costs, including the consolidation of
23 administrative, coordinating, and other county level
24 functions into shared functions to promote the efficient
25 administration and operation of the public school systems.
26 These areas of service include, but are not limited to, the
27 cooperative agreement areas as provided in subsection (q),
28 section thirteen of this article.

29 (d) The representative from each of the four geographic
30 quadrants of the council shall identify issues facing their
31 geographic quadrants and present them at the state level as
32 follows:

33 (1) Meet semiannually with the State Superintendent of
34 Schools;

35 (2) Meet annually with the State Board of Education;
36 and

37 (3) Provide an annual report to Legislative Oversight
38 Commission on Education Accountability and the Governor
39 on or before June 30 of each year.

40 (e) At least one meeting in each geographic quadrant
41 annually shall include on the meeting agenda a discussion
42 of any recommendations of the county boards in the
43 quadrant for changes in laws or policies needed to better
44 empower them to meet the state's education goals. A report
45 of these recommendations, if any, shall be included in the
46 annual report to Legislative Oversight Commission on
47 Education Accountability and the Governor.

§18-5-13c. Educational services cooperatives; purpose; establishment; governance; authorized functions and services.

1 (a) Pursuant to subsection (q), section thirteen of this
2 article, a county board is authorized to enter into a

3 cooperative agreement with one or more other county
4 boards to establish educational services cooperatives which
5 shall serve as regional units to provide for high quality, cost
6 effective lifelong education programs and services to
7 students, schools, school systems, and communities in
8 accordance with this section. Each educational services
9 cooperative may serve as a regional public multi-service
10 agency to develop, manage, and provide such services or
11 programs as determined by its governing council and as
12 provided in this section or otherwise provided in this code.
13 All references in this code to regional education service
14 agencies or RESA's mean an educational services
15 cooperative as authorized under this section.

16 (b) The regional education service agencies previously
17 established by section twenty-six, article two of this chapter
18 and W. Va. 126CSR72, filed October 15, 2015, and
19 effective November 16, 2015, shall remain and may
20 continue to operate in accordance with said section and rule
21 unless and until modified by a cooperative agreement
22 entered into by county boards within the boundaries of the
23 agency or dissolved by said county boards: *Provided*, That
24 on July 1, 2018, the regional education service agencies as
25 provided under prior provisions of section twenty-six,
26 article two of this chapter are dissolved. If a regional
27 education service agency is reconfigured pursuant to a
28 cooperative agreement or is dissolved, all property,
29 equipment and records held by the regional education
30 service agency necessary to effectuate the purposes of this
31 section shall be transferred or liquidated and disbursed in
32 accordance with the following priority order: (1) To any
33 successor educational services cooperative substantially
34 covering the same geographical area; (2) to the county
35 boards who were members of the regional education service
36 agency as agreed upon by those counties; or (3) to the state
37 board or to other appropriate entities as provided by law.

38 (c) An educational services cooperative shall be under
39 the direction and control of a governing council consisting
40 of the following members:

41 (1) The county superintendent of each county
42 participating in the cooperative agreement;

43 (2) A member of the board of education from each
44 county participating in the cooperative agreement selected
45 by the county board of education as provided in the bylaws
46 of the governing council of the educational services
47 cooperative; and

48 (3) The following representatives, if any, to be selected
49 by the educational services cooperative administrator with
50 the consent of the governing council:

51 (A) Representatives of institutions of higher education
52 and community and technical colleges serving the
53 geographical area covered by the educational services
54 cooperative;

55 (B) One non-superintendent chief instructional leader
56 employed by a member county;

57 (C) One school principal employed by a member
58 county;

59 (D) One teacher employed by a member county; and

60 (E) Additional members representing business and
61 industry, or other appropriate entities, as the governing
62 council determines fit to meet its responsibilities.

63 (d) The governing council of an educational services
64 cooperative:

65 (1) Shall adopt bylaws concerning the appointment and
66 terms of its members, including the authorization of
67 designees by its members, the selection of officers and their
68 terms, the filling of vacancies, the appointment of task
69 forces and study groups, the evaluation of the executive
70 director and staff and any other provisions necessary for the
71 operation of the educational services cooperative. A quorum

72 for governing council meetings shall be a simple majority
73 of the number of members of each governing council;

74 (2) Shall appoint an individual to serve as the
75 educational services cooperative administrator who shall
76 serve at the will and pleasure of the governing council and
77 shall implement the policies of the governing council;

78 (3) May employ regular full-time and part-time staff, as
79 necessary, after a majority of the members of a governing
80 council, by vote, verify that such employment is necessary
81 for effective provision of services and to perform services
82 or other projects that may require staff and support services
83 for effective implementation. Staff who are hired into a
84 position that requires a specified certification must maintain
85 the certification for the duration of employment. The
86 governing council is the sole employer of the educational
87 services cooperative's personnel it employs and shall be
88 responsible for any benefit and liability programs
89 necessitated by such employment. Employees of the
90 educational services cooperative are considered state
91 employees for the purposes of participation in the state's
92 public employees' insurance and retirement programs. A
93 recipient of personnel services from the educational services
94 cooperative is not deemed an employer because of the
95 exercise of supervision or control over any personnel
96 services provided;

97 (4) May purchase, hold, encumber and dispose of real
98 property, in the name of the educational services
99 cooperative, for use as its office or for any educational
100 service provided by the educational services cooperative if
101 a resolution to do so is adopted by a two-thirds vote of the
102 members of the governing council and then approved by
103 three-fourths of the county boards in the educational
104 services cooperative by majority vote of each county board;

105 (5) Shall operate as Local Educational Agencies
106 (LEA's) for financial purposes, including grants and
107 cooperative purchasing, and collectively as essential

108 agencies responsible for performing service functions to the
109 total community. An educational services cooperative is
110 eligible as an LEA to participate in partnership with or on
111 behalf of any county school system or school in those
112 programs that will accomplish implementation of the
113 strategic plan and/or state education initiative of the system
114 or school, or to further statutory priorities consistent with
115 educational services cooperative operations;

116 (6) May receive, expend and disburse funds from the
117 state and federal governments, from member counties, or
118 from gifts and grants and may contract with county boards
119 of education, the West Virginia Department of Education,
120 institutions of higher education, persons, companies, or
121 other agencies to implement programs and services at the
122 direction of the council. The state board, department of
123 education, or any member of a county board may request
124 implementation of programs and services by the educational
125 services cooperative. An educational services cooperative
126 may also receive funds from profit-generating enterprises,
127 the funds of which will contribute to the educational
128 services cooperative initiatives. Each educational services
129 cooperative is encouraged to partner with member school
130 systems, particularly those designated as low-performing,
131 and other organizations as appropriate to attract and
132 leverage resources available from federal programs to
133 maximize its capacity for meeting the needs of member
134 schools and school systems. Educational services
135 cooperatives are recognized as eligible LEA's for the
136 purposes of applying, on behalf of school systems, for grant
137 funds consistent with performing regional services and
138 functions and/or supportive of education initiatives of the
139 educational services cooperative;

140 (7) Upon the request of one or more county boards of
141 education, or by the state board as permitted or contracted,
142 and if directed by law, an educational services cooperative
143 may assume responsibility for one or more functions

144 otherwise performed by one or more county boards of
145 education;

146 (8) May offer technical assistance, including targeted
147 comprehensive staff development services, or other
148 technical assistance to any member school or school system,
149 and give priority to those schools and school systems that
150 are found to be out of compliance with a state law or federal
151 law;

152 (9) May serve as repositories of research-based teaching
153 and learning practices, and shall use technology,
154 particularly web-based technology, to ensure maximum
155 access to such practices by public schools in the region and
156 state; and

157 (10) Shall develop and/or implement any other
158 programs or services as directed by law or the governing
159 council, or requested by individual member counties or
160 groups of member counties subject to available funds. The
161 Legislature expects that the assistance and programs
162 developed and/or implemented by the educational services
163 cooperatives may differ among the schools, counties and
164 educational services cooperatives.

165 (e) The administrator of each educational services
166 cooperative shall submit annually a plan to the governing
167 council that identifies the programs and services which are
168 suggested for implementation by the educational services
169 cooperative during the following year. The plan shall
170 contain components of long-range planning determined by
171 the governing council. These programs and services may
172 include, but are not limited to, the following areas:

173 (1) Administrative services;

174 (2) Curriculum development;

175 (3) Data processing;

- 176 (4) Distance learning and other telecommunication
177 services;
- 178 (5) Evaluation and research;
- 179 (6) Staff development;
- 180 (7) Media and technology centers;
- 181 (8) Publication and dissemination of materials;
- 182 (9) Pupil personnel services;
- 183 (10) Planning;
- 184 (11) Secondary, postsecondary, community, adult, and
185 adult vocational education;
- 186 (12) Teaching and learning services, including services
187 for students with special talents and special needs;
- 188 (13) Employee personnel and employment services;
- 189 (14) Vocational rehabilitation;
- 190 (15) Health, diagnostic, and child development services
191 and centers;
- 192 (16) Leadership or direction in early childhood and
193 family education;
- 194 (17) Community services;
- 195 (18) Fiscal services and risk management programs;
- 196 (19) Legal services;
- 197 (20) Technology planning, training, and support
198 services;
- 199 (21) Health and safety services;
- 200 (22) Student academic challenges;

201 (23) Cooperative purchasing services; and

202 (24) Other programs and services as may be provided
203 pursuant to other provisions of this code.

204 (f) The educational services cooperative administrator,
205 with advice and assistance of the governing council, may
206 select as its fiscal agent one of the county boards of
207 education comprising the educational services cooperative.
208 The county board so selected may maintain a separate bank
209 account or accounts for the receipt and disbursement of all
210 educational services cooperative funds and perform the
211 accounting functions specified in the policies adopted by the
212 state board. A county board of education serving as a fiscal
213 agent may not initiate action, direct the programs or
214 substitute its judgment for that of the educational services
215 cooperative administrator as advised by the governing
216 council. The county board of education may reject an action
217 of the educational services cooperative administrator if
218 sufficient funds are not available, or if it perceives a legal
219 conflict. The educational services cooperative administrator
220 shall make arrangements for an annual audit to be conducted
221 in accordance with the requirements of the OMB Uniform
222 Guidance (2 C.F.R. 200) and the cost of the audit shall be
223 incurred by the educational services cooperative. Prior to
224 making those arrangements, the educational services
225 cooperative administrator must coordinate with the
226 respective fiscal agent to ensure the audit addresses all
227 applicable issues.

228 (g) Notwithstanding any other provision of this code to
229 the contrary, employees of educational services
230 cooperatives shall be reimbursed for travel, meals and
231 lodging at the same rate as state employees under the travel
232 management office of the Department of Administration.

233 (h) Notwithstanding any other provision of this code to
234 the contrary, county board members serving on governing
235 councils of educational services cooperatives may receive
236 compensation at a rate not to exceed \$100 per meeting

237 attended, not to exceed fifteen meetings per year. County
238 board members serving on governing councils may be
239 reimbursed for travel at the same rate as state employees
240 under the rules of the travel management office of the
241 Department of Administration. A county board member
242 may not be an employee of an educational services
243 cooperative.

§18-5-45. School calendar.

1 (a) As used in this section:

2 (1) “Instructional day” means a day within the
3 instructional term which meets the following criteria:

4 (A) Instruction is offered to students for at least the
5 minimum number of minutes as follows:

6 (i) For early childhood programs as provided in
7 subsection (d) section forty-four of this article;

8 (ii) For schools with grade levels kindergarten through
9 and including grade five, 315 minutes of instructional time
10 per day;

11 (iii) For schools with grade levels six through and
12 including grade eight, 330 minutes of instructional time per
13 day; and

14 (iv) For schools with grade levels nine through and
15 including grade twelve, 345 minutes of instructional time
16 per day.

17 (B) Instructional time is used for instruction and
18 cocurricular activities; and

19 (C) Other criteria as the state board determines
20 appropriate.

21 (2) “Cocurricular activities” are activities that are
22 closely related to identifiable academic programs or areas

23 of study that serve to complement academic curricula as
24 further defined by the state board; and

25 (3) “Instruction delivered through alternative methods”
26 means a plan developed by a county board and approved by
27 the state board for teachers to assign and grade work to be
28 completed by students on days when schools are closed due
29 to inclement weather or other unforeseen circumstances.

30 (b) *Findings.* —

31 (1) The primary purpose of the school system is to
32 provide instruction for students.

33 (2) The school calendar, as defined in this section, is
34 designed to define the school term both for employees and
35 for instruction.

36 (3) The school calendar shall provide for one hundred
37 eighty separate instructional days or an equivalent amount
38 of instructional time as provided in this section.

39 (c) The county board shall provide a school term for its
40 schools that contains the following:

41 (1) An employment term that excludes Saturdays and
42 Sundays and consists of at least two hundred days, which
43 need not be successive. The beginning and closing dates of
44 the employment term may not exceed forty-eight weeks;

45 (2) Within the employment term, an instructional term
46 for students of no less than one hundred eighty separate
47 instructional days, which includes an inclement weather and
48 emergencies plan designed to guarantee an instructional
49 term for students of no less than one hundred eighty separate
50 instructional days, subject to the following:

51 (A) A county board may increase the length of the
52 instructional day as defined in this section by at least thirty
53 minutes per day to ensure that it achieves at least an amount

54 of instructional time equivalent to one hundred and eighty
55 separate instructional days within its school calendar and:

56 (i) Apply up to five days of this equivalent time to
57 cancel days lost due to necessary school closures;

58 (ii) Plan within its school calendar and not subject to
59 cancellation and rescheduling as instructional days up to an
60 additional five days or equivalent portions of days, without
61 students present, to be used as determined by the county
62 board exclusively for activities by educators at the school
63 level designed to improve instruction; and

64 (iii) Apply any additional equivalent time to recover
65 time lost due to late arrivals and early dismissals;

66 (B) Subject to approval of its plan by the state board, a
67 county board may deliver instruction through alternative
68 methods on up to five days when schools are closed due to
69 inclement weather or other unforeseen circumstances and
70 these days are instructional days notwithstanding the
71 closure of schools; and

72 (C) The use of equivalent time gained by lengthening
73 the school day to cancel days lost, and the delivery of
74 instruction through alternative methods, both as defined in
75 this section, shall be considered instructional days for the
76 purpose of meeting the 180 separate day requirement and as
77 employment days for the purpose of meeting the 200 day
78 employment term.

79 (3) Within the employment term, noninstructional days
80 shall total twenty and shall be comprised of the following:

81 (A) Seven paid holidays;

82 (B) Election day as specified in section two, article five,
83 chapter eighteen-a of this code;

84 (C) Six days to be designated by the county board to be
85 used by the employees outside the school environment, with

86 at least four outside the school environment days scheduled
87 to occur after the one hundred and thirtieth instructional day
88 of the school calendar; (D) One day to be designated by the
89 county board to be used by the employees for preparation
90 for opening school and one day to be designated by the
91 county board to be used by the employees for preparation
92 for closing school: *Provided*, That the school preparation
93 days may be used for the purposes set forth in paragraph (E)
94 of this subdivision at the teacher's discretion; and

95 (E) The remaining days to be designated by the county
96 board for purposes to include, but not be limited to:

97 (i) Curriculum development;

98 (ii) Professional development;

99 (iii) Teacher-pupil-parent conferences;

100 (iv) Professional meetings;

101 (v) Making up days when instruction was scheduled but
102 not conducted; and

103 (vi) At least six two-hour blocks of time for faculty
104 senate meetings with at least one two-hour block of time
105 scheduled in the first month of the employment term, at least
106 one two-hour block of time scheduled in the last month of
107 the employment term and at least one two-hour block of
108 time scheduled in each of the months of October, December,
109 February and April; and

110 (4) Scheduled out-of-calendar days that are to be used
111 for instructional days in the event school is canceled for any
112 reason.

113 (d) A county board of education shall develop a policy
114 that requires additional minutes of instruction in the school
115 day or additional days of instruction to recover time lost due
116 to late arrivals and early dismissals.

117 (e) If it is not possible to complete one hundred eighty
118 separate instructional days with the current school calendar
119 and the additional five days of instructional time gained by
120 increasing the length of the instructional day as provided in
121 subsection (c) of this section are insufficient to offset the
122 loss of separate instructional days, the county board shall
123 schedule instruction on any available noninstructional day,
124 regardless of the purpose for which the day originally was
125 scheduled, or an out-of-calendar day and the day will be
126 used for instruction of students: *Provided*, That the
127 provisions of this subsection do not apply to:

128 (1) Holidays;

129 (2) Election day;

130 (3) Saturdays and Sundays; and

131 (4) The five days or equivalent portions of days planned
132 within the school calendar exclusively for activities by
133 educators at the school level to improve instruction that are
134 gained by increasing the length of the instructional day as
135 provided in subsection (c) of this section.

136 (f) The instructional term shall commence and terminate
137 on a date selected by the county board.

138 (g) The state board may not schedule the primary
139 statewide assessment program more than thirty days prior to
140 the end of the instructional year unless the state board
141 determines that the nature of the test mandates an earlier
142 testing date.

143 (h) The following applies to cocurricular activities:

144 (1) The state board shall determine what activities may
145 be considered cocurricular;

146 (2) The state board shall determine the amount of
147 instructional time that may be consumed by cocurricular
148 activities; and

149 (3) Other requirements or restrictions the state board
150 may provide in the rule required to be promulgated by this
151 section.

152 (i) Extracurricular activities may not be used for
153 instructional time.

154 (j) Noninstructional interruptions to the instructional
155 day shall be minimized to allow the classroom teacher to
156 teach.

157 (k) Prior to implementing the school calendar, the
158 county board shall secure approval of its proposed calendar
159 from the state board or, if so designated by the state board,
160 from the state superintendent.

161 (l) In formulation of a school's calendar, a county
162 school board shall hold at least two public meetings that
163 allow parents, teachers, teacher organizations, businesses
164 and other interested parties within the county to discuss the
165 school calendar. The public notice of the date, time and
166 place of the public hearing must be published in a local
167 newspaper of general circulation in the area as a Class II
168 legal advertisement, in accordance with the provisions of
169 article three, chapter fifty-nine of this code.

170 (m) The county board may contract with all or part of
171 the personnel for a longer term of employment.

172 (n) The minimum instructional term may be decreased
173 by order of the state superintendent in any county declared
174 a federal disaster area and in any county subject to an
175 emergency or disaster declaration by the Governor when the
176 event causing the declaration is substantially related to the
177 loss of instructional days in the county.

178 (o) Notwithstanding any provision of this code to the
179 contrary, the state board may grant a waiver to a county
180 board for its noncompliance with provisions of chapter
181 eighteen, eighteen-a, eighteen-b and eighteen-c of this code
182 to maintain compliance in reaching the mandatory one

183 hundred eighty separate instructional days established in
184 this section.

185 (p) The state board shall promulgate a rule in
186 accordance with the provisions of article three-b, chapter
187 twenty-nine-a of this code for the purpose of implementing
188 the provisions of this section.

ARTICLE 5A. LOCAL SCHOOL INVOLVEMENT.

§18-5A-5. Public school faculty senates established; election of officers; powers and duties.

1 (a) There is established at every public school in this
2 state a faculty senate which is comprised of all permanent,
3 full-time professional educators employed at the school who
4 shall all be voting members. "Professional educators", as
5 used in this section, means "professional educators" as
6 defined in chapter eighteen-a of this code. A quorum of
7 more than one half of the voting members of the faculty
8 shall be present at any meeting of the faculty senate at which
9 official business is conducted. Prior to the beginning of the
10 instructional term each year, but within the employment
11 term, the principal shall convene a meeting of the faculty
12 senate to elect a chair, vice chair and secretary and discuss
13 matters relevant to the beginning of the school year. The
14 vice chair shall preside at meetings when the chair is absent.
15 Meetings of the faculty senate shall be held during the times
16 provided in accordance with subdivision (12), subsection
17 (b) of this section as determined by the faculty senate.
18 Emergency meetings may be held during noninstructional
19 time at the call of the chair or a majority of the voting
20 members by petition submitted to the chair and vice chair.
21 An agenda of matters to be considered at a scheduled
22 meeting of the faculty senate shall be available to the
23 members at least two employment days prior to the meeting.
24 For emergency meetings the agenda shall be available as
25 soon as possible prior to the meeting. The chair of the
26 faculty senate may appoint such committees as may be
27 desirable to study and submit recommendations to the full

28 faculty senate, but the acts of the faculty senate shall be
29 voted upon by the full body.

30 (b) In addition to any other powers and duties conferred
31 by law, or authorized by policies adopted by the state or
32 county board or bylaws which may be adopted by the
33 faculty senate not inconsistent with law, the powers and
34 duties listed in this subsection are specifically reserved for
35 the faculty senate. The intent of these provisions is neither
36 to restrict nor to require the activities of every faculty senate
37 to the enumerated items except as otherwise stated. Each
38 faculty senate shall organize its activities as it considers
39 most effective and efficient based on school size,
40 departmental structure and other relevant factors.

41 (1) Each faculty senate shall control funds allocated to
42 the school from legislative appropriations pursuant to
43 section nine, article nine-a of this chapter. From those funds,
44 each classroom teacher and librarian shall be allotted \$100
45 for expenditure during the instructional year for academic
46 materials, supplies or equipment which, in the judgment of
47 the teacher or librarian, will assist him or her in providing
48 instruction in his or her assigned academic subjects or shall
49 be returned to the faculty senate: *Provided*, That nothing
50 contained herein prohibits the funds from being used for
51 programs and materials that, in the opinion of the teacher,
52 enhance student behavior, increase academic achievement,
53 improve self-esteem and address the problems of students at
54 risk. The remainder of funds shall be expended for academic
55 materials, supplies or equipment in accordance with a
56 budget approved by the faculty senate. Notwithstanding any
57 other provisions of the law to the contrary, funds not
58 expended in one school year are available for expenditure in
59 the next school year: *Provided, however*, That the amount
60 of county funds budgeted in a fiscal year may not be reduced
61 throughout the year as a result of the faculty appropriations
62 in the same fiscal year for such materials, supplies and
63 equipment. Accounts shall be maintained of the allocations
64 and expenditures of such funds for the purpose of financial
65 audit. Academic materials, supplies or equipment shall be

66 interpreted broadly, but does not include materials, supplies
67 or equipment which will be used in or connected with
68 interscholastic athletic events.

69 (2) A faculty senate may establish a process for
70 members to interview or otherwise obtain information
71 regarding applicants for classroom teaching vacancies that
72 will enable the faculty senate to submit recommendations
73 regarding employment to the principal. To facilitate the
74 establishment of a process that is timely, effective,
75 consistent among schools and counties, and designed to
76 avoid litigation or grievance, the state board shall
77 promulgate a rule pursuant to article three-b, chapter
78 twenty-nine-a of this code to implement the provisions of
79 this subdivision. The rule may include the following:

80 (A) A process or alternative processes that a faculty
81 senate may adopt;

82 (B) If determined necessary, a requirement and
83 procedure for training for principals and faculty senate
84 members or their designees who may participate in
85 interviews and provisions that may provide for the
86 compensation based on the appropriate daily rate of a
87 classroom teacher who directly participates in the training
88 for periods beyond his or her individual contract;

89 (C) Timelines that will assure the timely completion of
90 the recommendation or the forfeiture of the right to make a
91 recommendation upon the failure to complete a
92 recommendation within a reasonable time;

93 (D) The authorization of the faculty senate to delegate
94 the process for making a recommendation to a committee of
95 no less than three members of the faculty senate; and

96 (E) Such other provisions as the state board determines
97 are necessary or beneficial for the process to be established
98 by the faculty senate.

99 (3) A faculty senate may nominate teachers for
100 recognition as outstanding teachers under state and local
101 teacher recognition programs and other personnel at the
102 school, including parents, for recognition under other
103 appropriate recognition programs and may establish such
104 programs for operation at the school.

105 (4) A faculty senate may submit recommendations to
106 the principal regarding the assignment scheduling of
107 secretaries, clerks, aides and paraprofessionals at the school.

108 (5) A faculty senate may submit recommendations to
109 the principal regarding establishment of the master
110 curriculum schedule for the next ensuing school year.

111 (6) A faculty senate may establish a process for the
112 review and comment on sabbatical leave requests submitted
113 by employees at the school pursuant to section eleven,
114 article two of this chapter.

115 (7) Each faculty senate shall elect three faculty
116 representatives to the local school improvement council
117 established pursuant to section two of this article.

118 (8) Each faculty senate may nominate a member for
119 election to the county staff development council pursuant to
120 section eight, article three, chapter eighteen-a of this code.

121 (9) Each faculty senate shall have an opportunity to
122 make recommendations on the selection of faculty to serve
123 as mentors for beginning teachers under beginning teacher
124 internship programs at the school.

125 (10) A faculty senate may solicit, accept and expend any
126 grants, gifts, bequests, donations and any other funds made
127 available to the faculty senate: *Provided*, That the faculty
128 senate shall select a member who has the duty of
129 maintaining a record of all funds received and expended by
130 the faculty senate, which record shall be kept in the school
131 office and is subject to normal auditing procedures.

132 (11) Any faculty senate may review the evaluation
133 procedure as conducted in their school to ascertain whether
134 the evaluations were conducted in accordance with the
135 written system required pursuant to section twelve, article
136 two, chapter eighteen-a of this code or pursuant to section
137 two, article three-c, chapter eighteen-a of this code, as
138 applicable, and the general intent of this Legislature
139 regarding meaningful performance evaluations of school
140 personnel. If a majority of members of the faculty senate
141 determine that such evaluations were not so conducted, they
142 shall submit a report in writing to the State Board of
143 Education: *Provided*, That nothing herein creates any new
144 right of access to or review of any individual's evaluations.

145 (12) A local board shall provide to each faculty senate
146 at least six two-hour blocks of time for faculty senate
147 meetings with at least one two-hour block of time scheduled
148 in the first month of the employment term, one two-hour
149 block of time scheduled in the last month of the employment
150 term and at least one two-hour block of time scheduled in
151 each of the months of October, December, February and
152 April. A faculty senate may meet for an unlimited block of
153 time during noninstructional days to discuss and plan
154 strategies to improve student instruction and to conduct
155 other faculty senate business. A faculty senate meeting
156 scheduled on a noninstructional day shall be considered as
157 part of the purpose for which the noninstructional day is
158 scheduled. This time may be used and determined at the
159 local school level and includes, but is not limited to, faculty
160 senate meetings.

161 (13) Each faculty senate shall develop a strategic plan
162 to manage the integration of special needs students into the
163 regular classroom at their respective schools and submit the
164 strategic plan to the superintendent of the county board
165 periodically pursuant to guidelines developed by the State
166 Department of Education. Each faculty senate shall
167 encourage the participation of local school improvement

168 councils, parents and the community at large in developing
169 the strategic plan for each school.

170 Each strategic plan developed by the faculty senate shall
171 include at least: (A) A mission statement; (B) goals; (C)
172 needs; (D) objectives and activities to implement plans
173 relating to each goal; (E) work in progress to implement the
174 strategic plan; (F) guidelines for placing additional staff into
175 integrated classrooms to meet the needs of exceptional
176 needs students without diminishing the services rendered to
177 the other students in integrated classrooms; (G) guidelines
178 for implementation of collaborative planning and
179 instruction; and (H) training for all regular classroom
180 teachers who serve students with exceptional needs in
181 integrated classrooms.

ARTICLE 9A. PUBLIC SCHOOL SUPPORT.

§18-9A-8a. Foundation allowance for regional education service agencies.

1 For the fiscal year beginning on July 1, 2006, and for
2 each fiscal year thereafter, the foundation allowance for
3 regional education service agencies shall be equal to sixty-
4 three one-hundredths percent of the allocation for
5 professional educators as determined in section four of this
6 article, but not more than \$3,690,750. The allowance shall
7 be distributed to the regional education service agencies in
8 accordance with rules adopted by the state board. The
9 allowance for regional education service agencies shall be
10 excluded from the computation of total basic state aid as
11 provided in section twelve of this article: *Provided*, That the
12 foundation allowance for regional education service
13 agencies shall be reduced to zero for the fiscal year
14 beginning on July 1, 2017, and for each fiscal year
15 thereafter.

CHAPTER 18A. SCHOOL PERSONNEL.

ARTICLE 4. SALARIES, WAGES AND OTHER BENEFITS.

§18A-4-14. Duty-free lunch and daily planning period for certain employees.

1 (a) Notwithstanding section seven, article two of this
2 chapter, every teacher who is employed for a period of time
3 more than one half the class periods of the regular school
4 day and every service person whose employment is for a
5 period of more than three and one-half hours per day and
6 whose pay is at least the amount indicated in the state
7 minimum pay scale as set forth in section eight-a of this
8 article shall be provided a daily lunch recess of not less than
9 thirty consecutive minutes, and the employee shall not be
10 assigned any responsibilities during this recess. The recess
11 shall be included in the number of hours worked, and no
12 county shall increase the number of hours to be worked by
13 an employee as a result of the employee being granted a
14 recess under this section.

15 (b) Every teacher who is regularly employed for a
16 period of time more than one half the class periods of the
17 regular school day shall be provided at least one planning
18 period within each school day to be used to complete
19 necessary preparations for the instruction of pupils. No
20 teacher may be assigned any responsibilities during this
21 period, and no county shall increase the number of hours to
22 be worked by a teacher as a result of such teacher being
23 granted a planning period subsequent to the adoption of this
24 section (March 13, 1982). Educators shall receive
25 uninterrupted time for planning periods each day.
26 Administrators may not require a teacher to use the planning
27 period time allotted to complete duties beyond instructional
28 planning, including, but not limited to, administrative tasks
29 and meetings.

30 The duration of the planning period shall be in
31 accordance with the following:

32 (1) For grades where the majority of the student
33 instruction is delivered by only one teacher, the planning
34 period shall be no less than forty minutes; and

35 (2) For grades where students take separate courses
36 during at least four separate periods of instruction, most
37 usually delivered by different teachers for each subject, the
38 planning period shall be the length of the usual class period
39 taught by the teacher, but no less than forty minutes.
40 Principals, and assistant principals, where applicable, shall
41 cooperate in carrying out the provisions of this subsection,
42 including, but not limited to, assuming control of the class
43 period or supervision of students during the time the teacher
44 is engaged in the planning period. Substitute teachers may
45 also be utilized to assist with classroom responsibilities
46 under this subsection: *Provided*, That any substitute teacher
47 who is employed to teach a minimum of two consecutive
48 days in the same position shall be granted a planning period
49 pursuant to this section.

50 (c) Nothing in this section prevents any teacher from
51 exchanging his or her lunch recess or a planning period or
52 any service person from exchanging his or her lunch recess
53 for any compensation or benefit mutually agreed upon by
54 the employee and the county superintendent or his or her
55 agent: *Provided*, That a teacher and the superintendent or
56 his or her agent may not agree to terms which are different
57 from those available to any other teacher granted rights
58 under this section within the individual school or to terms
59 which in any way discriminate among those teachers within
60 the individual school, and a service person granted rights
61 under this section and the superintendent or his or her agent
62 may not agree to terms which are different from those
63 available to any other service personnel within the same
64 classification category granted rights under this section
65 within the individual school or to terms which in any way
66 discriminate among those service personnel within the same
67 classification category within the individual school.



CHAPTER 73

**(Com. Sub. for H. B. 2494 - By Delegates Westfall,
Statler, White, Atkinson and Higginbotham)**

[Passed April 6, 2017; in effect ninety days from passage.]
[Approved by the Governor on April 25, 2017.]

AN ACT to amend and reenact §18-2E-4 of the Code of West Virginia, 1931, as amended, relating to school, school district and statewide school report cards; modifying state board duties pertaining to the report cards; modifying information to be included in the school and school district report cards; removing requirement for school report cards to mailed directly to the parents; and requiring school and school district report cards be made easily accessible on, or through a report card icon or link on, the county board website and provided in paper form upon request of the parent, guardian or custodian.

Be it enacted by the Legislature of West Virginia:

That §18-2E-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2E. HIGH QUALITY EDUCATIONAL PROGRAMS.

§18-2E-4. Better schools accountability; school, school district and statewide school report cards.

- 1 (a) For the purpose of providing information to the
- 2 parents of public school children and the general public on
- 3 the quality of education in the public schools which is
- 4 uniform and comparable between schools within and among
- 5 the various school districts, the state board shall provide a
- 6 uniform format for school, school district and statewide
- 7 school report cards and shall promulgate rules concerning

8 the collection and reporting of data and the preparation of
9 report cards under this section. The format shall provide for
10 brief, concise reporting in nontechnical language of
11 required information. Any technical or explanatory material
12 a county board wishes to include shall be contained in a
13 separate appendix available upon request.

14 (b) The school report cards shall include information as
15 prescribed in this section to give the parents of students at
16 the school and the general public an indication of the quality
17 of education at the school and other programs supportive of
18 community needs, including, but not limited to, the
19 following:

20 (1) Indicators of student performance at the school in
21 comparison with the county, state, regional and national
22 student performance, as applicable, including student
23 performance by grade level in the various subjects measured
24 pursuant to a uniform statewide assessment program
25 adopted by the state board; school attendance rates; the
26 percent of students not promoted to next grade; and the
27 graduation rate;

28 (2) Indicators of school performance in comparison with
29 the aggregate of all other schools in the county and the state,
30 as applicable, including enrollment; average class size;
31 pupil-teacher ratio; pupil-administrator ratio; operating
32 expenditure per pupil; county expenditure by fund in
33 graphic display; and the average degree classification and
34 years of experience of the administrators and teachers at the
35 school;

36 (3) The names of the members of the local school
37 improvement council, created pursuant to section two,
38 article five-a of this chapter; and

39 (4) The name or names of the business partner or
40 partners of the school.

41 (c) The school district report card shall include the data
42 for each school for each separately listed applicable

43 indicator and the aggregate of the data for all schools, as
44 applicable, in the county for each indicator. The statewide
45 school report card shall include the data for each county for
46 each separately listed indicator and the aggregate for all
47 counties for each indicator.

48 (d) The report cards shall be prepared using actual local
49 school, county, state, regional and national data indicating
50 the present performance of the school and also shall include
51 the state norms and the upcoming year's targets for the
52 school and the county board.

53 The state board shall provide technical assistance to
54 each county board in preparing the school and school
55 district report cards.

56 Each county board shall prepare report cards in
57 accordance with the guidelines set forth in this section. The
58 school district report cards shall be presented at a regular
59 school board meeting subject to applicable notice
60 requirements and shall be made available to a newspaper of
61 general circulation serving the district. The school and
62 school district report cards shall be made easily accessible
63 on, or through a report card icon or link on, the county board
64 website and provided in paper form upon request to the
65 parent or parents, guardian or custodian of a child enrolled
66 in that school. In addition, each county board shall submit
67 the completed report cards to the state board which shall
68 make copies available to any person requesting them. The
69 report cards shall be completed and disseminated prior to
70 January 1, 1989, and in each year thereafter, and shall be
71 based upon information for the current school year, or for
72 the most recent school year for which the information is
73 available, in which case the year shall be clearly footnoted.

74 (e) In addition to the requirements of subsection (c) of
75 this section, the school district report card shall list the
76 following information:

77 (1) The names of the members of the county board and
78 the dates upon which their terms expire; and

79 (2) The names of the county school superintendent and
80 every assistant and associate superintendent and their area
81 of school administration.

82 (f) The state board shall develop and implement a
83 separate report card for nontraditional public schools
84 pursuant to the appropriate provisions of this section to the
85 extent practicable.

CHAPTER 74

**(Com. Sub. for S. B. 186 - By Senators Jeffries,
Ojeda, Facemire and Woelfel)**

[Passed April 5, 2017; in effect ninety days from passage.]
[Approved by the Governor on April 18, 2017.]

AN ACT to amend and reenact §18-5-18 and §18-5-44 of the Code of West Virginia, 1931, as amended; and to amend and reenact §18-8-1a of said code, all relating to adjusting the date upon which children become eligible for certain school programs and school attendance requirements; changing the kindergarten age attainment requirement from age five prior to September 1 to age five prior to July 1, with the July 1 date to become enforceable with the 2019-2020 school year; changing the early childhood education program age attainment date requirement from age four prior to September 1 to age four prior to July 1, with the July 1 date becoming enforceable with the 2018-2019 school year; and changing the age for which compulsory attendance begins to those who attain age six by July 1 of each year, with the July 1 date becoming enforceable with the 2019-2020 school year.

Be it enacted by the Legislature of West Virginia:

That §18-5-18 and §18-5-44 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §18-8-1a of said code be amended and reenacted, all to read as follows:

ARTICLE 5. COUNTY BOARD OF EDUCATION.

§18-5-18. Kindergarten programs.

1 (a) County boards shall provide kindergarten programs
2 for all children who have attained the age of five prior to
3 September 1 of the school year in which the pupil enters the
4 kindergarten program and may, pursuant to the provisions
5 of section forty-four of this article, establish kindergarten
6 programs designed for children below the age of five. The
7 programs for children who shall have attained the age of five
8 shall be full-day everyday programs.

9 (b) Beginning in the school year 2019-2020, county
10 boards shall provide kindergarten programs for all children
11 who have attained the age of five prior to July 1 of the
12 school year in which the pupil enters the kindergarten
13 program and may, pursuant to the provisions of section
14 forty-four of this article, establish kindergarten programs
15 designed for children below the age of five. The programs
16 for children who shall have attained the age of five shall be
17 full-day everyday programs.

18 (c) Persons employed as kindergarten teachers, as
19 distinguished from paraprofessional personnel, shall be
20 required to hold a certificate valid for teaching at the
21 assigned level as prescribed by rules established by the state
22 board. The state board shall establish the minimum
23 requirements for all paraprofessional personnel employed in
24 kindergarten programs established pursuant to the
25 provisions of this section and no such paraprofessional
26 personnel may be employed in any kindergarten program
27 unless he or she meets the minimum requirements.
28 Beginning July 1, 2014, any person previously employed as
29 an aide in a kindergarten program and who is employed in
30 the same capacity on and after that date and any new person

31 employed in that capacity in a kindergarten program on and
32 after that date shall hold the position of aide and either Early
33 Childhood Classroom Assistant Teacher I, Early Childhood
34 Classroom Assistant Teacher II or Early Childhood
35 Classroom Assistant Teacher III. Any person employed as
36 an aide in a kindergarten program that is eligible for full
37 retirement benefits before July 1, 2020, may remain
38 employed as an aide in that position and shall be granted an
39 Early Childhood Classroom Assistant Teacher permanent
40 authorization by the state superintendent pursuant to section
41 two-a, article three, chapter eighteen-a of this code.

42 (d) The state board, with the advice of the state
43 superintendent, shall establish and prescribe guidelines and
44 criteria relating to the establishment, operation and
45 successful completion of kindergarten programs in
46 accordance with the other provisions of this section.
47 Guidelines and criteria so established and prescribed also
48 are intended to serve for the establishment and operation of
49 nonpublic kindergarten programs and shall be used for the
50 evaluation and approval of those programs by the state
51 superintendent, provided application for the evaluation and
52 approval is made in writing by proper authorities in control
53 of the programs. The state superintendent, annually, shall
54 publish a list of nonpublic kindergarten programs, including
55 Montessori kindergartens that have been approved in
56 accordance with the provisions of this section. Montessori
57 kindergartens established and operated in accordance with
58 usual and customary practices for the use of the Montessori
59 method which have teachers who have training or
60 experience, regardless of additional certification, in the use
61 of the Montessori method of instruction for kindergartens
62 shall be considered to be approved.

63 (e) Pursuant to the guidelines and criteria, and only
64 pursuant to the guidelines and criteria, the county boards
65 may establish programs taking kindergarten to the homes of
66 the children involved, using educational television,
67 paraprofessional personnel in addition to and to supplement

68 regularly certified teachers, mobile or permanent
69 classrooms and other means developed to best carry
70 kindergarten to the child in its home and enlist the aid and
71 involvement of its parent or parents in presenting the
72 program to the child; or may develop programs of a more
73 formal kindergarten type, in existing school buildings, or
74 both, as the county board may determine, taking into
75 consideration the cost, the terrain, the existing available
76 facilities, the distances each child may be required to travel,
77 the time each child may be required to be away from home,
78 the child's health, the involvement of parents and other
79 factors as each county board may find pertinent. The
80 determinations by any county board are final and
81 conclusive.

§18-5-44. Early childhood education programs.

1 (a) For the purposes of this section, an “early childhood
2 education program” means a program created under this
3 section for children who have attained the age of four prior
4 to September 1 of the school year in which the children enter
5 the program.

6 (b) For the purposes of this section beginning in the
7 school year 2018-2019, an “early childhood education
8 program” means a program created under this section for
9 children who have attained the age of four prior to July 1 of
10 the school year in which the children enter the program.

11 (c) *Findings.* –

12 (1) Among other positive outcomes, early childhood
13 education programs have been determined to:

14 (A) Improve overall readiness when children enter
15 school;

16 (B) Decrease behavioral problems;

17 (C) Improve student attendance;

- 18 (D) Increase scores on achievement tests;
- 19 (E) Decrease the percentage of students repeating a
20 grade; and
- 21 (F) Decrease the number of students placed in special
22 education programs;
- 23 (2) Quality early childhood education programs
24 improve school performance and low-quality early
25 childhood education programs may have negative effects,
26 especially for at-risk children;
- 27 (3) West Virginia has the lowest percentage of its adult
28 population twenty-five years of age or older with a
29 bachelor's degree and the education level of parents is a
30 strong indicator of how their children will perform in
31 school;
- 32 (4) During the 2006-2007 school year, West Virginia
33 ranked thirty-ninth among the fifty states in the percentage
34 of school children eligible for free and reduced lunches and
35 this percentage is a strong indicator of how the children will
36 perform in school;
- 37 (5) For the school year 2008-2009, 13,135 students were
38 enrolled in prekindergarten, a number equal to
39 approximately sixty-three percent of the number of students
40 enrolled in kindergarten;
- 41 (6) Excluding projected increases due to increases in
42 enrollment in the early childhood education program,
43 projections indicate that total student enrollment in West
44 Virginia will decline by one percent, or by approximately
45 2,704 students, by the school year 2012-2013;
- 46 (7) In part, because of the dynamics of the state aid
47 formula, county boards will continue to enroll four-year-old
48 students to offset the declining enrollments;

49 (8) West Virginia has a comprehensive kindergarten
50 program for five-year-olds, but the program was established
51 in a manner that resulted in unequal implementation among
52 the counties, which helped create deficit financial situations
53 for several county boards;

54 (9) Expansion of current efforts to implement a
55 comprehensive early childhood education program should
56 avoid the problems encountered in kindergarten
57 implementation;

58 (10) Because of the dynamics of the state aid formula,
59 counties experiencing growth are at a disadvantage in
60 implementing comprehensive early childhood education
61 programs; and

62 (11) West Virginia citizens will benefit from the
63 establishment of quality comprehensive early childhood
64 education programs.

65 (d) County boards shall provide early childhood
66 education programs for all children who have attained the
67 age of four prior to September 1 of the school year in which
68 the children enter the early childhood education program.
69 These early childhood education programs shall provide at
70 least forty-eight thousand minutes annually and no less than
71 fifteen hundred minutes of instruction per week.

72 (e) Beginning in the school year 2018-2019, county
73 boards shall provide early childhood education programs for
74 all children who have attained the age of four prior to July
75 1 of the school year in which the children enter the early
76 childhood education program.

77 (f) The program shall meet the following criteria:

78 (1) It shall be voluntary, except that, upon enrollment,
79 the provisions of section one-a, article eight of this chapter
80 apply to an enrolled student, subject to subdivision (4) of
81 this subsection;

82 (2) It shall be open to all children meeting the age
83 requirement set forth in this section;

84 (3) It shall provide no less than fifteen hundred minutes
85 of instruction per week, in a full-day program with at least
86 forty-eight thousand minutes of instruction annually; and

87 (4) It shall permit a parent of an enrolled child to
88 withdraw the child from that program by notifying the
89 district in writing. A child withdrawn under this section is
90 not subject to the attendance provisions of this chapter until
91 that child again enrolls in a public school in this state.

92 (g) Enrollment of students in Head Start, or in any other
93 program approved by the state superintendent as provided
94 in this section, may be counted toward satisfying the
95 requirement of subsection (c) of this section.

96 (h) For the purposes of implementation financing, all
97 counties are encouraged to make use of funds from existing
98 sources, including:

99 (1) Federal funds provided under the Elementary and
100 Secondary Education Act pursuant to 20 U. S. C. §6301, *et*
101 *seq.*;

102 (2) Federal funds provided for Head Start pursuant to 42
103 U. S. C. §9831, *et seq.*;

104 (3) Federal funds for temporary assistance to needy
105 families pursuant to 42 U. S. C. §601, *et seq.*;

106 (4) Funds provided by the School Building Authority
107 pursuant to article nine-d of this chapter;

108 (5) In the case of counties with declining enrollments,
109 funds from the state aid formula above the amount indicated
110 for the number of students actually enrolled in any school
111 year; and

112 (6) Any other public or private funds.

113 (i) Each county board shall develop a plan for
114 implementing the program required by this section. The
115 plan shall include the following elements:

116 (1) An analysis of the demographics of the county
117 related to early childhood education program
118 implementation;

119 (2) An analysis of facility and personnel needs;

120 (3) Financial requirements for implementation and
121 potential sources of funding to assist implementation;

122 (4) Details of how the county board will cooperate and
123 collaborate with other early childhood education programs
124 including, but not limited to, Head Start, to maximize
125 federal and other sources of revenue;

126 (5) Specific time lines for implementation; and

127 (6) Any other items the state board may require by
128 policy.

129 (j) A county board shall submit its plan to the Secretary
130 of the Department of Health and Human Resources. The
131 secretary shall approve the plan if the following conditions
132 are met:

133 (1) The county board has maximized the use of federal
134 and other available funds for early childhood programs; and

135 (2) The county board has provided for the maximum
136 implementation of Head Start programs and other public
137 and private programs approved by the state superintendent
138 pursuant to the terms of this section; or

139 (3) The secretary finds that, if the county board has not
140 met one or more of the requirements of this subsection, the
141 county board has acted in good faith and the failure to
142 comply was not the primary fault of the county board. Any

143 denial by the secretary may be appealed to the circuit court
144 of the county in which the county board is located.

145 (k) The county board shall submit its plan for approval
146 to the state board. The state board shall approve the plan if
147 the county board has complied substantially with the
148 requirements of subsection (g) of this section and has
149 obtained the approval required in subsection (h) of this
150 section.

151 (l) Every county board shall submit its plan for
152 reapproval by the Secretary of the Department of Health and
153 Human Resources and by the state board at least every two
154 years after the initial approval of the plan and until full
155 implementation of the early childhood education program in
156 the county. As part of the submission, the county board
157 shall provide a detailed statement of the progress made in
158 implementing its plan. The standards and procedures
159 provided for the original approval of the plan apply to any
160 reapproval.

161 (m) A county board may not increase the total number
162 of students enrolled in the county in an early childhood
163 program until its program is approved by the Secretary of
164 the Department of Health and Human Resources and the
165 state board.

166 (n) The state board annually may grant a county board a
167 waiver for total or partial implementation if the state board
168 finds that all of the following conditions exist:

169 (1) The county board is unable to comply either
170 because:

171 (A) It does not have sufficient facilities available; or

172 (B) It does not and has not had available funds sufficient
173 to implement the program;

174 (2) The county has not experienced a decline in
175 enrollment at least equal to the total number of students to
176 be enrolled; and

177 (3) Other agencies of government have not made
178 sufficient funds or facilities available to assist in
179 implementation.

180 Any county board seeking a waiver shall apply with the
181 supporting data to meet the criteria for which they are
182 eligible on or before March 25 for the following school year.
183 The state superintendent shall grant or deny the requested
184 waiver on or before April 15 of that same year.

185 (o) The provisions of subsections (b), (c) and (d),
186 section eighteen of this article relating to kindergarten apply
187 to early childhood education programs in the same manner
188 in which they apply to kindergarten programs.

189 (p) Except as required by federal law or regulation, no
190 county board may enroll students who will be less than four
191 years of age prior to September 1 for the year they enter
192 school.

193 (q) Except as required by federal law or regulation,
194 beginning in the school year 2018-2019, no county board
195 may enroll students who will be less than four years of age
196 prior to July 1 for the year they enter school.

197 (r) Neither the state board nor the state department may
198 provide any funds to any county board for the purpose of
199 implementing this section unless the county board has a plan
200 approved pursuant to subsections (h), (i) and (j) of this
201 section.

202 (s) The state board shall promulgate a rule in accordance
203 with the provisions of article three-b, chapter twenty-nine-a
204 of this code for the purposes of implementing the provisions
205 of this section. The state board shall consult with the
206 Secretary of the Department of Health and Human

207 Resources in the preparation of the rule. The rule shall
208 contain the following:

209 (1) Standards for curriculum;

210 (2) Standards for preparing students;

211 (3) Attendance requirements;

212 (4) Standards for personnel; and

213 (5) Any other terms necessary to implement the
214 provisions of this section.

215 (t) The rule shall include the following elements relating
216 to curriculum standards:

217 (1) A requirement that the curriculum be designed to
218 address the developmental needs of four-year-old children
219 consistent with prevailing research on how children learn;

220 (2) A requirement that the curriculum be designed to
221 achieve long-range goals for the social, emotional, physical
222 and academic development of young children;

223 (3) A method for including a broad range of content that
224 is relevant, engaging and meaningful to young children;

225 (4) A requirement that the curriculum incorporate a
226 wide variety of learning experiences, materials and
227 equipment, and instructional strategies to respond to
228 differences in prior experience, maturation rates and
229 learning styles that young children bring to the classroom;

230 (5) A requirement that the curriculum be designed to
231 build on what children already know in order to consolidate
232 their learning and foster their acquisition of new concepts
233 and skills;

234 (6) A requirement that the curriculum meet the
235 recognized standards of the relevant subject matter
236 disciplines;

237 (7) A requirement that the curriculum engage children
238 actively in the learning process and provide them with
239 opportunities to make meaningful choices;

240 (8) A requirement that the curriculum emphasize the
241 development of thinking, reasoning, decisionmaking and
242 problem-solving skills;

243 (9) A set of clear guidelines for communicating with
244 parents and involving them in decisions about the
245 instructional needs of their children; and

246 (10) A systematic plan for evaluating program success
247 in meeting the needs of young children and for helping them
248 to be ready to succeed in school.

249 (u) After the school year 2012-2013, on or before July
250 1 of each year, each county board shall report the following
251 information to the Secretary of the Department of Health
252 and Human Resources and the state superintendent:

253 (1) Documentation indicating the extent to which
254 county boards are maximizing resources by using the
255 existing capacity of community-based programs, including,
256 but not limited to, Head Start and child care; and

257 (2) For those county boards that are including eligible
258 children attending approved, contracted community-based
259 programs in their net enrollment for the purposes of
260 calculating state aid pursuant to article nine-a of this
261 chapter, documentation that the county board is equitably
262 distributing funding for all children regardless of setting.

ARTICLE 8. COMPULSORY SCHOOL ATTENDANCE.

§18-8-1a. Commencement and termination of compulsory school attendance; public school entrance requirements; exceptions.

1 (a) Notwithstanding the provisions of section one of this
2 article, compulsory school attendance begins with the

3 school year in which the sixth birthday is reached prior to
4 September 1 of such year or upon enrolling in a publicly
5 supported kindergarten program and, subject to subdivision
6 (3) of this subsection, continues to the sixteenth birthday or
7 for as long as the student continues to be enrolled in a school
8 system after the sixteenth birthday.

9 (1) A child may be removed from such kindergarten
10 program when the principal, teacher and parent or guardian
11 concur that the best interest of the child would not be served
12 by requiring further attendance: *Provided*, That the
13 principal shall make the final determination with regard to
14 compulsory school attendance in a publicly supported
15 kindergarten program.

16 (2) The compulsory school attendance provision of this
17 article shall be enforced against a person eighteen years of
18 age or older for as long as the person continues to be
19 enrolled in a school system and may not be enforced against
20 the parent, guardian or custodian of the person.

21 (3) Notwithstanding the provisions of section one of this
22 article, compulsory school attendance begins with the
23 school year in which the sixth birthday is reached prior to
24 September 1 of such year or upon enrolling in a publicly
25 supported kindergarten program and continues to the
26 seventeenth birthday or for as long as the student continues
27 to be enrolled in a school system after the seventeenth
28 birthday: *Provided*, That beginning in the school year 2019-
29 2020, compulsory school attendance begins with the school
30 year in which the sixth birthday is reached prior to July 1 of
31 such year or upon enrolling in a publicly supported
32 kindergarten program.

33 (b) Attendance at a state-approved or Montessori
34 kindergarten, as provided in section eighteen, article five of
35 this chapter, is deemed school attendance for purposes of
36 this section. Prior to entrance into the first grade in
37 accordance with section five, article two of this chapter,
38 each child must have either:

39 (1) Successfully completed such publicly or privately
40 supported, state-approved kindergarten program or
41 Montessori kindergarten program; or

42 (2) Successfully completed an entrance test of basic
43 readiness skills approved by the county in which the school
44 is located. The test may be administered in lieu of
45 kindergarten attendance only under extraordinary
46 circumstances to be determined by the county board.

47 (c) Notwithstanding the provisions of this section,
48 section five, article two of this chapter and section eighteen,
49 article five of this chapter, a county board may provide for
50 advanced entrance or placement under policies adopted by
51 said board for any child who has demonstrated sufficient
52 mental and physical competency for such entrance or
53 placement.

54 (d) This section does not prevent a student from another
55 state from enrolling in the same grade in a public school in
56 West Virginia as the student was enrolled at the school from
57 which the student transferred.

CHAPTER 75

**(Com. Sub. for H. B. 2373 - By Delegates Statler, Hill,
Espinosa, Kessinger, N. Foster, Wagner, McGeehan,
Higginbotham, Ward, Williams and Ellington)**

[Passed April 6, 2017; in effect ninety days from passage.]
[Approved by the Governor on April 20, 2017.]

AN ACT to amend and reenact §18-5-22c of the Code of West Virginia, 1931, as amended, relating to the administration of epinephrine auto-injectors by a school nurse, nonmedical personnel or a school transportation employee to a student or school personnel; authorizing school transportation

employees trained in administration of epinephrine auto-injectors and designated and authorized by the school or county board to administer auto-injectors to a student or school personnel experiencing an anaphylactic reaction and excluding such school transportation employees from section twenty-two, article five, chapter eighteen of said code; adding the county board as an entity that can authorize and designate nonmedical school personnel to administer the epinephrine auto-injector; establishing that school transportation employees are immune from liability for administration of an epinephrine auto-injector except in cases of gross negligence or willful misconduct; and requiring the State Board of Education to promulgate rules necessary to effectuate the provisions of this section.

Be it enacted by the Legislature of West Virginia:

That §18-5-22c of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 5. COUNTY BOARD OF EDUCATION.

§18-5-22c. Providing for the maintenance and use of epinephrine auto-injectors; administration of injections; notice; indemnity from liability; rules.

1 (a) A public, private, parochial or denominational
 2 school located within this state may possess and maintain at
 3 the school a supply of epinephrine auto-injectors for use in
 4 emergency medical care or treatment for an anaphylactic
 5 reaction. A prior diagnosis for a student or school personnel
 6 requiring the use of epinephrine auto-injectors is not
 7 necessary to permit the school to stock epinephrine auto-
 8 injectors. Epinephrine auto-injectors shall be maintained by
 9 the school in a secure location which is only accessible by
 10 medical personnel and authorized nonmedical personnel
 11 and not by students.

12 (b) An allopathic physician licensed to practice pursuant
 13 to the provisions of article three, chapter thirty of this code
 14 or an osteopathic physician licensed to practice pursuant to

15 the provisions of article fourteen, chapter thirty of this code
16 may prescribe within the course of his or her professional
17 practice standing orders and protocols for use when
18 necessary by a school which wishes to maintain epinephrine
19 auto-injector pursuant to the provisions of this section.

20 (c) A school nurse, as set forth in section twenty-two of
21 this article, may administer an epinephrine auto-injector to
22 a student or school personnel during regular school hours or
23 at a school function when the school nurse medically
24 believes the individual is experiencing an anaphylactic
25 reaction. A school nurse may use the school supply of
26 epinephrine auto-injectors for a student or school personnel
27 authorized to self-administer that meet the requirements of
28 a prescription on file with the school.

29 (d) Nonmedical school personnel who have been trained
30 in the administration of an epinephrine auto-injector and
31 who have been designated and authorized by the school or
32 county board to administer the epinephrine auto-injector are
33 authorized to administer an epinephrine auto-injector to a
34 student or school personnel during regular school hours or
35 at a school function when the authorized and designated
36 nonmedical school personnel reasonably believes, based
37 upon their training, that the individual is experiencing an
38 anaphylactic reaction. Nonmedical school personnel may
39 use the school supply of epinephrine auto-injectors for a
40 student or school personnel authorized to self-administer
41 that meet the requirements of a prescription on file with the
42 school.

43 (e) School transportation employees, including bus
44 drivers, who have been trained in the administration of an
45 epinephrine auto-injector and who have been designated
46 and authorized by the school or county board to administer
47 an epinephrine auto-injector may administer an epinephrine
48 auto-injector to a student or school personnel during
49 transportation to or from a school function when the school
50 transportation employee reasonably believes, based upon
51 his or her training, that the individual is experiencing an

52 anaphylactic reaction. A school transportation employee
53 may use the individual's personal supply of epinephrine
54 auto-injectors or the school's supply of epinephrine auto-
55 injectors for a student or school personnel authorized to self-
56 administer that meet the requirements of a prescription on
57 file with the school: *Provided*, That a school transportation
58 employee shall defer to an individual possessing a higher
59 degree of medical training or the parent of the child
60 experiencing an anaphylactic reaction, if either are present
61 at the time of the reaction: *Provided, however*, That the
62 school transportation employee, trained and authorized to
63 administer epinephrine auto-injectors, is not subject to the
64 terms of section twenty-two of this article.

65 (f) Prior notice to the parents of a student of the
66 administration of the epinephrine auto-injector is not
67 required. Immediately following the administration of the
68 epinephrine auto-injector, the school shall provide notice to
69 the parent of a student who received an auto-injection.

70 (g) A school nurse, a trained school transportation
71 employee, or trained and authorized nonmedical school
72 personnel who administer an epinephrine auto-injection to
73 a student or to school personnel as provided in this section
74 is immune from liability for any civil action arising out of
75 an act or omission resulting from the administration of the
76 epinephrine auto-injection unless the act or omission was
77 the result of the school nurse, school transportation
78 employee, or trained and authorized nonmedical school
79 personnel's gross negligence or willful misconduct.

80 (h) For the purposes of this section, all county boards of
81 education may participate in free or discounted drug
82 programs from pharmaceutical manufacturers to provide
83 epinephrine auto-injectors to schools in their counties which
84 choose to stock auto-injectors.

85 (i) All county boards of education are required to collect
86 and compile aggregate data on incidents of anaphylactic
87 reactions resulting in the administration of school

88 maintained epinephrine auto-injectors in their county during
89 a school year and forward the data to the state
90 superintendent of schools. The state superintendent of
91 schools shall prepare an annual report to be presented to the
92 Joint Committee on Government and Finance as set forth in
93 article three, chapter four of this code, by December 31 of
94 each year.

95 (j) The State Board of Education, as defined in article
96 two of this chapter, shall consult with the state health
97 officer, as defined in section four, article three, chapter
98 thirty of this code, and promulgate rules necessary to
99 effectuate the provisions of this section in accordance with
100 the provisions of article three-b, chapter twenty-nine-a of
101 this code. The rules shall provide, at a minimum, for:

102 (1) The criteria for selection and minimum requirements
103 of nonmedical school personnel and school transportation
104 employees who may administer epinephrine auto-injectors
105 following the necessary training;

106 (2) The training requirements necessary for nonmedical
107 school personnel and school transportation employees to be
108 authorized to administer an epinephrine auto-injection;

109 (3) Training on anaphylaxis and allergy awareness for
110 food service workers in the school system, if easily
111 available locally;

112 (4) Storage requirements for maintaining the
113 epinephrine auto-injectors within the schools;

114 (5) Comprehensive notice requirements to the parents of a
115 student who was administered a school maintained epinephrine
116 auto-injection including who administered the injection, the
117 rationale for administering the injection, the approximate time of
118 the injection and any other necessary elements to make the
119 student's parents fully aware of the circumstances surrounding
120 the administration of the injection;

121 (6) Any and all necessary documentation to be kept and
122 maintained regarding receipt, inventory, storage and usage
123 of all epinephrine auto-injectors;

124 (7) Detailed reporting requirements for county boards of
125 education on incidents of use of school maintained
126 epinephrine auto-injectors during a school year; and

127 (8) Any other requirements necessary to fully
128 implement this section.

CHAPTER 76

**(Com. Sub. for S. B. 36 - By Senators Stollings,
Gaunch, Ojeda, Facemire, Jeffries and Beach)**

[Passed April 1, 2017; in effect ninety days from passage.]
[Approved by the Governor on April 11, 2017.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §18-5-22d, relating to opioid antagonists; allowing schools to voluntarily maintain and use opioid antagonist; providing for the administration of an antagonist by a school nurse or other trained and authorized nonmedical school personnel for emergency care or treatment of an adverse opioid event; setting forth notice requirements; setting forth immunity from liability for schools, school nurses and trained and authorized nonmedical school personnel; providing for data collection and reporting requirements; and setting forth rule-making authority to effectuate the provisions of the section.

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 §18-5-22d, to read as follows:

ARTICLE 5. COUNTY BOARD OF EDUCATION.**§18-5-22d. Providing for the maintenance and use of opioid antagonist; administration; notice; indemnity from liability; rules.**

1 (a) A public, private, parochial or denominational
2 school located within this state may possess and maintain at
3 the school a supply of an opioid antagonist for use in
4 emergency medical care or treatment for an adverse opioid
5 event. Opioid antagonists shall be maintained by the school
6 in a secure location which is only accessible by medical
7 personnel and authorized nonmedical personnel and not by
8 students.

9 (b) A school nurse, as set forth in section twenty-two of
10 this article, is authorized to administer an opioid antagonist
11 to a student, school personnel or a person during regular
12 school hours, at a school function, or at an event on school
13 property when the school nurse medically believes the
14 individual is experiencing an adverse opioid event.

15 (c) Nonmedical school personnel who have been trained
16 in the administration of an opioid antagonist and who have
17 been designated and authorized by the school to administer
18 the opioid antagonist are authorized to administer an opioid
19 antagonist to a student, school personnel or a person during
20 regular school hours, at a school function, at an event on
21 school property when the authorized and designated
22 nonmedical school personnel reasonably believes, based
23 upon their training, that the individual is experiencing an
24 adverse opioid event.

25 (d) Prior notice to the parents of a student of the
26 administration of the opioid antagonist is not required.
27 Immediately following the administration of the opioid
28 antagonist, the school shall provide notice to the parent of a
29 student who received the opioid antagonist.

30 (e) A school nurse or trained and authorized nonmedical
31 school personnel who administer an opioid antagonist as
32 provided in this section is immune from liability for any

33 civil action arising out of an act or omission resulting from
34 the administration of the opioid antagonist unless the act or
35 omission was the result of the school nurse or trained and
36 authorized nonmedical school personnel's gross negligence
37 or willful misconduct.

38 (f) All county boards of education are required to collect
39 and compile aggregate data on adverse opioid events
40 resulting in the administration of school maintained opioid
41 antagonist in their county during a school year and forward
42 the data to State Superintendent of Schools. The State
43 Superintendent of Schools shall prepare an annual report to
44 be presented to the Joint Committee on Government and
45 Finance as set forth in article three, chapter four of this code,
46 by December 31 of each year.

47 (g) Nothing in this section requires a public, private,
48 parochial or denominational school located within this state
49 to possess an opioid antagonist. A public, private, parochial
50 or denominational school located within this state or a
51 county board of education is immune from liability from
52 any civil action arising from the public, private, parochial or
53 denominational school located within this state not
54 possessing an opioid antagonist in the school.

55 (h) The State Board of Education, as defined in article
56 two of this chapter, shall consult with the State Health
57 Officer, as defined in section four, article three, chapter
58 thirty of this code, and promulgate rules necessary to
59 effectuate the provisions of this section in accordance with
60 the provisions of article three-b, chapter twenty-nine-a of
61 this code. The rules shall provide, at a minimum, for:

62 (1) The criteria for selection and minimum requirements
63 of nonmedical school personnel who may administer opioid
64 antagonist following the necessary training;

65 (2) The training requirements necessary for nonmedical
66 school personnel to be authorized to administer an opioid
67 antagonist;

68 (3) Training on what constitutes an adverse opioid
69 event;

70 (4) Storage requirements for maintaining the opioid
71 antagonist within the schools;

72 (5) Comprehensive notice requirements to the parents of
73 a student who was administered a school maintained opioid
74 antagonist including who administered the antagonist, the
75 rational for administering the antagonist, the approximate
76 time of the administration of the opioid antagonist and any
77 other necessary elements to make the student's parents fully
78 aware of the circumstances surrounding the administration
79 of the antagonist;

80 (6) Any and all necessary documentation to be kept and
81 maintained regarding receipt, inventory, storage and usage
82 of all opioid antagonist;

83 (7) Detailed reporting requirements for county boards of
84 education on incidents of use of school maintained opioid
85 antagonist during a school year; and

86 (8) Any other requirements necessary to fully
87 implement this section.

CHAPTER 77

**(Com. Sub. for S. B. 630 - By Senators Mann, Hall
and Sypolt)**

[Passed April 8, 2017; in effect from passage.]
[Approved by the Governor on April 26, 2017.]

AN ACT to amend the Code of West Virginia, 1931, as amended,
by adding thereto a new article, designated §18-5F-1, §18-5F-
2, §18-5F-3, §18-5F-4, §18-5F-5 and §18-5F-6, all relating to
establishing the Accessibility and Equity in Public Education

Enhancement Act; setting forth legislative findings and purpose; defining terms; allowing a county board or a multicounty consortium to create a virtual instruction program for one or more schools serving any composition of grades kindergarten through twelve by adopting a policy creating the program; allowing the county board or multicounty consortium after adopting the policy to contract with virtual school providers; delaying participation of eligible students in grades kindergarten through five until after the program has been in operation for one full school year; requiring eligible students to be counted in the net enrollment of the school district for the purposes of calculating and receiving state aid, be subject to the same state assessment requirements as other students in the school district and receive a diploma upon completing the same coursework required of regular public school students in the district; exempting, to a limited extent, certain students, parents and school districts from certain laws and state board policies that pertain to requiring the student to be in a school building receiving instruction for any set period of time; providing that a participating eligible student be considered to be attending a certain school; allowing the eligible student to participate in any cocurricular and extracurricular activities of the school under the same participation requirements imposed on traditional students attending the school; exempting a county board from certain provisions of law or state board rule to the extent any conflict with the delivery of the program; exempting a county board from certain online course restrictions; requiring coursework offered through a program be aligned to certain academic standards; requiring the assessment results of a student be included in the assessment results of the school and the school district in which the student is considered to be enrolled for purposes of accountability; and requiring report to the Legislative Oversight Commission on Education Accountability on all aspects of the program.

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 §18-5F-1,

§18-5F-2, §18-5F-3, §18-5F-4, §18-5F-5 and §18-5F-6, all to read as follows:

ARTICLE 5F. ACCESSIBILITY AND EQUITY IN PUBLIC EDUCATION ENHANCEMENT ACT.

§18-5F-1. Short title.

1 This article shall be known and may be cited as the
2 Accessibility and Equity in Public Education Enhancement
3 Act.

§18-5F-2. Legislative findings; purpose.

1 (a) The Legislature finds and declares that:

2 (1) County school districts have called for more local
3 control and flexibility to meet the education needs of their
4 communities;

5 (2) Students, parents and teachers are seeking
6 alternatives to the traditional classroom delivery of
7 education that better meets the educational needs of
8 students;

9 (3) Public schools should be able to provide a variety of
10 instructional delivery models;

11 (4) The county school districts can enhance education
12 opportunities for students, using technology;

13 (5) Using technology to deliver instruction can provide
14 flexibility and increase options for instruction;

15 (6) Giving county school districts the flexibility to
16 create innovative programs will provide teachers with new
17 instructional opportunities; and

18 (7) This Act is not intended to save money through the
19 reduction of school personnel positions.

20 (b) The purpose of this article is to enhance access and
21 equity in public education in West Virginia.

§18-5F-3. Definitions.

1 For the purposes of this article, unless a different
2 meaning clearly appears from the context:

3 (a) “Blended program” means a formal education
4 program in which a student learns:

5 (1) At least in part through online learning, with some
6 element of student control over time, place, path or pace;

7 (2) At least in part in a supervised setting outside the
8 home; and

9 (3) In such a way that the modalities of each student’s
10 learning path within a course or subject are connected to
11 provide an integrated learning experience;

12 (b) “Eligible student” means a student eligible for
13 attendance in public schools in a school district that
14 provides a virtual instruction program, that is a member of
15 a multicounty consortium providing a virtual instruction
16 program or that does not provide a virtual instruction
17 program and is not a member of a multicounty consortium
18 but participates through a collaborative agreement between
19 the school district in which the student is enrolled and a
20 school district or a multicounty consortium providing a
21 virtual instruction program;

22 (c) “Multicounty consortium” means a written
23 arrangement where two or more county boards act in
24 concert to establish a virtual school that will serve eligible
25 students; and

26 (d) “Virtual instruction program” means a program
27 implemented by a county board or multicounty consortium
28 that provides a full-time online or blended program of
29 instruction for students enrolled in any composition of
30 grades kindergarten through twelve.

§18-5F-4. County board policy adoption.

1 (a) A county board or a multicounty consortium may
2 create a virtual instruction program for one or more schools
3 serving any composition of grades kindergarten through
4 twelve by adopting a policy creating the program and after
5 adopting the policy may contract with virtual school
6 providers. When there is a multicounty consortium, each
7 county board in the consortium shall adopt a policy creating
8 the virtual instruction program. The virtual instruction
9 program may begin July 1, 2017, or at any point thereafter:
10 *Provided, That*, notwithstanding any other provision of this
11 article to the contrary, no eligible students in grades
12 kindergarten through five may participate in a virtual
13 instruction program until after the program has been in
14 operation for one full school year.

15 (b) The policy adopted by the county board pursuant to
16 this section shall govern the virtual instruction program
17 offered by the county board or multicounty consortium.

18 (c) The policy shall be consistent with this article and
19 may offer eligible students in grades kindergarten through
20 twelve an online pathway for earning a high school diploma
21 and, at a minimum, shall include the following:

22 (1) The scope, instructional model and capacity for the
23 virtual education program;

24 (2) Assessment protocol and specific requirements for
25 monitoring performance that are consistent with section
26 five, article two-e of this chapter;

27 (3) A plan for monitoring students receiving virtual
28 instruction in accordance with pacing and completion of the
29 required virtual coursework: *Provided, That*, if virtual
30 instruction occurs in a public school classroom then a
31 teacher, professional personnel, professional educator or
32 paraprofessional employed by that county must be present
33 to monitor;

34 (4) Qualifications of faculty, which at a minimum shall
35 include a teaching certificate issued pursuant to article three,
36 chapter eighteen-a of this code and state board rules; and

37 (5) A requirement that any virtual school provider
38 contracted with comply with state and federal privacy laws.

§18-5F-5. Compliance with existing state law.

1 (a) An eligible student enrolled in a virtual instruction
2 program shall:

3 (1) Be counted in the net enrollment of the school
4 district in which the student resides for the purposes of
5 calculating and receiving state aid;

6 (2) Be subject to the same state assessment requirements
7 as other students in the school district; and

8 (3) Receive a diploma from the school district, upon
9 completing the same coursework required of regular public
10 school students in the district.

11 (b) An eligible student participating in a virtual
12 instruction program, to the extent the program as delineated
13 in the county board policy allows or requires instruction to
14 occur outside of a school building, is not required to comply
15 with compulsory school attendance requirements set forth
16 in article eight of this code or any other provision of law or
17 state board rule relating to attendance.

18 (c) Neither the school district, the eligible student nor
19 the parents of the student participating in a virtual
20 instruction program, to the extent the program as delineated
21 in the county board policy allows or requires instruction to
22 occur outside of a school building, may incur any penalty or
23 be held accountable for the absence of the student from the
24 school building.

25 (d) For an eligible student participating in a virtual
26 instruction program, neither the school district nor the

27 student, to the extent the program as delineated in the county
28 board policy is a learn at your own pace program, is required
29 to comply with the instructional term requirement set forth
30 in section forty-five, article five of this chapter or any other
31 law or state board rule requiring a student to be receiving
32 instruction for any set time.

33 (e) An eligible student participating in a virtual
34 instruction program shall be considered to be attending the
35 school in the attendance district created by the county board
36 pursuant to section sixteen, article five of this chapter that
37 the eligible student resides in unless otherwise transferred
38 to another school pursuant to that section or any other
39 provision of this code. The eligible student may participate
40 in any cocurricular and extracurricular activities of that
41 school, but is subject to the same participation requirements
42 imposed on a traditional student attending the school.

43 (f) A county board is exempt from any provision of law
44 or state board rule that applies to the traditional delivery of
45 instruction such as requirements relating to the physical
46 presence of a student, student monitoring and security, the
47 maximum teacher-pupil ratio set forth in section eighteen-a,
48 article five of this chapter, instructional time requirements
49 and physical education requirements to the extent any of the
50 foregoing conflict with the delivery of the virtual instruction
51 program.

52 (g) The virtual instruction program is not subject to
53 online course restrictions imposed by the state board, state
54 superintendent or the West Virginia Department of
55 Education.

56 (h) Coursework offered through a virtual instruction
57 program shall be aligned to the appropriate academic
58 standards as required by state law and state board rule.

59 (i) The assessment results of a student shall be included
60 in the assessment results of the school and the school district

61 in which the student is considered enrolled pursuant to this
62 section for purposes of accountability.

§18-5F-6. Report to Legislative Oversight Commission on Education Accountability.

1 At the end of the first year any virtual instruction
2 program is implemented pursuant to this article, the West
3 Virginia Department of Education, after consulting with the
4 county board or boards implementing the program, shall
5 report to the Legislative Oversight Commission on
6 Education Accountability on all aspects of the program.
7 The report, at least, shall include the grade levels of the
8 students the program was offered to; the number of students
9 who enrolled in the program; the number of students who
10 were enrolled in the program full-time and number who
11 participated in a blended program; the number of students
12 who were homeschooled, enrolled in a private school and
13 enrolled in a public school immediately preceding
14 enrollment in the virtual instruction program; and how the
15 students performed academically as compared with students
16 in a traditional classroom setting.

CHAPTER 78

**(Com. Sub. for H. B. 2702 - By Delegates Westfall,
Cooper, Ambler, Wagner, Moye, Atkinson, Marcum
and Higginbotham)**

[Passed April 8, 2017; in effect July 1, 2017.]
[Approved by the Governor on April 25, 2017.]

AN ACT to amend and reenact §18-8-4 of the Code of West Virginia, 1931, as amended, relating to documentation of unexcused absences from compulsory school attendance; limiting the excused absences for personal illness or injury in

the family to those of student's parent, guardian or custodian; requiring all documentation related to absences be provided to school no later than three days of occurrence; authorizing schools to have discretion whether to give notice in the case of three unexcused absences; giving schools the discretion whether to give said notice by written or other means to a parent after three absences; giving discretion for attendance director or assistant to make a complaint against parent after ten total unexcused absences; and clarifying responsibility of administrative head or other chief administrator of school for meeting; and making other technical clarifications.

Be it enacted by the Legislature of West Virginia:

That §18-8-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 8. COMPULSORY SCHOOL ATTENDANCE.

§18-8-4. Duties of attendance director and assistant directors; complaints, warrants and hearings.

1 (a) The county attendance director and the assistants
2 shall diligently promote regular school attendance. The
3 director and assistants shall:

4 (1) Ascertain reasons for unexcused absences from
5 school of students of compulsory school age and students
6 who remain enrolled beyond the compulsory school age as
7 defined under section one-a of this article;

8 (2) Take such steps as are, in their discretion, best
9 calculated to encourage the attendance of students and to
10 impart upon the parents and guardians the importance of
11 attendance and the seriousness of failing to do so;

12 (3) For the purposes of this article, the following
13 definitions apply:

14 (A) "Excused absence" includes:

15 (i) Personal illness or injury of the student;

- 16 (ii) Personal illness or injury of the student's parent,
17 guardian, custodian, or family member: *Provided*, That the
18 excuse must provide a reasonable explanation for why the
19 student's absence was necessary and caused by the illness
20 or injury in the family;
- 21 (iii) Medical or dental appointment with written excuse
22 from physician or dentist;
- 23 (iv) Chronic medical condition or disability that impacts
24 attendance;
- 25 (v) Participation in home or hospital instruction due to
26 an illness or injury or other extraordinary circumstance that
27 warrants home or hospital confinement;
- 28 (vi) Calamity, such as a fire or flood;
- 29 (vii) Death in the family;
- 30 (viii) School-approved or county-approved curricular or
31 extra-curricular activities;
- 32 (ix) Judicial obligation or court appearance involving
33 the student;
- 34 (x) Military requirement for students enlisted or
35 enlisting in the military;
- 36 (xi) Personal or academic circumstances approved by
37 the principal; and
- 38 (xii) Such other situations as may be further determined
39 by the county board: *Provided*, That absences of students
40 with disabilities shall be in accordance with the Individuals
41 with Disabilities Education Improvement Act of 2004 and
42 the federal and state regulations adopted in compliance
43 therewith; and
- 44 (B) "Unexcused absence" means any absence not
45 specifically included in the definition of "excused absence";
46 and

47 (4) All documentation relating to absences shall be
48 provided to the school no later than three instructional days
49 after the first day the student returns to school.

50 (b) In the case of three total unexcused absences of a
51 student during a school year, the attendance director or
52 assistant may serve notice by written or other means to the
53 parent, guardian, or custodian of the student that the
54 attendance of the student at school is required and that if the
55 student has five unexcused absences, a conference with the
56 principal, administrative head or other chief administrator
57 will be required.

58 (c) In the case of five total unexcused absences, the
59 attendance director or assistant shall serve written notice to
60 the parent, guardian or custodian of the student that within
61 five days of receipt of the notice the parent, guardian or
62 custodian, accompanied by the student, shall report in
63 person to the school the student attends for a conference
64 with the principal, administrative head or other chief
65 administrator of the school in order to discuss and correct
66 the circumstances causing the unexcused absences of the
67 student, including the adjustment of unexcused absences
68 based on the meeting.

69 (d) In the case of ten total unexcused absences of a
70 student during a school year, the attendance director or
71 assistant may make a complaint against the parent, guardian
72 or custodian before a magistrate of the county. If it appears
73 from the complaint that there is probable cause to believe
74 that an offense has been committed and that the accused has
75 committed it, a summons or a warrant for the arrest of the
76 accused shall issue to any officer authorized by law to serve
77 the summons or to arrest persons charged with offenses
78 against the state. More than one parent, guardian or
79 custodian may be charged in a complaint. Initial service of
80 a summons or warrant issued pursuant to the provisions of
81 this section shall be attempted within ten calendar days of
82 receipt of the summons or warrant and subsequent attempts
83 at service shall continue until the summons or warrant is

84 executed or until the end of the school term during which
85 the complaint is made, whichever is later.

86 (e) The magistrate court clerk, or the clerk of the circuit
87 court performing the duties of the magistrate court as
88 authorized in section eight, article one, chapter fifty of this
89 code, shall assign the case to a magistrate within ten days of
90 execution of the summons or warrant. The hearing shall be
91 held within twenty days of the assignment to the magistrate,
92 subject to lawful continuance. The magistrate shall provide
93 to the accused at least ten days' advance notice of the date,
94 time and place of the hearing.

95 (f) When any doubt exists as to the age of a student
96 absent from school, the attendance director and assistants
97 have authority to require a properly attested birth certificate
98 or an affidavit from the parent, guardian or custodian of the
99 student, stating age of the student. In the performance of his
100 or her duties, the county attendance director and assistants
101 have authority to take without warrant any student absent
102 from school in violation of the provisions of this article and
103 to place the student in the school in which he or she is or
104 should be enrolled.

105 (g) The county attendance director and assistants shall
106 devote such time as is required by section three of this
107 article to the duties of attendance director in accordance
108 with this section during the instructional term and at such
109 other times as the duties of an attendance director are
110 required. All attendance directors and assistants hired for
111 more than two hundred days may be assigned other duties
112 determined by the superintendent during the period in
113 excess of two hundred days. The county attendance director
114 is responsible under direction of the county superintendent
115 for efficiently administering school attendance in the
116 county.

117 (h) In addition to those duties directly relating to the
118 administration of attendance, the county attendance director

119 and assistant directors also shall perform the following
120 duties:

121 (1) Assist in directing the taking of the school census to
122 see that it is taken at the time and in the manner provided by
123 law;

124 (2) Confer with principals and teachers on the
125 comparison of school census and enrollment for the
126 detection of possible nonenrollees;

127 (3) Cooperate with existing state and federal agencies
128 charged with enforcing child labor laws;

129 (4) Prepare a report for submission by the county
130 superintendent to the State Superintendent of Schools on
131 school attendance, at such times and in such detail as may
132 be required. The state board shall promulgate a legislative
133 rule pursuant to article three-b, chapter twenty-nine-a of this
134 code that set forth student absences that are excluded for
135 accountability purposes. The absences that are excluded by
136 rule shall include, but are not limited to, excused student
137 absences, students not in attendance due to disciplinary
138 measures and absent students for whom the attendance
139 director has pursued judicial remedies to compel attendance
140 to the extent of his or her authority. The attendance director
141 shall file with the county superintendent and county board
142 at the close of each month a report showing activities of the
143 school attendance office and the status of attendance in the
144 county at the time;

145 (5) Promote attendance in the county by compiling data
146 for schools and by furnishing suggestions and
147 recommendations for publication through school bulletins
148 and the press, or in such manner as the county
149 superintendent may direct;

150 (6) Participate in school teachers' conferences with
151 parents and students;

152 (7) Assist in such other ways as the county
153 superintendent may direct for improving school attendance;

154 (8) Make home visits of students who have excessive
155 unexcused absences, as provided in subsection (a) of this
156 section, or if requested by the chief administrator, principal
157 or assistant principal; and

158 (9) Serve as the liaison for homeless children and youth.

CHAPTER 79

**(Com. Sub. for H. B. 2561 - By Delegates Espinosa,
Upson, Blair, Westfall, R. Romine, Rowan, Cooper,
Statler, Kelly, Dean and Rohrbach)**

[Passed April 8, 2017; in effect ninety days from passage.]
[Approved by the Governor on April 26, 2017.]

AN ACT to amend and reenact §18-9A-4, §18-9A-5, §18-9A-6a, §18-9A-7, §18-9A-9 and §18-9A-10 of the Code of West Virginia, 1931, as amended; and to amend said Code by inserting a new section, designated §18-9D-4d, all relating to public school support generally; determining allowance for fundable professional educators at set ratio, rather than the number employed subject to a limit; providing for determination of allowance for fundable professional educator positions in excess of number employed; determining allowance for professional educator positions that exceed the number employed; basing minimum professional instructional personnel required on percent of employed fundable professional educators; providing for prorating professional instructional personnel among participating counties in joint school or program or service; removing penalty for not meeting applicable instructional personnel ratio for 2017-18 school year; determining allowance for

fundable service personnel at set ratio, rather than number employed subject to a limit; providing for determination of allowance for fundable service personnel positions in excess of number employed; providing for proration of number and allowance of personnel employed in part by state and county funds; adding professional student support personnel allowance to calculation of teachers retirement fund allowance; establishing that the teachers retirement fund allowance is factored on average retirement contribution rate of each county and establishing basis for determining the average retirement contribution rate; allowing limited portion of funds for bus purchases to be used for school facility and equipment repair, maintenance and improvement or replacement or other current expense priorities if requested and approved by state superintendent following verification; changing calculation of allowance for current expense from percent allowances for professional and service personnel to county's state average costs per square footage per student for operations and maintenance; providing for prorating allowance for current expense among participating counties in joint school or program or service; adding the improvement of instructional technology to the allowance to improve instructional programs; removing authorization for use of instructional improvement funds for implementation and maintenance of regional computer information system; removing requirement for fully utilizing applicable provisions of allowances for professional and service personnel before using instructional improvement funds for employment; changing percentage of allocation allowed for employment; removing restriction limiting use of new instructional improvement funds for employment except for technology system specialists until certain determination made by state superintendent; authorizing use of instructional technology improvement funds for employment of technology system specialists and requiring amount used to be included and justified in strategic technology plan; specifying when certain debt service payments are to be made into school building capital improvement fund; authorizing use of percentages of allocations for improving instructional programs, for

improving instructional technology for facility and equipment repair, maintenance and improvement, or replacement and other current expense priorities and for emergency purposes; requiring amounts used to be included and justified in respective strategic plans; authorizing School Building Authority to maintain a reserve fund in the amount of not less than \$600,000 for the purpose of making emergency grants to financially distressed county boards to assist them for certain purposes; directing grants to be made in accordance with guideline established by the authority and deleting expired provisions.

Be it enacted by the Legislature of West Virginia:

That §18-9A-4, §18-9A-5, §18-9A-6a, §18-9A-7, §18-9A-9 and §18-9A-10 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by inserting a new section, designated §18-9D-4d, all to read as follows:

ARTICLE 9A. PUBLIC SCHOOL SUPPORT.

§18-9A-4. Foundation allowance for professional educators.

1 (a) The basic foundation allowance to the county for
2 professional educators is the amount of money required to
3 pay the state minimum salaries, in accordance with
4 provisions of article four, chapter eighteen-a of this code,
5 subject to the following:

6 (1) In making this computation a county shall receive an
7 allowance for state aid eligible professional educator
8 positions to each one thousand students in net enrollment as
9 follows:

10 (A) For each high-density county, seventy-two and
11 three tenths professional educators per each one thousand
12 students in net enrollment;

13 (B) For each medium-density county, seventy-two and
14 forty-five one hundredths professional educators per each
15 one thousand students in net enrollment;

16 (C) For each low-density county, seventy-two and six
17 tenths professional educators per each one thousand
18 students in net enrollment;

19 (D) For each sparse-density county, seventy-two and
20 seventy-five one hundredths professional educators per
21 each one thousand students in net enrollment; and

22 (E) For any professional educator positions, or fraction
23 thereof, determined for a county pursuant to paragraphs (A),
24 (B), (C) and (D) of this subdivision that exceed the number
25 employed, the county's allowance for these positions shall
26 be determined using the average state funded salary of
27 professional educators for the county;

28 (2) The number of and the allowance for personnel paid
29 in part by state and county funds shall be prorated; and

30 (3) Where two or more counties join together in support
31 of a vocational or comprehensive high school or any other
32 program or service, the professional educators for the school
33 or program may be prorated among the participating
34 counties on the basis of each one's enrollment therein and
35 the personnel shall be considered within the above-stated
36 limit.

37 (b) Each county board shall establish and maintain a
38 minimum ratio of professional instructional personnel per
39 state aid funded professional educators as follows:

40 (1) For each high-density county, the minimum ratio of
41 professional instructional personnel per state aid funded
42 professional educators, or the number employed, whichever
43 is less, is ninety-one and twenty-nine one hundredths
44 percent;

45 (2) For each medium-density county, the minimum ratio
46 of professional instructional personnel per state aid funded
47 professional educators, or the number employed, whichever
48 is less, is ninety-one and twenty-four one hundredths
49 percent;

50 (3) For each low-density county, the minimum ratio of
51 professional instructional personnel per state aid funded
52 professional educators, or the number employed, whichever
53 is less, is ninety-one and eighteen one hundredths percent;

54 (4) For each sparse-density county, the minimum ratio
55 of professional instructional personnel per state aid funded
56 professional educators, or the number employed, whichever
57 is less, is ninety-one and seven one hundredths percent; and

58 (5) Where two or more counties join together in support
59 of a vocational or comprehensive high school or any other
60 program or service, the professional instructional personnel
61 for the school or program may be prorated among the
62 participating counties on the basis of each one's enrollment
63 therein and the personnel shall be considered within the
64 above-stated limit.

65 (c) Any county board which does not establish and
66 maintain the applicable minimum ratio required in
67 subsection (b) of this section shall suffer a pro rata reduction
68 in the allowance for professional educators under this
69 section: *Provided*, That a county may not be penalized if it
70 has increases in enrollment during that school year:
71 *Provided, however*, That for the school year 2017-2018,
72 only, a county may not be penalized for not meeting the
73 applicable minimum ratio required in subsection (b) of this
74 section.

75 (d) A county may not increase the number of
76 administrative personnel employed as either professional
77 educators or pay grade (H) service personnel above the
78 number which were employed, or for which positions were
79 posted, on June 30, 1990, and, therefore, county boards shall

80 whenever possible utilize classroom teachers for curriculum
81 administrative positions through the use of modified or
82 extended contracts.

§18-9A-5. Foundation allowance for service personnel.

1 (a) The basic foundation allowance to the county for
2 service personnel shall be the amount of money required to
3 pay the annual state minimum salaries in accordance with
4 the provisions of article four, chapter eighteen-a of this
5 code, to such service personnel employed, subject to the
6 following:

7 (1) A county shall receive an allowance for state aid
8 eligible service personnel positions per one thousand
9 students in net enrollment, as follows:

10 (A) For each high-density county, forty-three and
11 ninety-seven one hundredths service personnel per one
12 thousand students in net enrollment;

13 (B) For each medium-density county, forty-four and
14 fifty-three one hundredths service personnel per one
15 thousand students in net enrollment;

16 (C) For each low-density county, forty-five and one
17 tenth service personnel per one thousand students in net
18 enrollment;

19 (D) For each sparse-density county, forty-five and sixty-
20 eight one hundredths service personnel per one thousand
21 students in net enrollment; and

22 (E) For any service personnel positions, or fraction
23 thereof, determined for a county pursuant to subdivision (1)
24 of this subsection that exceed the number employed, the
25 county's allowance for these positions shall be determined
26 using the average state funded minimum salary of service
27 personnel for the county;

28 (2) The number of and the allowance for personnel paid
29 in part by state and county funds shall be prorated; and

30 (3) Where two or more counties join together in support
31 of a vocational or comprehensive high school or any other
32 program or service, the service personnel for the school or
33 program may be prorated among the participating counties
34 on the basis of each one's enrollment therein and that the
35 personnel shall be considered within the above-stated limit.

§18-9A-6a. Teachers retirement fund allowance; unfunded liability allowance.

1 (a) The total teachers retirement fund allowance is the
2 sum of the basic foundation allowance for professional
3 educators, the basic foundation allowance for professional
4 student support personnel and the basic foundation
5 allowance for service personnel, as provided in sections
6 four, five and eight of this article; all salary equity
7 appropriations authorized in section five, article four of
8 chapter eighteen-a; and such amounts as are to be paid by
9 the counties pursuant to sections five-a and five-b of said
10 article to the extent such county salary supplements are
11 equal to the amount distributed for salary equity among the
12 counties, multiplied by the average retirement contribution
13 rate for each county board. The average contribution rate for
14 each county board is based on the required employer
15 contributions for state aide eligible employees participating
16 in the retirement plans pursuant to articles seven-a and
17 seven-b of this chapter.

18 (b) The teachers retirement fund allowance amounts
19 provided for in subsection (a) of this section shall be
20 accumulated in the employers accumulation fund of the
21 State Teachers Retirement System pursuant to section
22 eighteen, article seven-a of this chapter, and shall be in lieu
23 of the contribution required of employers pursuant to
24 subsection (b) of said section as to all personnel included in
25 the allowance for state aid in accordance with sections four,
26 five and eight of this article.

27 (c) In addition to the teachers retirement fund allowance
28 provided for in subsection (a) of this section, there shall be
29 an allowance for the reduction of any unfunded liability of
30 the teachers retirement fund in accordance with the
31 following provisions of this subsection. On or before
32 December 31, of each year, the actuary or actuarial firm
33 employed in accordance with the provisions of section four,
34 article ten-d, chapter five of this code shall submit a report
35 to the President of the Senate and the Speaker of the House
36 of Delegates which sets forth an actuarial valuation of the
37 teachers retirement fund as of the preceding thirtieth day of
38 June. Each annual report shall recommend the actuary's best
39 estimate, at that time, of the funding necessary to both
40 eliminate the unfunded liability over a forty-year period
41 beginning on July 1, 1994, and to meet the cash flow
42 requirements of the fund in fulfilling its future anticipated
43 obligations to its members. In determining the amount of
44 funding required, the actuary shall take into consideration
45 all funding otherwise available to the fund for that year from
46 any source: *Provided*, That the appropriation and allocation
47 to the teachers' retirement fund made pursuant to the
48 provisions of section six-b of this article shall be included
49 in the determination of the requisite funding amount. In any
50 year in which the actuary determines that the teachers
51 retirement fund is not being funded in such a manner, the
52 allowance made for the unfunded liability for the next fiscal
53 year shall be not less than the amount of the actuary's best
54 estimate of the amount necessary to conform to the funding
55 requirements set forth in this subsection.

§18-9A-7. Foundation allowance for transportation cost.

1 (a) The allowance in the foundation school program for
2 each county for transportation is the sum of the following
3 computations:

4 (1) A percentage of the transportation costs incurred by
5 the county for maintenance, operation and related costs
6 exclusive of all salaries, including the costs incurred for

7 contracted transportation services and public utility
8 transportation, as follows:

9 (A) For each high-density county, eighty-seven and
10 one-half percent;

11 (B) For each medium-density county, ninety percent;

12 (C) For each low-density county, ninety-two and one-
13 half percent;

14 (D) For each sparse-density county, ninety-five percent;

15 (E) For any county for the transportation cost for
16 maintenance, operation and related costs, exclusive of all
17 salaries, for transporting students to and from classes at a
18 multicounty vocational center, the percentage provided in
19 paragraphs (A) through (D) of this subdivision as applicable
20 for the county plus an additional ten percent; and

21 (F) For any county for that portion of its school bus
22 system that uses as an alternative fuel compressed natural
23 gas or propane, the percentage provided in paragraphs (A)
24 through (D) of this subdivision as applicable for the county
25 plus an additional ten percent: *Provided*, That for any
26 county receiving an additional ten percent for that portion
27 of their bus system using bio-diesel as an alternative fuel
28 during the school year 2012-2013, bio-diesel shall continue
29 to qualify as an alternative fuel under this paragraph to the
30 extent that the additional percentage applicable to that
31 portion of the bus system using bio-diesel shall be decreased
32 by two and one-half percent per year for four consecutive
33 school years beginning in school year 2014-2015: *Provided*,
34 *however*, That any county using an alternative fuel and
35 qualifying for the additional allowance under this
36 subdivision shall submit a plan regarding the intended
37 future use of alternatively fueled school buses;

38 (2) The total cost, within each county, of insurance
39 premiums on buses, buildings and equipment used in
40 transportation;

41 (3) An amount equal to eight and one-third percent of
42 the current replacement value of the bus fleet within each
43 county as determined by the state board. The amount shall
44 only be used for the replacement of buses except as provided
45 in subdivision (4) of this subsection. Buses purchased after
46 July 1, 1999 that are driven one hundred eighty thousand
47 miles, regardless of year model, are subject to the
48 replacement value of eight and one-third percent as
49 determined by the state board. In addition, in any school
50 year in which its net enrollment increases when compared
51 to the net enrollment the year immediately preceding, a
52 school district may apply to the state superintendent for
53 funding for an additional bus or buses. The state
54 superintendent shall make a decision regarding each
55 application based upon an analysis of the individual school
56 district's net enrollment history and transportation needs:
57 *Provided*, That the superintendent may not consider any
58 application which fails to document that the county has
59 applied for federal funding for additional buses. If the state
60 superintendent finds that a need exists, a request for funding
61 shall be included in the budget request submitted by the state
62 board for the upcoming fiscal year;

63 (4) Notwithstanding the restriction on the use of funds
64 for the replacement of buses pursuant to subdivision (3) of
65 this subsection, up to \$200,000 of these funds in any school
66 year may be used by a county for school facility and
67 equipment repair, maintenance and improvement or
68 replacement or other current expense priorities if a request
69 by the county superintendent listing the amount, the
70 intended use of the funds and the serviceability of the bus
71 fleet is approved by the state superintendent. Before
72 approving the request, the state superintendent shall verify
73 the serviceability of the county's bus fleet based upon the
74 state school bus inspection defect rate of the county over the
75 two prior years; and

76 (5) Aid in lieu of transportation equal to the state
77 average amount per pupil for each pupil receiving the aid
78 within each county.

79 (b) The total state share for this purpose is the sum of
80 the county shares: *Provided*, That a county may not receive
81 an allowance which is greater than one-third above the
82 computed state average allowance per transportation mile
83 multiplied by the total transportation mileage in the county
84 exclusive of the allowance for the purchase of additional
85 buses.

86 (c) One half of one percent of the transportation
87 allowance distributed to each county is for the purpose of
88 trips related to academic classroom curriculum and not
89 related to any extracurricular activity. Any remaining funds
90 credited to a county for the purpose of trips related to
91 academic classroom curriculum during the fiscal year shall
92 be carried over for use in the same manner the next fiscal
93 year and shall be separate and apart from, and in addition to,
94 the appropriation for the next fiscal year. The state board
95 may request a county to document the use of funds for trips
96 related to academic classroom curriculum if the board
97 determines that it is necessary.

**§18-9A-9. Foundation allowance for other current expense
and substitute employees and faculty senates.**

1 The total allowance for other current expense and
2 substitute employees is the sum of the following:

3 (1) For current expense:

4 (A) The non-salary related expenditures for operations
5 and maintenance, exclusive of expenditures reported in
6 special revenue funds, for the latest available school year, in
7 each county, divided by the total square footage of school
8 buildings in each county is used to calculate a state average
9 expenditure per square foot for operations and maintenance;

10 (B) The total square footage of school buildings in each
11 county divided by each county's net enrollment for school
12 aid purposes is used to calculate a state average square
13 footage per student;

14 (C) Each county's net enrollment for school aid
15 purposes multiplied by the state average expenditure per
16 square foot for operations and maintenance as calculated in
17 paragraph (A) of this subdivision and multiplied by the state
18 average square footage per student as calculated in
19 paragraph (B) of this subdivision is that county's state
20 average costs per square footage per student for operations
21 and maintenance;

22 (D) Where two or more counties join together in support
23 of a vocational or comprehensive high school or any other
24 program or service, the allowance for current expense may
25 be prorated among the participating counties by adjusting
26 the net enrollment for school aid purposes utilized in the
27 calculation by the number of students enrolled therein for
28 each county; and

29 (E) Each county's allowance for current expense is
30 70.25% of the county's state average costs per square
31 footage per student for operations and maintenance amount
32 as calculated in paragraph (C) of this subdivision; plus

33 (2) For professional educator substitutes or current
34 expense, two and five-tenths percent of the computed state
35 allocation for professional educators and professional
36 student support personnel as determined in sections four and
37 eight of this article. Distribution to the counties is made
38 proportional to the number of professional educators and
39 professional student support personnel authorized for the
40 county in compliance with sections four and eight of this
41 article; plus

42 (3) For service personnel substitutes or current expense,
43 two and five-tenths percent of the computed state allocation
44 for service personnel as determined in section five of this
45 article. Distribution to the counties is made proportional to

46 the number of service personnel authorized for the county
47 in compliance with section five of this article; plus

48 (4) For academic materials, supplies and equipment for
49 use in instructional programs, \$200 multiplied by the
50 number of professional instructional personnel and
51 professional student support personnel employed in the
52 schools of the county. Distribution is made to each county
53 for allocation to the faculty senate of each school in the
54 county on the basis of \$200 per professional instructional
55 personnel employed at the school. "Faculty Senate" means
56 a faculty senate created pursuant to section five, article five-
57 a of this chapter. Decisions for the expenditure of such funds
58 are made at the school level by the faculty senate in
59 accordance with the provisions of said section five, article
60 five-a and may not be used to supplant the current expense
61 expenditures of the county. Beginning on September 1,
62 1994, and every September thereafter, county boards shall
63 forward to each school for the use by faculty senates the
64 appropriation specified in this section. Each school shall be
65 responsible for keeping accurate records of expenditures.

**§18-9A-10. Foundation allowance to improve instructional
programs and instructional technology.**

1 (a) The total allowance to improve instructional
2 programs and instructional technology is the sum of the
3 following:

4 (1) For instructional improvement, in accordance with
5 county and school electronic strategic improvement plans
6 required by section five, article two-e of this chapter, an
7 amount equal to ten percent of the increase in the local share
8 amount for the next school year above any required
9 allocation pursuant to section six-b of this article shall be
10 added to the amount of the appropriation for this purpose
11 for the immediately preceding school year. The sum of these
12 amounts shall be allocated to the counties as follows:

13 (A) One hundred fifty thousand dollars shall be
14 allocated to each county; and

15 (B) Allocation to the counties of the remainder of these
16 funds shall be made proportional to the average of each
17 county's average daily attendance for the preceding year
18 and the county's second month net enrollment.

19 Moneys allocated by this subdivision shall be used to
20 improve instructional programs according to the county and
21 school strategic improvement plans required by section five,
22 article two-e of this chapter and approved by the state board.

23 Up to fifty percent of this allocation for the
24 improvement of instructional programs may be used to
25 employ professional educators and service personnel in the
26 county. Prior to the use of any funds from this subdivision
27 for personnel costs, the county board must receive
28 authorization from the state superintendent. The state
29 superintendent shall require the county board to
30 demonstrate: (1) The need for the allocation; (2) efficiency
31 and fiscal responsibility in staffing; (3) sharing of services
32 with adjoining counties and the regional educational service
33 agency for that county in the use of the total local district
34 board budget; and (4) employment of technology
35 integration specialists to meet the needs for implementation
36 of the West Virginia Strategic Technology Learning Plan.
37 County boards shall make application for the use of funds
38 for personnel for the next fiscal year by May 1 of each year.
39 On or before June 1, the state superintendent shall review
40 all applications and notify applying county boards of the
41 approval or disapproval of the use of funds for personnel
42 during the fiscal year appropriate. The state superintendent
43 shall require the county board to demonstrate the need for
44 an allocation for personnel based upon the county's inability
45 to meet the requirements of state law or state board policy.

46 The funds available for personnel under this subdivision
47 may not be used to increase the total number of professional
48 noninstructional personnel in the central office beyond four.

49 The plan shall be made available for distribution to the
50 public at the office of each affected county board; plus

51 (2) For the purposes of improving instructional
52 technology, an amount equal to twenty percent of the
53 increase in the local share amount for the next school year
54 above any required allocation pursuant to section six-b of
55 this article shall be added to the amount of the appropriation
56 for this purpose for the immediately preceding school year.
57 The sum of these amounts shall be allocated to the counties
58 as follows:

59 (A) Thirty thousand dollars shall be allocated to each
60 county; and

61 (B) Allocation to the counties of the remainder of these
62 funds shall be made proportional to the average of each
63 county's average daily attendance for the preceding year
64 and the county's second month net enrollment.

65 Moneys allocated by this subdivision shall be used to
66 improve instructional technology programs according to the
67 county board's strategic technology learning plan.

68 This allocation for the improvement of instructional
69 technology programs may also be used for the employment
70 of technology system specialists essential for the technology
71 systems of the schools of the county to be fully functional
72 and readily available when needed by classroom teachers.
73 The amount of this allocation used for the employment of
74 technology system specialists shall be included and justified
75 in the county board's strategic technology learning plan;
76 plus

77 (3) One percent of the state average per pupil state aid
78 multiplied by the number of students enrolled in dual credit,
79 advanced placement and international baccalaureate
80 courses, as defined by the state board, distributed to the
81 counties proportionate to enrollment in these courses in
82 each county; plus

83 (4) An amount not less than the amount required to meet
84 debt service requirements on any revenue bonds issued prior
85 to January 1, 1994, and the debt service requirements on any
86 revenue bonds issued for the purpose of refunding revenue

87 bonds issued prior to January 1, 1994, shall be paid by the
88 Department of Education in accordance with the
89 expenditure schedule approved by the state budget office
90 into the School Building Capital Improvements Fund
91 created by section six, article nine-d of this chapter and shall
92 be used solely for the purposes of that article. The School
93 Building Capital Improvements Fund shall not be utilized to
94 meet the debt services requirement on any revenue bonds or
95 revenue refunding bonds for which moneys contained
96 within the School Building Debt Service Fund have been
97 pledged for repayment pursuant to that section.

98 (b) Notwithstanding the restrictions on the use of funds
99 pursuant to subdivisions (1) and (2), subsection (a) of this
100 section, a county board may:

101 (1) Utilize up to twenty-five percent of the allocation for
102 the improvement of instructional programs in any school
103 year for school facility and equipment repair, maintenance
104 and improvement or replacement and other current expense
105 priorities and for emergency purposes. The amount of this
106 allocation used for any of these purposes shall be included
107 and justified in the county and school strategic improvement
108 plans or amendments thereto; and

109 (2) Utilize up to fifty percent of the allocation for
110 improving instructional technology in any school year for
111 school facility and equipment repair, maintenance and
112 improvement or replacement and other current expense
113 priorities and for emergency purposes. The amount of this
114 allocation used for any of these purposes shall be included
115 and justified in the county board's strategic technology
116 learning plan or amendments thereto.

117 (c) When the school improvement bonds secured by
118 funds from the School Building Capital Improvements Fund
119 mature, the State Board of Education shall annually deposit
120 an amount equal to \$24,000,000 from the funds allocated in
121 this section into the School Construction Fund created
122 pursuant to the provisions of section six, article nine-d of
123 this chapter to continue funding school facility construction
124 and improvements.

125 (d) Any project funded by the School Building
 126 Authority shall be in accordance with a comprehensive
 127 educational facility plan which must be approved by the
 128 state board and the School Building Authority.

ARTICLE 9D. SCHOOL BUILDING AUTHORITY.

§18-9D-4d. Emergency facility and equipment repair or replacement fund for financially distressed counties.

1 From the funds available to it the School Building
 2 Authority shall maintain a reserve fund in the amount of not
 3 less than \$600,000 for the purpose of making emergency
 4 grants to financially distressed county boards to assist them
 5 in making repairs or performing urgent maintenance to
 6 facilities or facility related equipment or facility related
 7 equipment replacement necessary to maintain the
 8 serviceability or structural integrity of school facilities
 9 currently in use or necessary for educating the students of
 10 the county. The grants shall be made in accordance with
 11 guideline established by the school building authority. For
 12 the purposes of this section, “financially distressed county”
 13 means a county either in deficit or on the most recently
 14 established watch list established by the Department of
 15 Education of those counties at-risk of becoming in deficit.

CHAPTER 80

**(Com. Sub. for H. B. 2720 - By Mr. Speaker (Mr.
 Armstead) and Delegate Miley)
 [By Request of the Executive]**

[Passed April 8, 2017; in effect July 1, 2017.]
 [Approved by the Governor on April 24, 2017.]

AN ACT to amend and reenact §18-9D-3 and §18-9D-8 of the Code of West Virginia, 1931, as amended, all relating to the funding of School Building Authority operational costs; and

continuing a special revenue account known as the “School Building Authority Fund”.

Be it enacted by the Legislature of West Virginia:

That §18-9D-3 and §18-9D-8 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 9D. SCHOOL BUILDING AUTHORITY.

§18-9D-3. Powers of authority; School Building Authority Fund.

- 1 (a) The School Building Authority has the power:
- 2 (1) To sue and be sued, plead and be impleaded;
- 3 (2) To have a seal and alter the same at pleasure;
- 4 (3) To contract to acquire and to acquire, in the name of
5 the authority, by purchase, lease-purchase not to exceed a
6 term of twenty-five years, or otherwise, real property or
7 rights or easements necessary or convenient for its corporate
8 purposes and to exercise the power of eminent domain to
9 accomplish those purposes;
- 10 (4) To acquire, hold and dispose of real and personal
11 property for its corporate purposes;
- 12 (5) To make bylaws for the management and rule of its
13 affairs;
- 14 (6) To appoint, contract with and employ attorneys,
15 bond counsel, accountants, construction and financial
16 experts, underwriters, financial advisers, trustees,
17 managers, officers and such other employees and agents as
18 may be necessary in the judgment of the authority and to fix
19 their compensation: *Provided*, That contracts entered into
20 by the School Building Authority in connection with the
21 issuance of bonds under this article to provide professional
22 and technical services, including, without limitation,
23 accounting, actuarial, underwriting, consulting, trustee,

24 bond counsel, legal services and contracts relating to the
25 purchase or sale of bonds are subject to the provisions of
26 article three, chapter five-a of this code: *Provided, however,*
27 That notwithstanding any other provisions of this code, any
28 authority of the Attorney General of this state relating to the
29 review of contracts and other documents to effectuate the
30 issuance of bonds under this article shall be exclusively
31 limited to the form of the contract and document: *Provided*
32 *further,* That the Attorney General of this state shall
33 complete all reviews of contracts and documents relating to
34 the issuance of bonds under this article within ten calendar
35 days of receipt of the contract and document for review;

36 (7) To make contracts and to execute all instruments
37 necessary or convenient to effectuate the intent of and to
38 exercise the powers granted to it by this article;

39 (8) To renegotiate all contracts entered into by it
40 whenever, due to a change in situation, it appears to the
41 authority that its interests will be best served;

42 (9) To acquire by purchase, eminent domain or
43 otherwise all real property or interests in the property
44 necessary or convenient to accomplish the purposes of this
45 article;

46 (10) To require proper maintenance and insurance of
47 any project authorized under this section, including flood
48 insurance for any facility within the one hundred year flood
49 plain at which authority funds are expended;

50 (11) To charge rent for the use of all or any part of a
51 project or buildings at any time financed, constructed,
52 acquired or improved, in whole or in part, with the revenues
53 of the authority;

54 (12) To assist any county board of education that
55 chooses to acquire land, buildings and capital improvements
56 to existing school buildings and property for use as public
57 school facilities, by lease from a private or public lessor for

58 a term not to exceed twenty-five years with an option to
59 purchase pursuant to an investment contract with the lessor
60 on such terms and conditions as may be determined to be in
61 the best interests of the authority, the state Board of
62 Education and the county board of education, consistent
63 with the purposes of this article, by transferring funds to the
64 state Board of Education as provided in subsection (d),
65 section fifteen of this article for the use of the county board
66 of education;

67 (13) To accept and expend any gift, grant, contribution,
68 bequest or endowment of money and equipment to, or for
69 the benefit of, the authority or any project under this article,
70 from the State of West Virginia or any other source for any
71 or all of the purposes specified in this article or for any one
72 or more of such purposes as may be specified in connection
73 with the gift, grant, contribution, bequest or endowment;

74 (14) To enter on any lands and premises for the purpose
75 of making surveys, soundings and examinations;

76 (15) To contract for architectural, engineering or other
77 professional services considered necessary or economical
78 by the authority to provide consultative or other services to
79 the authority or to any regional educational service agency
80 or county board requesting professional services offered by
81 the authority, to evaluate any facilities plan or any project
82 encompassed in the plan, to inspect existing facilities or any
83 project that has received or may receive funding from the
84 authority or to perform any other service considered by the
85 authority to be necessary or economical. Assistance to the
86 region or district may include the development of
87 preapproved systems, plans, designs, models or documents;
88 advice or oversight on any plan or project; or any other
89 service that may be efficiently provided to Regional
90 Educational Service Agencies or county boards by the
91 authority;

92 (16) To provide funds on an emergency basis to repair
93 or replace property damaged by fire, flood, wind, storm,

94 earthquake or other natural occurrence, the funds to be made
95 available in accordance with guidelines of the School
96 Building Authority;

97 (17) To transfer moneys to custodial accounts
98 maintained by the School Building Authority with a state
99 financial institution from the school construction fund and
100 the school improvement fund created in the State Treasury
101 pursuant to the provisions of section six of this article, as
102 necessary to the performance of any contracts executed by
103 the School Building Authority in accordance with the
104 provisions of this article;

105 (18) To enter into agreements with county boards and
106 persons, firms or corporations to facilitate the development
107 of county board projects and county board facilities plans.
108 The county board participating in an agreement shall pay at
109 least twenty-five percent of the cost of the agreement.
110 Nothing in this section shall be construed to supersede, limit
111 or impair the authority of county boards to develop and
112 prepare their projects or plans;

113 (19) To encourage any project or part thereof to provide
114 opportunities for students to participate in supervised,
115 unpaid work-based learning experiences related to the
116 student's program of study approved by the county board.
117 The work-based learning experience must be conducted in
118 accordance with a formal training plan approved by the
119 instructor, the employer and the student and which sets forth
120 at a minimum the specific skills to be learned, the required
121 documentation of work-based learning experiences, the
122 conditions of the placement, including duration and safety
123 provisions, and provisions for supervision and liability
124 insurance coverage as applicable. Projects involving the
125 new construction and renovation of vocational-technical
126 and adult education facilities should provide opportunities
127 for students to participate in supervised work-based learning
128 experiences, to the extent practical, which meet the
129 requirements of this subdivision. Nothing in this
130 subdivision may be construed to affect registered youth

131 apprenticeship programs or the provisions governing those
132 programs; and

133 (20) To do all things necessary or convenient to carry
134 out the powers given in this article.

135 (b) The special revenue account in the State Treasury
136 known as the “School Building Authority Fund” is hereby
137 continued. The fund is to be administered by the School
138 Building Authority. Expenditures from the fund shall be for
139 the purposes set forth in this article and are not authorized
140 from collections but are to be made only in accordance with
141 appropriation by the Legislature and in accordance with the
142 provisions of article three, chapter twelve of this code and
143 upon fulfillment of the provisions of article three, chapter
144 twelve of this code and upon fulfillment of the provisions of
145 article two, chapter eleven-b of this code.

**§18-9D-8. Use of proceeds of bonds; bonds exempt from
taxation.**

1 (a) The maximum aggregate amount of bonds
2 outstanding at any time, for which the moneys in the School
3 Building Debt Service Fund or the Excess Lottery School
4 Building Debt Service Fund are to be pledged, is \$500
5 million; however, any amount of bonds for which moneys
6 have been deposited in a sinking fund, reserve fund or other
7 fund established to provide payment of principal or interest
8 on the bonds shall be excluded from the calculation of the
9 maximum aggregate amount of bonds outstanding at any
10 time. The issuance of revenue bonds under the provisions of
11 this article shall be authorized, from time to time, by
12 resolution or resolutions of the School Building Authority,
13 copies of which shall be provided to the Governor, the
14 President of the Senate and the Speaker of the House of
15 Delegates within five days of their approval, which shall set
16 forth the proposed projects authorized in accordance with
17 the provisions of section sixteen of this article and provide
18 for the issuance of bonds in amounts sufficient, when sold
19 as provided in this section, to provide moneys considered
20 sufficient by the authority to pay the costs, less the amounts

21 of any other funds available for the costs or from any
22 appropriation, grant or gift for the costs: *Provided*, That
23 bond issues from which bond revenues are to be distributed
24 in accordance with section fifteen of this article for projects
25 authorized pursuant to the provisions of section sixteen of
26 this article are not required to set forth the proposed projects
27 in the resolution. The resolution shall prescribe the rights
28 and duties of the bondholders and the School Building
29 Authority and, for that purpose, may prescribe the form of
30 the trust agreement referred to in this section. The bonds
31 may be issued, from time to time, in such amounts; shall be
32 of such series; bear such date or dates; mature at such time
33 or times not exceeding forty years from their respective
34 dates; bear interest at such rate or rates; be in such
35 denominations; be in such form, either coupon or registered,
36 carrying such registration, exchangeability and
37 interchangeability privileges; be payable in such medium of
38 payment and at such place or places within or without the
39 state; be subject to such terms of redemption at such prices
40 not exceeding one hundred five percent of the principal
41 amount of the bonds; and be entitled to such priorities on
42 the revenues paid into the fund pledged for repayment of the
43 bonds as may be provided in the resolution authorizing the
44 issuance of the bonds or in any trust agreement made in
45 connection with the bonds: *Provided, however*, That
46 revenue bonds issued on or after January 1, 1994, and prior
47 to January 1, 2008, which are secured by lottery proceeds
48 from section eighteen, article twenty-two, chapter twenty-
49 nine of this code shall mature at such time or times not
50 exceeding ten years from their respective dates: *Provided*
51 *further*, That revenue bonds issued on or after January 1,
52 2008, which are secured by lottery proceeds from section
53 eighteen or eighteen-a, article twenty-two, chapter twenty-
54 nine of this code, shall mature at such time or times not
55 exceeding twenty years from their respective dates.

56 (b) The bonds shall be signed by the Governor, his or
57 her designee or the vice chair of the authority, under the
58 great seal of the state, attested by the Secretary of State, and
59 the coupons attached to the bonds shall bear the facsimile
60 signature of the Governor, his or her designee or the vice

61 chair of the authority. In case any of the officers whose
62 signatures appear on the bonds or coupons cease to be
63 officers before the delivery of the bonds, the signatures shall
64 nevertheless be valid and sufficient for all purposes the
65 same as if the officers had remained in office until the
66 delivery. The revenue bonds shall be sold in the manner
67 determined by the authority to be for the best interests of the
68 state.

69 (c) Any pledge of revenues made by the School
70 Building Authority for revenue bonds issued prior to July
71 20, 1993, pursuant to this article is valid and binding
72 between the parties from the time the pledge is made; and
73 the revenues pledged shall immediately be subject to the
74 lien of the pledge without any further physical delivery of
75 the revenues pledged or further act. The lien of the pledge
76 is valid and binding against all parties having claims of any
77 kind in tort, contract or otherwise, irrespective of whether
78 the parties have notice of the lien of the pledge and the
79 pledge shall be a prior and superior charge over any other
80 use of the revenues pledged.

81 (d) The proceeds of any bonds shall be used solely for
82 the purpose or purposes as may be generally or specifically
83 set forth in the resolution authorizing those bonds and shall
84 be disbursed in the manner and with the restrictions, if any,
85 that the authority provides in the resolution authorizing the
86 issuance of the bonds or in the trust agreement referred to in
87 this section securing the bonds. If the proceeds of the bonds,
88 by error in calculations or otherwise, are less than the cost
89 of any projects specifically set forth in the resolution,
90 additional bonds may in like manner be issued to provide
91 the amount of the deficiency; and unless otherwise provided
92 for in the resolution or trust agreement hereinafter
93 mentioned, the additional bonds shall be considered to be of
94 the same issue and are entitled to payment from the same
95 fund, without preference or priority, as the bonds before
96 issued for the projects. If the proceeds of bonds issued for
97 the projects specifically set forth in the resolution
98 authorizing the bonds issued by the authority exceed the
99 cost of the bonds, the surplus may be used for any other

100 projects authorized in accordance with the provisions of
101 section sixteen of this article or in any other manner that the
102 resolution authorizing the bonds provides. Prior to the
103 preparation of definitive bonds, the authority may, under
104 like restrictions, issue temporary bonds with or without
105 coupons, exchangeable for definitive bonds upon the
106 issuance of the definitive bonds.

107 (e) After the issuance of any revenue bonds, the
108 revenues pledged for the revenue bonds shall not be reduced
109 as long as any of the revenue bonds are outstanding and
110 unpaid except under the terms, provisions and conditions
111 that are contained in the resolution, trust agreement or other
112 proceedings under which the revenue bonds were issued.

113 (f) The revenue bonds and the revenue refunding bonds
114 and bonds issued for combined purposes, together with the
115 interest on the bonds, are exempt from all taxation by the
116 State of West Virginia, or by any county, school district,
117 municipality or political subdivision thereof.

118 (g) Any school construction bonds issued under this
119 section shall be issued on parity with any existing School
120 Building Authority bonds previously issued under this article.

CHAPTER 81

**(H. B. 2188 - By Delegates Rowe, Pushkin, Sobonya,
Fleischauer and Hornbuckle)**

[Passed April 4, 2017; in effect ninety days from passage.]
[Approved by the Governor on April 24, 2017.]

AN ACT to amend and reenact §18-21-2 of the Code of West Virginia, 1931, as amended, relating to extending the length of time for the special Community-Based Pilot Demonstration Project to Improve Outcomes for At-Risk Youth.

Be it enacted by the Legislature of West Virginia:

That §18-21-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 21. SPECIAL COMMUNITY-BASED PILOT DEMONSTRATION PROJECT TO IMPROVE OUTCOMES FOR AT-RISK YOUTH.

§18-21-2. Creation of a special Community-Based Pilot Demonstration Project to Improve Outcomes for At-Risk Youth.

1 Effective July 1, 2012, if funds are available, the
2 Secretary of the West Virginia Department of Health and
3 Human Resources shall select a community-based
4 organization to establish a special Community-Based Pilot
5 Demonstration Project to Improve Outcomes for At-Risk
6 Youth in a specified community for a duration of seven
7 years. The project will identify, implement and document
8 best practices that can be replicated in other communities.
9 The designated community-based organization shall
10 operate the special pilot project under the direction of the
11 Secretary of the Department of Health and Human
12 Resources and shall work in collaboration with the State
13 School Superintendent, local county school superintendent,
14 Chancellor for Community and Technical College
15 Education, the closest community and technical college and
16 four-year college or university, State Workforce Investment
17 Division, Executive Director of the West Virginia
18 Vocational Rehabilitation Services, the local juvenile court
19 system, the local workforce investment board, the
20 Chancellor for Higher Education, the Director of West
21 Virginia Division of Juvenile Services, the local mental or
22 behavioral health organizations and other governmental and
23 community-based organizations.

CHAPTER 82

**(Com. Sub. for S. B. 388 - By Senators Sypolt,
Azinger, Boso, Cline, Ferns, Karnes, Maynard,
Ojeda, Rucker, Smith, Takubo, Trump and
Maroney)**

[Passed April 8, 2017; in effect ninety days from passage.]
[Approved by the Governor on April 26, 2017.]

AN ACT to amend and reenact §61-7-11a and §61-7-14 of the Code of West Virginia, 1931, as amended, all relating generally to dangerous weapons; exempting persons other than provisional concealed handgun permittees who are lawfully authorized to carry a concealed handgun to possess firearms on school parking lots, driveways and other areas of vehicular ingress or egress; creating safety storage requirements on such possession; clarifying persons who may possess a firearm on property where such is otherwise prohibited when acting in an official capacity; and correcting internal statutory references.

Be it enacted by the Legislature of West Virginia:

That §61-7-11a and §61-7-14 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 7. DANGEROUS WEAPONS.

§61-7-11a. Possessing deadly weapons on premises of educational facilities; reports by school principals; suspension of driver's license; possessing deadly weapons on premises housing courts of law and family law courts.

- 1 (a) The Legislature finds that the safety and welfare of
- 2 the citizens of this state are inextricably dependent upon

3 assurances of safety for children attending and persons
4 employed by schools in this state and for persons employed
5 by the judicial department of this state. It is for the purpose
6 of providing assurances of safety that subsections (b), (g)
7 and (h) of this section and paragraph (I), subdivision (2),
8 subsection (b) of this section are enacted as a reasonable
9 regulation of the manner in which citizens may exercise the
10 rights accorded to them pursuant to section twenty-two,
11 article three of the Constitution of the State of West
12 Virginia.

13 (b) (1) It is unlawful for a person to possess a firearm or
14 other deadly weapon on a school bus as defined in section
15 one, article one, chapter seventeen-a of this code or in or on
16 a public primary or secondary education building, structure,
17 facility or grounds including a vocational education
18 building, structure, facility or grounds where secondary
19 vocational education programs are conducted or at a school-
20 sponsored function, or in or on a private primary or
21 secondary education building, structure or facility:
22 *Provided*, That it shall not be unlawful to possess a firearm
23 or other deadly weapon on or in a private primary or
24 secondary education building, structure or facility when
25 such institution has adopted written policies allowing for
26 possession of firearms on or in the institution's buildings,
27 structures or facilities.

28 (2) This subsection does not apply to:

29 (A) A law-enforcement officer employed by a federal,
30 state, county or municipal law- enforcement agency;

31 (B) Any probation officer appointed pursuant to section
32 five, article twelve, chapter sixty-two or chapter forty-nine
33 of this code in the performance of his or her duties;

34 (C) A retired law-enforcement officer who:

35 (i) Is employed by a state, county or municipal law-
36 enforcement agency;

37 (ii) Is covered for liability purposes by his or her
38 employer;

39 (iii) Is authorized by a county board of education and
40 the school principal to serve as security for a school;

41 (iv) Meets all the requirements to carry a firearm as a
42 qualified retired law-enforcement officer under the Law-
43 Enforcement Officer Safety Act of 2004, as amended,
44 pursuant to 18 U. S. C. §926C(c); and

45 (v) Meets all of the requirements for handling and using
46 a firearm established by his or her employer and has
47 qualified with his or her firearm to those requirements;

48 (D) A person specifically authorized by the board of
49 education of the county or principal of the school where the
50 property is located to conduct programs with valid
51 educational purposes;

52 (E) A person who, as otherwise permitted by the
53 provisions of this article, possesses an unloaded firearm or
54 deadly weapon in a motor vehicle or leaves an unloaded
55 firearm or deadly weapon in a locked motor vehicle;

56 (F) Programs or raffles conducted with the approval of
57 the county board of education or school which include the
58 display of unloaded firearms;

59 (G) The official mascot of West Virginia University,
60 commonly known as the Mountaineer, acting in his or her
61 official capacity;

62 (H) The official mascot of Parkersburg South High
63 School, commonly known as the Patriot, acting in his or her
64 official capacity; or

65 (I) Any person, twenty-one years old or older, who has
66 a valid concealed handgun permit may possess a concealed
67 handgun while in a motor vehicle in a parking lot, traffic

68 circle or other areas of vehicular ingress or egress to a public
69 school: *Provided*, That:

70 (i) When he or she is occupying the vehicle the person
71 stores the handgun out of view from persons outside the
72 vehicle; or

73 (ii) When he or she is not occupying the vehicle the
74 person stores the handgun out of view from persons outside
75 the vehicle, the vehicle is locked, and the handgun is in a
76 locked trunk, glove box or other interior compartment, or in
77 a locked container securely fixed to the vehicle.

78 (3) A person violating this subsection is guilty of a
79 felony and, upon conviction thereof, shall be imprisoned in
80 a state correctional facility for a definite term of years of not
81 less than two years nor more than ten years, or fined not
82 more than \$5,000, or both fined and imprisoned.

83 (c) A school principal subject to the authority of the
84 State Board of Education who discovers a violation of
85 subsection (b) of this section shall report the violation as
86 soon as possible to:

87 (1) The State Superintendent of Schools. The State
88 Board of Education shall keep and maintain these reports
89 and may prescribe rules establishing policy and procedures
90 for making and delivering the reports as required by this
91 subsection; and

92 (2) The appropriate local office of the State Police,
93 county sheriff or municipal police agency.

94 (d) In addition to the methods of disposition provided
95 by article five, chapter forty-nine of this code, a court which
96 adjudicates a person who is fourteen years of age or older as
97 delinquent for a violation of subsection (b) of this section
98 may order the Division of Motor Vehicles to suspend a
99 driver's license or instruction permit issued to the person for
100 a period of time as the court considers appropriate, not to
101 extend beyond the person's nineteenth birthday. If the

102 person has not been issued a driver's license or instruction
103 permit by this state, a court may order the Division of Motor
104 Vehicles to deny the person's application for a license or
105 permit for a period of time as the court considers
106 appropriate, not to extend beyond the person's nineteenth
107 birthday. A suspension ordered by the court pursuant to this
108 subsection is effective upon the date of entry of the order.
109 Where the court orders the suspension of a driver's license
110 or instruction permit pursuant to this subsection, the court
111 shall confiscate any driver's license or instruction permit in
112 the adjudicated person's possession and forward to the
113 Division of Motor Vehicles.

114 (e)(1) If a person eighteen years of age or older is
115 convicted of violating subsection (b) of this section and if
116 the person does not act to appeal the conviction within the
117 time periods described in subdivision (2) of this subsection,
118 the person's license or privilege to operate a motor vehicle
119 in this state shall be revoked in accordance with the
120 provisions of this section.

121 (2) The clerk of the court in which the person is
122 convicted as described in subdivision (1) of this subsection
123 shall forward to the commissioner a transcript of the
124 judgment of conviction. If the conviction is the judgment of
125 a magistrate court, the magistrate court clerk shall forward
126 the transcript when the person convicted has not requested
127 an appeal within twenty days of the sentencing for the
128 conviction. If the conviction is the judgment of a circuit
129 court, the circuit clerk shall forward a transcript of the
130 judgment of conviction when the person convicted has not
131 filed a notice of intent to file a petition for appeal or writ of
132 error within thirty days after the judgment was entered.

133 (3) If, upon examination of the transcript of the
134 judgment of conviction, the commissioner determines that
135 the person was convicted as described in subdivision (1) of
136 this subsection, the commissioner shall make and enter an
137 order revoking the person's license or privilege to operate a
138 motor vehicle in this state for a period of one year or, in the

139 event the person is a student enrolled in a secondary school,
140 for a period of one year or until the person's twentieth
141 birthday, whichever is the greater period. The order shall
142 contain the reasons for the revocation and the revocation
143 period. The order of suspension shall advise the person that
144 because of the receipt of the court's transcript, a
145 presumption exists that the person named in the order of
146 suspension is the same person named in the transcript. The
147 commissioner may grant an administrative hearing which
148 substantially complies with the requirements of the
149 provisions of section two, article five-a, chapter seventeen-
150 c of this code upon a preliminary showing that a possibility
151 exists that the person named in the notice of conviction is
152 not the same person whose license is being suspended. The
153 request for hearing shall be made within ten days after
154 receipt of a copy of the order of suspension. The sole
155 purpose of this hearing is for the person requesting the
156 hearing to present evidence that he or she is not the person
157 named in the notice. If the commissioner grants an
158 administrative hearing, the commissioner shall stay the
159 license suspension pending the commissioner's order
160 resulting from the hearing.

161 (4) For the purposes of this subsection, a person is
162 convicted when he or she enters a plea of guilty or is found
163 guilty by a court or jury.

164 (f)(1) It is unlawful for a parent, guardian or custodian
165 of a person less than eighteen years of age who knows that
166 the person is in violation of subsection (b) of this section or
167 has reasonable cause to believe that the person's violation
168 of subsection (b) is imminent to fail to immediately report
169 his or her knowledge or belief to the appropriate school or
170 law-enforcement officials.

171 (2) A person violating this subsection is guilty of a
172 misdemeanor and, upon conviction thereof, shall be fined
173 not more than \$1,000, or shall be confined in jail not more
174 than one year, or both fined and confined.

175 (g)(1) It is unlawful for a person to possess a firearm or
176 other deadly weapon on the premises of a court of law,
177 including family courts.

178 (2) This subsection does not apply to:

179 (A) A law-enforcement officer acting in his or her
180 official capacity; and

181 (B) A person exempted from the provisions of this
182 subsection by order of record entered by a court with
183 jurisdiction over the premises or offices.

184 (3) A person violating this subsection is guilty of a
185 misdemeanor and, upon conviction thereof, shall be fined
186 not more than \$1,000, or shall be confined in jail not more
187 than one year, or both fined and confined.

188 (h)(1) It is unlawful for a person to possess a firearm or
189 other deadly weapon on the premises of a court of law,
190 including family courts, with the intent to commit a crime.

191 (2) A person violating this subsection is guilty of a
192 felony and, upon conviction thereof, shall be imprisoned in
193 a state correctional facility for a definite term of years of not
194 less than two years nor more than ten years, or fined not
195 more than \$5,000, or both fined and imprisoned.

196 (i) Nothing in this section may be construed to be in
197 conflict with the provisions of federal law.

**§61-7-14. Right of certain persons to limit possession of
firearms on premises.**

1 Notwithstanding the provisions of this article, any
2 owner, lessee or other person charged with the care, custody
3 and control of real property may prohibit the carrying
4 openly or concealing of any firearm or deadly weapon on
5 property under his or her domain: *Provided*, That for
6 purposes of this section “person” means an individual or any
7 entity which may acquire title to real property.

8 Any person carrying or possessing a firearm or other
9 deadly weapon on the property of another who refuses to
10 temporarily relinquish possession of the firearm or other
11 deadly weapon, upon being requested to do so, or to leave
12 the premises, while in possession of the firearm or other
13 deadly weapon, is guilty of a misdemeanor and, upon
14 conviction thereof, shall be fined not more than \$1,000 or
15 confined in jail not more than six months, or both: *Provided*,
16 That the provisions of this section do not apply to a person
17 as set forth in subdivisions (3) through (7), inclusive,
18 subsection (a), section six of this article while the person is
19 acting in an official capacity; and to a person as set forth in
20 subdivisions (1) through (8), inclusive, subsection (b) of
21 said section, while the person is acting in his or her official
22 capacity: *Provided, however*, That under no circumstances,
23 except as provided for by the provisions of paragraph (I),
24 subdivision (2), subsection (b), section eleven-a of this
25 article, may any person possess or carry or cause the
26 possession or carrying of any firearm or other deadly
27 weapon on the premises of any primary or secondary
28 educational facility in this state unless the person is a law-
29 enforcement officer or he or she has the express written
30 permission of the county school superintendent.

CHAPTER 83

**(Com. Sub. for H. B. 2364 - By Delegates Hamilton,
Ambler, A. Evans, Statler, R. Romine, Hicks,
Rodighiero, Hamrick, Eldridge, Lynch and Frich)**

[Passed April 6, 2017; in effect ninety days from passage.]
[Approved by the Governor on April 26, 2017.]

AN ACT to amend and reenact §3-1-37 of the Code of West Virginia, 1931, as amended; and to amend and reenact §3-9-9 of said code, all relating to restrictions on presence and

conduct at or within one hundred feet of polls; prohibiting persons other than voters and election officials from being or remaining within one hundred feet of entrance of polling place while polls open; permitting person delivering voter to polling place to discharge voter within one hundred feet of entrance of polling place; requiring person delivering voter to remove vehicle one hundred feet until the voter is to be transported from polling place or another voter delivered; permitting vehicles delivering voters who require assistance to remain within one hundred feet of entrance until voter is to be transported from polling place; defining electioneering; prohibiting electioneering in or within one hundred feet of polling place on election day; prohibiting electioneering in or within one hundred feet of early voting polling places during early voting periods; providing exceptions to electioneering prohibitions for persons upon his or her private property; clarifying that electioneering on private property near polling places must conform to other existing laws and ordinances; and making stylistic changes to outdated language.

Be it enacted by the Legislature of West Virginia:

That §3-1-37 of the Code of West Virginia, 1931, as amended, be amended and reenacted and that §3-9-9 of said code be amended and reenacted, all to read as follows:

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.

§3-1-37. Restrictions on presence and conduct at polls.

1 (a) Except as otherwise provided in this section, no
 2 person, other than the election officers and voters going to
 3 the election room to vote and returning therefrom, may be
 4 or remain within one hundred feet of the outside entrance to
 5 the building housing the polling place while the polls are
 6 open. This subsection does not apply to persons who reside
 7 or conduct business within such distance of the entrance to
 8 the building housing the polling place, while in the
 9 discharge of their legitimate business, or to persons whose

10 business requires them to pass and repass within one
11 hundred feet of such entrance.

12 (b) A person who is delivering a voter to a polling place
13 by motor vehicle may drive such vehicle to a convenient and
14 accessible location to discharge the voter, notwithstanding
15 that the location is within one hundred feet of the outside
16 entrance to the building housing the polling place. Upon
17 discharging such voter from the vehicle, the person shall
18 remove the vehicle from within one hundred feet of the
19 entrance until such time as the voter is to be transported
20 from the polling place or another voter delivered: *Provided*,
21 That vehicles delivering voters who require assistance by
22 reason of blindness, disability or advanced age may remain
23 within one hundred feet of the entrance until such time as
24 the voter is to be transported from the polling place.

25 (c) The election commissions shall limit the number of
26 voters in the election room so as to preserve order. No
27 person may approach nearer than five feet to any booth or
28 compartment while the election is being held, except the
29 voters to prepare their ballots, or the poll clerks when called
30 on by a voter to assist in the preparation of his or her ballot,
31 and no person, other than election officers and voters
32 engaged in receiving, preparing and depositing their ballots,
33 may be permitted to be within five feet of any ballot box,
34 except by authority of the board of election commissioners,
35 and then only for the purpose of keeping order and enforcing
36 the law.

37 (d) Not more than one person may be permitted to
38 occupy any booth or compartment at one time. No person
39 may remain in or occupy a booth or compartment longer
40 than may be necessary to prepare his or her ballot, and in no
41 event longer than five minutes, except that any person who
42 claims a disability pursuant to section thirty-four of this
43 article shall have additional time up to ten additional
44 minutes to prepare his or her ballot. No voter, or person
45 offering to vote, may hold any conversation or

46 communication with any person other than the poll clerks or
47 commissioners of election, while in the election room.

48 (e) The provisions of this section do not apply to persons
49 rendering assistance to blind voters as provided in section
50 thirty-four of this article or to any child fourteen years of
51 age or younger who accompanies a parent, grandparent or
52 legal guardian who is voting. Any dispute concerning the
53 age of a child accompanying a parent, grandparent or legal
54 guardian who is voting shall be determined by the election
55 commissioners.

ARTICLE 9. OFFENSES AND PENALTIES.

§3-9-9. Electioneering defined; unlawful acts at polling places; exceptions; penalties.

1 (a) As used in this section, "electioneering" means the
2 displaying of signs or other campaign paraphernalia, the
3 distribution of campaign literature, cards, or handbills, the
4 soliciting of signatures to any petition, or the solicitation of
5 votes for or against any bona fide candidate or ballot
6 question in a manner which expressly advocates the election
7 or defeat of the candidate or expressly advocates the passage
8 or defeat of the ballot question. "Electioneering" does not
9 include exit polling, so long as persons conducting exit
10 polling are not otherwise engaging in electioneering
11 activities described above, or bumper stickers or signs
12 affixed to a person's vehicle which is parked within or
13 passing through a distance of one hundred feet of the
14 entrance to a polling place while such person is voting or
15 transporting any voter to the polls.

16 (b) No officer of election may disclose to any person the
17 name of any candidate for whom a voter has voted. No
18 officer of election may do any electioneering on election
19 day.

20 (c) No person may do any electioneering on election day
21 within any polling place, or within one hundred feet of the

22 outside entrance to the building housing the polling place.
23 No person may do any electioneering in the polling place or
24 within one hundred feet of the outside entrance of any
25 polling place where early voting is conducted during the
26 period in which early voting is offered during the hours
27 while such early voting is actually taking place. Nothing in
28 this subsection shall prohibit a citizen from doing any
29 electioneering upon his or her own private property,
30 regardless of distance from the polling place, so long as that
31 electioneering conforms to other existing laws and
32 ordinances.

33 (d) No person may apply for or receive any ballot in any
34 polling place, other than that in which the person is entitled
35 to vote, nor may any person examine a ballot which any
36 voter has prepared for voting, or solicit the voter to show the
37 same, nor ask, nor make any arrangement, directly or
38 indirectly, with any voter, to vote an open ballot. No person,
39 except a commissioner of election, may receive from any
40 voter a ballot prepared by him or her for voting. No voter
41 may receive a ballot from any person other than one of the
42 poll clerks; nor may any person other than a poll clerk
43 deliver a ballot to a commissioner of election to be voted by
44 such commissioner. No voter may deliver any ballot to a
45 commissioner of election to be voted, except the one he or
46 she receives from the poll clerk. No voter may place any
47 mark upon his or her ballot, or suffer or permit any other
48 person to do so, by which it may be afterward identified as
49 the ballot voted by him or her.

50 (e) Whoever violates any provision of this section shall
51 be guilty of a misdemeanor and, on conviction thereof, shall
52 be fined not less than \$100 nor more than \$1,000, or
53 confined in jail for not more than one year, or both fined and
54 confined.

CHAPTER 84

**(Com. Sub. for H. B. 2781 - By Delegates Blair,
Zatezalo, Householder, Ambler, Hamrick, Anderson,
Martin, Maynard and Lewis)**

[Passed April 8, 2017; in effect from passage.]
[Approved by the Governor on April 26, 2017.]

AN ACT to amend and reenact §3-2-11 of the Code of West Virginia, 1931, as amended, relating to voting procedures; removing requirement that Division of Motor Vehicles forward certain information of persons who decline to become registered to vote to Secretary of State; amending the effective date for voter registration procedures passed in 2016 and 2017 legislative sessions to July 1, 2019; requiring Division of Motor Vehicles to make presentation to Joint Committee on Government and Finance if unable to meet requirements of section by February 1, 2019; and requiring Division of Motor Vehicles shall report to the Joint Committee on Government and Finance by January 1, 2018, with full and complete list of all infrastructure they require to achieve certain purposes.

Be it enacted by the Legislature of West Virginia:

That §3-2-11 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2. REGISTRATION OF VOTERS.

§3-2-11. Registration in conjunction with driver licensing.

- 1 (a) The Division of Motor Vehicles or other division or
- 2 department that may be established by law to perform motor
- 3 vehicle driver licensing services shall obtain as an integral
- 4 and simultaneous part of every process of application for the
- 5 issuance, renewal or change of address of a motor vehicle

6 driver's license or official identification card pursuant to the
7 provisions of article two, chapter seventeen-b of this code,
8 when the division's regional offices are open for regular
9 business, the following information from each qualified
10 registrant:

11 (1) Full name, including first, middle, last and any
12 premarital names;

13 (2) Date of birth;

14 (3) Residence address and mailing address, if different;

15 (4) The applicant's electronic signature;

16 (5) Telephone number, if available;

17 (6) Email address, if available;

18 (7) Political party membership, if any;

19 (8) Driver's license number and last four digits of social
20 security number;

21 (9) A notation that the applicant has attested that he or
22 she meets all voter eligibility requirements, including
23 United States citizenship;

24 (10) Whether the applicant affirmatively declined to
25 become registered to vote during the transaction with the
26 Division of Motor Vehicles;

27 (11) Date of application; and

28 (12) Any other information specified in rules adopted to
29 implement this section.

30 (b) Unless the applicant affirmatively declines to
31 become registered to vote or update their voter registration
32 during the transaction with the Division of Motor Vehicles,
33 the Division of Motor Vehicles shall release all of the
34 information obtained pursuant to subsection (a) of this

35 section, to the Secretary of State, who shall forward the
36 information to the county clerk for the relevant county to
37 process the newly registered voter or updated information
38 for the already-registered voter pursuant to law. The
39 Division of Motor Vehicles shall notify that applicant that
40 by submitting his or her signature, the applicant grants
41 written consent for the submission of the information
42 obtained and required to be submitted to the Secretary of
43 State pursuant to this section.

44 (c) Information regarding a person's failure to sign the
45 voter registration application is confidential and may not be
46 used for any purpose other than to determine voter
47 registration.

48 (d) A qualified voter who submits the required
49 information or update to his or her voter registration,
50 pursuant to the provisions of subsection (a) of this section,
51 in person at a driver licensing facility at the time of applying
52 for, obtaining, renewing or transferring his or her driver's
53 license or official identification card and who presents
54 identification and proof of age at that time is not required to
55 make his or her first vote in person or to again present
56 identification in order to make that registration valid.

57 (e) A qualified voter who submits by mail or by delivery
58 by a third party an application for registration on the form
59 used in conjunction with driver licensing is required to make
60 his or her first vote in person and present identification as
61 required for other mail registration in accordance with the
62 provisions of subsection (g), section ten of this article. If the
63 applicant has been previously registered in the jurisdiction
64 and the application is for a change of address, change of
65 name, change of political party affiliation or other
66 correction, the presentation of identification and first vote in
67 person is not required.

68 (f) An application for voter registration submitted
69 pursuant to the provisions of this section updates a previous
70 voter registration by the applicant and authorizes the

71 cancellation of registration in any other county or state in
72 which the applicant was previously registered.

73 (g) A change of address from one residence to another
74 within the same county which is submitted for driver
75 licensing or nonoperator's identification purposes in
76 accordance with applicable law serves as a notice of change
77 of address for voter registration purposes if requested by the
78 applicant after notice and written consent of the applicant.

79 (h) Completed applications for voter registration or
80 change of address for voting purposes received by an office
81 providing driver licensing services shall be forwarded to the
82 Secretary of State within five days of receipt unless other
83 means are available for a more expedited transmission. The
84 Secretary of State shall remove and file any forms which
85 have not been signed by the applicant and shall forward
86 completed, signed applications to the clerk of the
87 appropriate county commission within five days of receipt.

88 (i) Voter registration application forms containing voter
89 information which are returned to a driver licensing office
90 unsigned shall be collected by the Division of Motor
91 Vehicles, submitted to the Secretary of State and maintained
92 by the Secretary of State's office according to the retention
93 policy adopted by the Secretary of State.

94 (j) The Secretary of State shall establish procedures to
95 protect the confidentiality of the information obtained from
96 the Division of Motor Vehicles, including any information
97 otherwise required to be confidential by other provisions of
98 this code.

99 (k) A person registered to vote pursuant to this section
100 may cancel his or her voter registration at any time by any
101 method available to any other registered voter.

102 (l) This section shall not be construed as requiring the
103 Division of Motor Vehicles to determine eligibility for voter
104 registration and voting.

105 (m) The changes made to this section during the 2016
106 Regular Legislative Session shall become effective on July
107 1, 2019, and any costs associated therewith shall be paid by
108 the Division of Motor Vehicles. If the Division of Motor
109 Vehicles is unable to meet the requirements of this section
110 by February 1, 2019, it shall make a presentation to the Joint
111 Committee on Government and Finance explaining any
112 resources necessary to meet the requirements or any
113 changes to the code that it recommends immediately prior
114 to the 2019 Regular Legislative Session: *Provided*, That the
115 Division of Motor Vehicles shall report to the Joint
116 Committee on Government and Finance by January 1, 2018
117 with a full and complete list of all infrastructure they require
118 to achieve the purposes of this section.

119 (n) The Secretary of State shall propose rules for
120 legislative approval in accordance with the provisions of
121 article three, chapter twenty-nine-a of this code in order to
122 implement the requirements of this section.

CHAPTER 85

**(Com. Sub. for H. B. 2319 - By Delegates Upson,
Mr. Speaker (Mr. Armstead), Hamilton, Rohrbach
and Baldwin)**

[Passed April 6, 2017; in effect ninety days from passage.]
[Approved by the Governor on April 26, 2017.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §3-8-15, relating to requiring timely disclosure of fund-raising events, including contributions, of candidates or candidate committees for legislative office while the Legislature is in session; requiring members of Legislature who are candidates for public office to disclose existence of fund-raising event and receipt of all contributions within five business days after

event; imposing the same reporting requirements upon former candidates or candidate committees for legislative office who are still in office and who use fund-raising event to retire or pay-off debt to campaign while Legislature in session; clarifying that reporting under this section does not relieve a candidate or candidate's committee from regular reporting requirements; requiring Secretary of State to create a form for disclosure; requiring the Secretary of State to publish information on the Secretary of State's website; authorizing the Secretary of State to establish a means for electronic filing and disclosure as an alternative; and authorizing the Secretary of State to promulgate legislative and emergency rules.

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 §3-8-15, to read as follows:

ARTICLE 8. REGULATIONS AND CONTROL OF ELECTIONS.

§3-8-15. Disclosure of contributions during legislative session.

1 (a) In addition to other reporting required under this
2 article, any member, or any candidate committee for a
3 member of the Legislature who is a candidate for legislative
4 office, who has a fund-raising event while the Legislature is
5 in session, shall disclose the existence of the event and the
6 receipt of all contributions, including the source and
7 amounts, within five business days after the fund-raising
8 event.

9 (b) The reporting requirements under this section also
10 apply to former candidates or candidate committees for
11 legislative office who are still holding any legislative office
12 and who use a fund-raising event to retire or pay-off debt of
13 a campaign account while the Legislature is in session.

14 (c) The reporting requirements of this section do not
15 relieve a candidate or candidate's committee from reporting

16 contributions received and disclosed in conformity with this
17 section from reporting them as required by the regular
18 reporting requirements as contained in section five of this
19 article.

20 (d) The Secretary of State shall prepare a form for
21 disclosure of these contributions and publish the
22 information on the Secretary of State's website within forty-
23 eight hours of the Secretary of State receiving the completed
24 form: *Provided*, That as an alternative, the Secretary of State
25 is authorized to establish a means for electronic filing and
26 disclosure.

27 (e) Pursuant to article three, chapter twenty-nine-a of
28 this code, the Secretary of State may propose rules and
29 emergency rules for legislative approval relating to
30 procedures and policies consistent with this section.



CHAPTER 86

**(S. B. 687 - By Senators Smith, Sypolt, Blair, Boley,
Cline, Ferns, Gaunch, Mullins, Facemire, Jeffries,
Ojeda and Woelfel)**

[Passed April 8, 2017; in effect from passage.]
[Approved by the Governor on April 26, 2017.]

AN ACT to amend and reenact §22-3-11, §22-3-13a and §22-3-23 of the Code of West Virginia, 1931, as amended; to amend and reenact §22-6-24 of said code; to amend and reenact §22-11-7b of said code; to amend and reenact §22A-1-2 and §22A-1-5 of said code; to amend and reenact §22A-2-59 of said code; to amend said code by adding thereto a new section, designated §22A-2A-1001; to amend and reenact §22A-6-3, §22A-6-4 and §22A-6-6 of said code; to amend and reenact §22A-7-2, §22A-7-3, §22A-7-5, §22A-7-5a and §22A-7-7 of said code; to amend and reenact §22A-9-1 of said code; to

amend and reenact §22A-11-1, §22A-11-2, §22A-11-3 and §22A-11-4 of said code; and to amend said code by adding thereto a new section, designated §22A-11-5, all relating generally to natural resources; providing that moneys be paid from Special Reclamation Water Trust Fund to assure a reliable source of capital and operating expenses for the treatment of discharges from forfeited sites; modifying notification requirements for preblast surveys for surface mining operations and certain other blasting activities; removing minimum bond requirements related to certain reclamation work; providing for changes to the method of plugging abandoned gas wells where a coal operator intends to mine through the well; removing certain criteria from evaluation for the narrative water quality standard; authorizing the elimination of the Board of Miner Training, Education and Certification, the Mine Inspectors' Examining Board and the Mine Safety Technology Task Force, and the transfer of duties from those boards and task force to the Board of Coal Mine Health and Safety; providing guaranteed term limits for certain board and commission members; providing that an automated external defibrillator unit be required first-aid equipment located in certain areas of an underground coal mine; directing that the Office of Miners' Health, Safety and Training revise state rules related to diesel equipment operating in underground mines; and requiring rulemaking.

Be it enacted by the Legislature of West Virginia:

That §22-3-11, §22-3-13a and §22-3-23 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §22-6-24 of said code be amended and reenacted; that §22-11-7b of said code be amended and reenacted; that §22A-1-2 and §22A-1-5 of said code be amended and reenacted; that §22A-2-59 of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §22A-2A-1001; that §22A-6-3, §22A-6-4 and §22A-6-6 of said code be amended and reenacted; that §22A-7-2, §22A-7-3, §22A-7-5, §22A-7-5a and §22A-7-7 of said code be amended and reenacted; that §22A-9-1 of said code be amended and reenacted; that §22A-11-1, §22A-11-2, §22A-11-3 and §22A-11-4 of said code be amended and

reenacted; and that said code be amended by adding thereto a new section, designated §22A-11-5, all to read as follows:

CHAPTER 22. ENVIRONMENTAL RESOURCES.

ARTICLE 3. SURFACE COAL MINING AND RECLAMATION ACT.

§22-3-11. Bonds; amount and method of bonding; bonding requirements; special reclamation tax and funds; prohibited acts; period of bond liability.

1 (a) After a surface mining permit application has been
2 approved pursuant to this article, but before a permit has
3 been issued, each operator shall furnish a penal bond, on a
4 form to be prescribed and furnished by the secretary,
5 payable to the state of West Virginia and conditioned upon
6 the operator faithfully performing all of the requirements of
7 this article and of the permit. The penal amount of the bond
8 shall be not less than \$1,000 nor more than \$5,000 for each
9 acre or fraction of an acre: *Provided*, That the minimum
10 amount of bond furnished for any type of reclamation
11 bonding shall be \$10,000. The bond shall cover: (1) The
12 entire permit area; or (2) that increment of land within the
13 permit area upon which the operator will initiate and
14 conduct surface mining and reclamation operations within
15 the initial term of the permit. If the operator chooses to use
16 incremental bonding, as succeeding increments of surface
17 mining and reclamation operations are to be initiated and
18 conducted within the permit area, the operator shall file with
19 the secretary an additional bond or bonds to cover the
20 increments in accordance with this section: *Provided*,
21 *however*, That once the operator has chosen to proceed with
22 bonding either the entire permit area or with incremental
23 bonding, the operator shall continue bonding in that manner
24 for the term of the permit.

25 (b) The period of liability for bond coverage begins with
26 issuance of a permit and continues for the full term of the
27 permit plus any additional period necessary to achieve

28 compliance with the requirements in the reclamation plan of
29 the permit.

30 (c)(1) The form of the bond shall be approved by the
31 secretary and may include, at the option of the operator,
32 surety bonding, collateral bonding (including cash and
33 securities), establishment of an escrow account, self
34 bonding or a combination of these methods. If collateral
35 bonding is used, the operator may elect to deposit cash or
36 collateral securities or certificates as follows: Bonds of the
37 United States or its possessions of the Federal Land Bank or
38 of the Homeowners' Loan Corporation; full faith and credit
39 general obligation bonds of the State of West Virginia or
40 other states and of any county, district or municipality of the
41 state of West Virginia or other states; or certificates of
42 deposit in a bank in this state, which certificates shall be in
43 favor of the department. The cash deposit or market value
44 of the securities or certificates shall be equal to or greater
45 than the penal sum of the bond. The secretary shall, upon
46 receipt of any deposit of cash, securities or certificates,
47 promptly place the same with the Treasurer of the state of
48 West Virginia whose duty it is to receive and hold the
49 deposit in the name of the state in trust for the purpose for
50 which the deposit is made when the permit is issued. The
51 operator making the deposit is entitled, from time to time,
52 to receive from the State Treasurer, upon the written
53 approval of the secretary, the whole or any portion of any
54 cash, securities or certificates so deposited, upon depositing
55 with him or her in lieu thereof cash or other securities or
56 certificates of the classes specified in this subsection having
57 value equal to or greater than the sum of the bond.

58 (2) The secretary may approve an alternative bonding
59 system if it will: (A) Reasonably assure that sufficient funds
60 will be available to complete the reclamation, restoration
61 and abatement provisions for all permit areas which may be
62 in default at any time; and (B) provide a substantial
63 economic incentive for the permittee to comply with all
64 reclamation provisions.

65 (d) The secretary may accept the bond of the applicant
66 itself without separate surety when the applicant
67 demonstrates to the satisfaction of the secretary the
68 existence of a suitable agent to receive service of process
69 and a history of financial solvency and continuous operation
70 sufficient for authorization to self insure.

71 (e) It is unlawful for the owner of surface or mineral
72 rights to interfere with the present operator in the discharge
73 of the operator's obligations to the state for the reclamation
74 of lands disturbed by the operator.

75 (f) All bond releases shall be accomplished in
76 accordance with the provisions of section twenty-three of
77 this article.

78 (g)(1) The Special Reclamation Fund previously created
79 is continued. The Special Reclamation Water Trust Fund is
80 created within the state treasury into and from which
81 moneys shall be paid for the purpose of assuring a reliable
82 source of capital and operating expenses for the treatment
83 of water discharges from forfeited sites where the secretary
84 has obtained or applied for an NPDES permit as of the
85 effective date of this article. The moneys accrued in both
86 funds, any interest earned thereon and yield from
87 investments by the State Treasurer or West Virginia
88 Investment Management Board are reserved solely and
89 exclusively for the purposes set forth in this section and
90 section seventeen, article one of this chapter.

91 (2) The funds shall be administered by the secretary who
92 is authorized to expend the moneys in both funds for the
93 reclamation and rehabilitation of lands which were
94 subjected to permitted surface mining operations and
95 abandoned after August 3, 1977, where the amount of the
96 bond posted and forfeited on the land is less than the actual
97 cost of reclamation, and where the land is not eligible for
98 abandoned mine land reclamation funds under article two of
99 this chapter. The secretary may also expend an amount not
100 to exceed ten percent of the total annual assets in both funds

101 to implement and administer the provisions of this article
102 and, as they apply to the Surface Mine Board, articles one
103 and four, chapter twenty-two-b of this code.

104 (3)(A) A tax credit shall be granted against the tax
105 imposed by subsection (i) of this section to any mine
106 operator who performs reclamation or remediation at a bond
107 forfeiture site which otherwise would have been reclaimed
108 using funds from the Special Reclamation Fund or Special
109 Reclamation Water Trust Fund. The credit authorized
110 pursuant to this subdivision is retroactive and may be
111 claimed for reclamation or remediation performed on or
112 after January 1, 2012: *Provided*, That for reclamation or
113 remediation performed prior to July 13, 2013, no tax credit
114 may be granted unless a written application for the tax credit
115 was submitted to the Tax Commissioner prior to September
116 1, 2014. The amount of credit shall be determined as
117 provided in this section.

118 (B) The amount of a reclamation tax credit granted
119 under this subsection shall be equal to the amount that the
120 Tax Commissioner determines, based on the project costs,
121 as shown in the records of the secretary, that would have
122 been spent from the Special Reclamation Fund or Special
123 Reclamation Water Trust Fund to accomplish the
124 reclamation or remediation performed by the mine operator,
125 including expenditures for water treatment.

126 (C) To claim the credit, the mine operator shall, from
127 time to time, file with the Tax Commissioner a written
128 application seeking the amount of the credit earned. Within
129 thirty days of receipt of the application, the Tax
130 Commissioner shall issue a certification of the amount of
131 tax credit, if any, to be allocated to the eligible taxpayer.
132 Should the amount of the credit certified be less than the
133 amount applied for, the Tax Commissioner shall set forth in
134 writing the reason for the difference. Should no certification
135 be issued within the thirty-day period, the application will
136 be deemed certified. Any decision by the Tax
137 Commissioner is appealable pursuant to the provisions of

138 the West Virginia Tax Procedure and Administration Act
139 set forth in article ten, chapter eleven of the code.
140 Applications for certification of the proposed tax credit shall
141 contain the information and be in the detail and form as
142 required by the Tax Commissioner.

143 (h) The Tax Commissioner may promulgate rules for
144 legislative approval pursuant to the provisions of article
145 three, chapter twenty-nine-a of this code to carry out the
146 purposes of this subdivision two, subsection (g) of this
147 section.

148 (i)(1) Rate, deposits and review.

149 (A) For tax periods commencing on and after July 1,
150 2009, every person conducting coal surface mining shall
151 remit a special reclamation tax of fourteen and four-tenths
152 cents per ton of clean coal mined, the proceeds of which
153 shall be allocated by the secretary for deposit in the Special
154 Reclamation Fund and the Special Reclamation Water Trust
155 Fund.

156 (B) For tax periods commencing on and after July 1,
157 2012, the rate of tax specified in paragraph (A) of this
158 subdivision is discontinued and is replaced by the rate of tax
159 specified in this paragraph. For tax periods commencing on
160 and after July 1, 2012, every person conducting coal surface
161 mining shall remit a special reclamation tax of twenty-seven
162 and nine-tenths cents per ton of clean coal mined, the
163 proceeds of which shall be allocated by the secretary for
164 deposit in the Special Reclamation Fund and the Special
165 Reclamation Water Trust Fund. Of that amount, fifteen
166 cents per ton of clean coal mined shall be deposited into the
167 Special Reclamation Water Trust Fund.

168 (C) The tax shall be levied upon each ton of clean coal
169 severed or clean coal obtained from refuse pile and slurry
170 pond recovery or clean coal from other mining methods
171 extracting a combination of coal and waste material as part
172 of a fuel supply.

173 (D) Beginning with the tax period commencing on July
174 1, 2009, and every two years thereafter, the special
175 reclamation tax shall be reviewed by the Legislature to
176 determine whether the tax should be continued: *Provided*,
177 That the tax may not be reduced until the Special
178 Reclamation Fund and Special Reclamation Water Trust
179 Fund have sufficient moneys to meet the reclamation
180 responsibilities of the state established in this section.

181 (2) In managing the special reclamation program, the
182 secretary shall: (A) Pursue cost-effective alternative water
183 treatment strategies; and (B) conduct formal actuarial
184 studies every two years and conduct informal reviews
185 annually on the Special Reclamation Fund and Special
186 Reclamation Water Trust Fund.

187 (3) Prior to December 31, 2008, the secretary shall:

188 (A) Determine the feasibility of creating an alternate
189 program, on a voluntary basis, for financially sound
190 operators by which those operators pay an increased tax into
191 the Special Reclamation Fund in exchange for a maximum
192 per-acre bond that is less than the maximum established in
193 subsection (a) of this section;

194 (B) Determine the feasibility of creating an incremental
195 bonding program by which operators can post a reclamation
196 bond for those areas actually disturbed within a permit area,
197 but for less than all of the proposed disturbance and obtain
198 incremental release of portions of that bond as reclamation
199 advances so that the released bond can be applied to
200 approved future disturbance; and

201 (C) Determine the feasibility for sites requiring water
202 reclamation by creating a separate water reclamation
203 security account or bond for the costs so that the existing
204 reclamation bond in place may be released to the extent it
205 exceeds the costs of water reclamation.

206 (4) If the secretary determines that the alternative
207 program, the incremental bonding program or the water
208 reclamation account or bonding programs reasonably assure
209 that sufficient funds will be available to complete the
210 reclamation of a forfeited site and that the Special
211 Reclamation Fund will remain fiscally stable, the secretary
212 is authorized to propose legislative rules in accordance with
213 article three, chapter twenty-nine-a of this code to
214 implement an alternate program, a water reclamation
215 account or bonding program or other funding mechanisms
216 or a combination thereof.

217 (j) This special reclamation tax shall be collected by the
218 Tax Commissioner in the same manner, at the same time
219 and upon the same tonnage as the minimum severance tax
220 imposed by article twelve-b, chapter eleven of this code is
221 collected: *Provided*, That under no circumstance shall the
222 special reclamation tax be construed to be an increase in
223 either the minimum severance tax imposed by said article or
224 the severance tax imposed by article thirteen of said chapter.

225 (k) Every person liable for payment of the special
226 reclamation tax shall pay the amount due without notice or
227 demand for payment.

228 (l) The Tax Commissioner shall provide to the secretary
229 a quarterly listing of all persons known to be delinquent in
230 payment of the special reclamation tax. The secretary may
231 take the delinquencies into account in making
232 determinations on the issuance, renewal or revision of any
233 permit.

234 (m) The Tax Commissioner shall deposit the moneys
235 collected with the Treasurer of the State of West Virginia to
236 the credit of the Special Reclamation Fund and Special
237 Reclamation Water Trust Fund.

238 (n) At the beginning of each quarter, the secretary shall
239 advise the Tax Commissioner and the Governor of the

240 assets, excluding payments, expenditures and liabilities, in
241 both funds.

242 (o) To the extent that this section modifies any powers,
243 duties, functions and responsibilities of the department that
244 may require approval of one or more federal agencies or
245 officials in order to avoid disruption of the federal-state
246 relationship involved in the implementation of the federal
247 Surface Mining Control and Reclamation Act, 30 U. S. C.
248 §1270 by the state, the modifications will become effective
249 upon the approval of the modifications by the appropriate
250 federal agency or official.

§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
3 or an operator's designee shall make the following
4 notifications in writing to all owners and occupants of man-
5 made dwellings or structures that the operator or operator's
6 designee will perform preblast surveys in accordance with
7 subsection (e) of this section:

8 (1) For surface mining operations the required
9 notifications shall be to all owners and occupants of man-
10 made dwellings or structures within one-half mile of the
11 permitted area or areas; and

12 (2) For blasting associated with permitted surface
13 disturbance of underground mines and blasting associated
14 with specified construction, including but not limited to,
15 haul roads, shafts, and/or drainage structures, the operator
16 may send a written request to the secretary asking that the
17 required notifications be limited to all owners and occupants
18 of man-made dwellings or structures within one-half mile
19 of the proposed blasting area.

20 (b) An owner of a man-made dwelling or structure
21 within the areas described in subdivision (1) or (2),
22 subsection (a) of this section may waive the right to a
23 preblast survey in writing. If an occupant or owner of a

24 man-made dwelling or structure refuses to allow the
25 operator or the operator's designee access to the dwelling or
26 structure and refuses to waive in writing the right to a
27 preblast survey or to the extent that access to any portion of
28 the structure, underground water supply or well is
29 impossible or impractical under the circumstances, the
30 preblast survey shall indicate that access was refused,
31 impossible or impractical. The operator or the operator's
32 designee shall execute a sworn affidavit explaining the
33 reasons and circumstances surrounding the refusals. The
34 secretary may not determine the preblast survey to be
35 incomplete because it indicates that access to a particular
36 structure, underground water supply or well was refused,
37 impossible or impractical. The operator shall send copies of
38 all written waivers and affidavits executed pursuant to this
39 subsection to the secretary.

40 (c) If a preblast survey was waived by the owner and
41 was within the requisite area and the property was sold, the
42 new owner may request a preblast survey from the operator.

43 (d) An owner within the requisite area may request,
44 from the operator, a preblast survey on structures
45 constructed after the original preblast survey.

46 (e) The preblast survey shall include:

47 (1) The names, addresses or description of structure
48 location and telephone numbers of the owner and the
49 residents of the structure being surveyed and the structure
50 number from the permit blasting map;

51 (2) The current home insurer of the owner and the
52 residents of the structure;

53 (3) The names, addresses and telephone numbers of the
54 surface mining operator and the permit number;

55 (4) The current general liability insurer of the surface
56 mining operator;

57 (5) The name, address and telephone number of the
58 person or firm performing the preblast survey;

59 (6) The current general liability insurer of the person or
60 firm performing the preblast survey;

61 (7) The date of the preblast survey and the date it was
62 mailed or delivered to the secretary;

63 (8) A general description of the structure and its
64 appurtenances, including, but not limited to: (A) The
65 number of stories; (B) the construction materials for the
66 frame and the exterior and interior finish; (C) the type of
67 construction including any unusual or substandard
68 construction; and (D) the approximate age of the structure;

69 (9) A general description of the survey methods and the
70 direction of progression of the survey, including a key to
71 abbreviations used;

72 (10) Written documentation and drawings, videos or
73 photographs of the preblast defects and other physical
74 conditions of all structures, appurtenances and water
75 sources which could be affected by blasting;

76 (11) Written documentation and drawings, videos or
77 photographs of the exterior and interior of the structure to
78 indicate preblast defects and condition;

79 (12) Written documentation and drawings, videos or
80 photographs of the exterior and interior of any appurtenance
81 of the structure to indicate preblast defects and condition;

82 (13) Sufficient exterior and interior photographs or
83 videos, using a variety of angles, of the structure and its
84 appurtenances to indicate preblast defects and the condition
85 of the structure and appurtenances;

86 (14) Written documentation and drawings, videos or
87 photographs of any unusual or substandard construction

88 technique and materials used on the structure or its
89 appurtenances or both structure and appurtenances;

90 (15) Written documentation relating to the type of water
91 supply, including a description of the type of system and
92 treatment being used, an analysis of untreated water
93 supplies, a water analysis of water supplies other than public
94 utilities and information relating to the quantity and quality
95 of water;

96 (16) When the water supply is a well, written
97 documentation, where available, relating to the type of well;
98 the well log; the depth, age and type of casing or lining; the
99 static water level; flow data; the pump capacity; the drilling
100 contractor; and the source or sources of the documentation;

101 (17) A description of any portion of the structure and
102 appurtenances not documented or photographed and the
103 reasons;

104 (18) The signature of the person performing the survey;
105 and

106 (19) Any other information required by the secretary
107 which additional information shall be established by rule in
108 accordance with article three, chapter twenty-nine-a of this
109 code.

110 (f) The preblast survey shall be submitted to the
111 secretary at least fifteen days prior to the commencement of
112 any production blasting. The secretary shall review each
113 preblast survey as to form and completeness only and notify
114 the operator of any deficiencies: *Provided*, That once all
115 required surveys have been reviewed and accepted by the
116 secretary, blasting may commence sooner than fifteen days
117 after submittal. The secretary shall provide a copy of the
118 preblast survey to the owner or occupant.

119 (g) The secretary shall propose rules for legislative
120 approval in accordance with article three, chapter twenty-
121 nine-a of this code dealing with preblast survey

122 requirements and setting the qualifications for individuals
123 and firms performing preblast surveys.

124 (h) The provisions of this section do not apply to the
125 extraction of minerals by underground mining methods.

**§22-3-23. Release of bond or deposits; application; notice;
duties of secretary; public hearings; final maps on grade
release.**

1 (a) The permittee may file a request with the secretary
2 for the release of a bond or deposit. The permittee shall
3 publish an advertisement regarding the request for release
4 in the same manner as is required of advertisements for
5 permit applications. A copy of the advertisement shall be
6 submitted to the secretary as part of any bond release
7 application and shall contain a notification of the precise
8 location of the land affected, the number of acres, the permit
9 and the date approved, the amount of the bond filed and the
10 portion sought to be released, the type and appropriate dates
11 of reclamation work performed and a description of the
12 results achieved as they relate to the permittee's approved
13 reclamation plan. In addition, as part of any bond release
14 application, the permittee shall submit copies of letters
15 which the permittee has sent to adjoining property owners,
16 local government bodies, planning agencies, sewage and
17 water treatment authorities or water companies in the
18 locality in which the surface mining operation is located,
19 notifying them of the permittee's intention to seek release
20 from the bond. Any request for grade release shall also be
21 accompanied by final maps.

22 (b) Upon receipt of the application for bond release, the
23 secretary, within thirty days, taking into consideration
24 existing weather conditions, shall conduct an inspection and
25 evaluation of the reclamation work involved. The
26 evaluation shall consider, among other things, the degree of
27 difficulty to complete any remaining reclamation, whether
28 pollution of surface and subsurface water is occurring, the
29 probability of continuance or future occurrence of the

30 pollution and the estimated cost of abating the pollution.
31 The secretary shall notify the permittee in writing of his or
32 her decision to release or not to release all or part of the bond
33 or deposit within sixty days from the date of the initial
34 publication of the advertisement if no public hearing is
35 requested. If a public hearing is held, the secretary's
36 decision shall be issued within thirty days thereafter.

37 (c) If the secretary is satisfied that reclamation covered
38 by the bond or deposit or portion thereof has been
39 accomplished as required by this article, he or she may
40 release the bond or deposit, in whole or in part, according to
41 the following schedule:

42 (1) When the operator completes the backfilling,
43 regrading and drainage control of a bonded area in
44 accordance with the operator's approved reclamation plan,
45 the release of sixty percent of the bond or collateral for the
46 applicable bonded area.

47 (2) After revegetation has been established on the
48 regraded mined lands in accordance with the approved
49 reclamation plan. When determining the amount of bond to
50 be released after successful revegetation has been
51 established, the secretary shall retain that amount of bond
52 for the revegetated area which would be sufficient for a third
53 party to cover the cost of reestablishing revegetation and for
54 the period specified for operator responsibility in section
55 thirteen of this article. No part of the bond or deposit shall
56 be released under this subsection so long as the lands to
57 which the release would be applicable are contributing
58 suspended solids to streamflow or runoff outside the permit
59 area in excess of the requirements set by subdivision (10),
60 subsection (b), section thirteen of this article or until soil
61 productivity for prime farm lands has returned to equivalent
62 levels of yield as nonmined land of the same soil type in the
63 surrounding area under equivalent management practices as
64 determined from the soil survey performed pursuant to
65 subdivision (15), subsection (a), section nine of this article.
66 Where a silt dam is to be retained as a permanent

67 impoundment pursuant to subdivision (8), subsection (b),
68 section thirteen of this article, the portion of bond may be
69 released under this subdivision so long as provisions for
70 sound future maintenance by the operator or the landowner
71 have been made with the secretary.

72 (3) When the operator has completed successfully all
73 surface coal mining and reclamation activities, the release
74 of the remaining portion of the bond, but not before the
75 expiration of the period specified for operator responsibility
76 in section thirteen of this article: *Provided*, That no bond
77 shall be fully released until all reclamation requirements of
78 this article are fully met: *Provided, however*, That the
79 release may be made where the quality of the untreated post-
80 mining water discharged is better than or equal to the
81 premining water quality discharged from the mining site
82 where expressly authorized by legislative rule promulgated
83 pursuant to section three, article one of this chapter.

84 (d) If the secretary disapproves the application for
85 release of the bond or portion thereof, the secretary shall
86 notify the permittee, in writing, stating the reasons for
87 disapproval and recommending corrective actions
88 necessary to secure the release and notifying the operator of
89 the right to a hearing.

90 (e) When any application for total or partial bond release
91 is filed with the secretary, he or she shall notify the
92 municipality in which a surface-mining operation is located
93 by registered or certified mail at least thirty days prior to the
94 release of all or a portion of the bond.

95 (f) Any person with a valid legal interest which is or
96 may be adversely affected by release of the bond or the
97 responsible officer or head of any federal, state or local
98 governmental agency which has jurisdiction by law or
99 special expertise with respect to any environmental, social
100 or economic impact involved in the operation, or is
101 authorized to develop and enforce environmental standards
102 with respect to the operations, has the right to file written

103 objections to the proposed bond release and request a
104 hearing with the secretary within thirty days after the last
105 publication of the permittee's advertisement. If written
106 objections are filed and a hearing requested, the secretary
107 shall inform all of the interested parties of the time and place
108 of the hearing and shall hold a public hearing in the locality
109 of the surface-mining operation proposed for bond release
110 within three weeks after the close of the public comment
111 period. The date, time and location of the public hearing
112 shall also be advertised by the secretary in a newspaper of
113 general circulation in the same locality.

114 (g) Without prejudice to the rights of the objectors, the
115 applicant, or the responsibilities of the secretary pursuant to
116 this section, the secretary may hold an informal conference
117 to resolve any written objections and satisfy the hearing
118 requirements of this section thereby.

119 (h) For the purpose of the hearing, the secretary has the
120 authority and is hereby empowered to administer oaths,
121 subpoena witnesses and written or printed materials, compel
122 the attendance of witnesses, or production of materials, and
123 take evidence, including, but not limited to, inspections of
124 the land affected and other surface-mining operations
125 carried on by the applicant in the general vicinity. A
126 verbatim record of each public hearing required by this
127 section shall be made and a transcript made available on the
128 motion of any party or by order of the secretary at the cost
129 of the person requesting the transcript.

130 (i) The secretary shall propose rules for legislative
131 approval during the 2018 regular session of the Legislature
132 in accordance with the provisions of article three, chapter
133 twenty-nine-a of the code and revisions to the Legislative
134 Rule entitled West Virginia Surface Mining Reclamation
135 Rule, Title 38, Series 2 of the West Virginia Code of State
136 Rules, to implement the revisions to this article made during
137 the 2017 legislative session. The secretary shall specifically
138 consider the adoption of corresponding federal standards
139 codified at 30 C. F. R. 700 *et. seq.*

ARTICLE 6. OFFICE OF OIL AND GAS; OIL AND GAS WELLS; ADMINISTRATION; ENFORCEMENT.**§22-6-24. Methods of plugging well.**

1 Upon the abandonment or cessation of the operation of
2 any well drilled for natural gas or petroleum, or drilled or
3 converted for the introduction of pressure, whether liquid or
4 gas, or for the introduction of liquid for the purposes
5 provided for in section twenty-five of this article or for the
6 disposal of pollutants or the effluent therefrom the well
7 operator, at the time of such abandonment or cessation, shall
8 fill and plug the well in the following manner:

9 (a) Where the well does not penetrate workable coal
10 beds, it shall either be filled with mud, clay or other
11 nonporous material from the bottom of the well to a point
12 twenty feet above the top of its lowest oil, gas or water-
13 bearing stratum; or a permanent bridge shall be anchored
14 thirty feet below its lowest oil, gas or water-bearing stratum,
15 and from such bridge it shall be filled with mud, clay or
16 other nonporous material to a point twenty feet above such
17 stratum; at this point there shall be placed a plug of cement
18 or other suitable material which will completely seal the
19 hole. Between this sealing plug and a point twenty feet
20 above the next higher oil, gas or water-bearing stratum, the
21 hole shall be filled, in the manner just described; and at such
22 point there shall be placed another plug of cement or other
23 suitable material which will completely seal the hole. In like
24 manner the hole shall be filled and plugged, with reference
25 to each of its oil, gas or water-bearing strata. However,
26 whenever such strata are not widely separated and are free
27 from water, they may be grouped and treated as a single
28 sand, gas or petroleum horizon, and the aforesaid filling and
29 plugging be performed as though there were but one
30 horizon. After the plugging of all oil, gas or water-bearing
31 strata, as aforesaid, a cement plug shall be placed
32 approximately ten feet below the bottom of the largest
33 casing in the well; from this point to the surface the well
34 shall be filled with mud, clay or other nonporous material,

35 except that a final cement plug shall be installed from a
36 point one hundred feet below the surface to the surface. In
37 case any of the oil or gas-bearing strata in a well shall have
38 been shot, thereby creating cavities which cannot readily be
39 filled in the manner above described, the well operator shall
40 follow either of the following methods:

41 (1) Should the stratum which has been shot be the
42 lowest one in the well, there shall be placed, at the nearest
43 suitable point, but not less than twenty feet above the
44 stratum, a plug of cement or other suitable material which
45 will completely seal the hole. In the event, however, that the
46 shooting has been done above one or more oil or gas-bearing
47 strata in the well, plugging in the manner specified shall be
48 done at the nearest suitable point, but not less than twenty
49 feet below and above the stratum shot; or

50 (2) When such cavity shall be in the lowest oil or gas-
51 bearing stratum in the well, a liner shall be placed which
52 shall extend from below the stratum to a suitable point, but
53 not less than twenty feet above the stratum in which
54 shooting has been done. In the event, however, that the
55 shooting has been done above one or more oil or gas-bearing
56 strata in the well, the liner shall be so placed that it will
57 extend not less than twenty feet above, nor less than twenty
58 feet below, the stratum in which shooting has been done.
59 Following the placing of the liner in the manner here
60 specified it shall be compactly filled with cement, mud, clay
61 or other nonporous sealing material.

62 (b) Where the well penetrates one or more workable
63 coal beds and a coal protection string of casing has been
64 circulated and cemented into the surface, the well shall be
65 filled and securely plugged in the manner provided in
66 subdivision (a) of this section, except that expanding cement
67 shall be used instead of regular hydraulic cement, to a point
68 approximately one hundred feet below the bottom of the
69 coal protection string of casing. From the point the well
70 shall be plugged according to the provisions in paragraph
71 (1) or (2) below:

72 (1) A two hundred foot plug of expanding cement shall
73 be placed in the well. From this point, the well shall be
74 filled with mud, clay or other nonporous material to a point
75 one hundred feet below the surface and a plug of cement
76 shall be placed from the point one hundred feet below the
77 surface to the surface with a monument installed therein
78 extending thirty inches above ground level.

79 (2) A one hundred foot plug of expanding cement shall
80 be placed in the well so that the top of such plug is located
81 at a point just below the coal protection string of casing.
82 After such plug has been securely placed in the well, the
83 coal protection string of casing shall be emptied of liquid
84 from the surface to a point one hundred feet below the
85 lowest workable coal bed or to the bottom of the coal
86 protection string of casing, whichever is shallower. A vent
87 or other device approved by the secretary shall then be
88 installed on the top of the coal protection string of casing in
89 such a manner that will prevent liquids and solids from
90 entering the well but will permit ready access to the full
91 internal diameter of the coal protection string of casing
92 when required. The coal protection string of casing and the
93 vent or other device approved by the secretary shall extend,
94 when finally in place, a distance of not less than thirty inches
95 above ground level and shall be permanently marked with
96 the well number assigned by the secretary;

97 (c) Where the well penetrates one or more workable coal
98 beds and a coal protection string of casing has not been
99 circulated and cemented into the surface, the well shall be
100 filled and securely plugged in the manner provided in
101 subsection (a) of this section to a point fifty feet below the
102 lowest workable coal bed. Thereafter, a plug of cement shall
103 be placed in the well at a point not less than forty feet below
104 the lowest workable coal bed. After the cement plug has
105 been securely placed in the well, the well shall be filled with
106 cement to a point twenty feet above the lowest workable
107 coal bed. From this point the well shall be filled with mud,
108 clay or other nonporous material to a point forty feet beneath

109 the next overlying workable coal bed, if such there be, and
110 the well shall then be filled with cement from this point to a
111 point twenty feet above such workable coal bed, and
112 similarly, in case there are more overlying workable coal
113 beds. After the filling and plugging of the well to a point
114 above the highest workable coal bed, filling and plugging of
115 the well shall continue in the manner provided in subsection
116 (a) of this section to a point one hundred feet below the
117 surface, and a plug of cement shall be installed from the
118 point one hundred feet below the surface to the surface with
119 a monument installed therein extending thirty inches above
120 ground level;

121 (d)(1) Where the well penetrates one or more workable
122 coal beds and a coal protection string of casing has not been
123 circulated and cemented into the surface, a coal operator or
124 coal seam owner may request that the well be plugged in the
125 manner provided in subdivision (3) of this subsection rather
126 than by the method provided in subsection (c) of this
127 section. Such request (forms for which shall be provided by
128 the secretary) must be filed in writing with the secretary
129 prior to the scheduled plugging of the well, and must include
130 the number of the well to be plugged and the name and
131 address of the well operator. At the time such request is filed
132 with the secretary, a copy of such request must also be
133 mailed by registered or certified mail to the well operator
134 named in the request.

135 (2) Upon receipt of such request, the secretary shall
136 issue an order staying the plugging of the well and shall
137 promptly determine the cost of plugging the well in the
138 manner provided in subdivision (3) of this subsection and
139 the cost of plugging the well in the manner provided in
140 subsection (c) of this section. In making such determination,
141 the secretary shall take into consideration any agreement
142 previously made between the well operator and the coal
143 operator or coal seam owner making the request. If the
144 secretary determines that the cost of plugging the well in the
145 manner provided in subsection (c) of this section exceeds

146 the cost of plugging the well in the manner provided in
147 subdivision (3) of this subsection, the secretary shall grant
148 the request of the coal operator or owner and shall issue an
149 order requiring the well operator to plug the well in the
150 manner provided in subdivision (3) of this subsection. If the
151 secretary determines that the cost of plugging the well in the
152 manner provided in subsection (c) of this section is less than
153 the cost of plugging the well in the manner provided in
154 subdivision (3) of this subsection, the secretary shall request
155 payment into escrow of the difference between the
156 determined costs by the coal operator or coal seam owner
157 making the request. Upon receipt of satisfactory notice of
158 such payment, or upon receipt of notice that the well
159 operator has waived such payment, the secretary shall grant
160 the request of the coal operator or coal seam owner and shall
161 issue an order requiring the well operator to plug the well in
162 the manner provided in subdivision (3) of this subsection. If
163 satisfactory notice of payment into escrow, or notice that the
164 well operator has waived such payment, is not received by
165 the secretary within fifteen days after the request for
166 payment into escrow, the secretary shall issue an order
167 permitting the plugging of the well in the manner provided
168 in subsection (c) of this section. Copies of all orders issued
169 by the secretary shall be sent by registered or certified mail
170 to the coal operator or coal seam owner making the request
171 and to the well operator. When the escrow agent has
172 received certification from the secretary of the satisfactory
173 completion of the plugging work and the reimbursable extra
174 cost thereof (that is, the difference between the secretary's
175 determination of plugging cost in the manner provided in
176 subsection (c) of this section and the well operator's actual
177 plugging cost in the manner provided in subdivision (3) of
178 this subsection), the escrow agent shall pay the reimbursable
179 sum to the well operator or the well operator's nominee
180 from the payment into escrow to the extent available. The
181 amount by which the payment into escrow exceeds the
182 reimbursable sum plus the escrow agent's fee, if any, shall

183 be repaid to the coal owner. If the amount paid to the well
184 operator or the well operator's nominee is less than the
185 actual reimbursable sum, the escrow agent shall inform the
186 coal owner, who shall pay the deficiency to the well
187 operator or the well operator's nominee within thirty days.
188 If the coal operator breaches this duty to pay the deficiency,
189 the well operator shall have a right of action and be entitled
190 to recover damages as if for wrongful conversion of
191 personality, and reasonable attorney fees.

192 (3) Where a request of a coal operator or coal seam
193 owner filed pursuant to subdivision (1) of this subsection
194 has been granted by the secretary, the well shall be plugged
195 in the manner provided in subsection (a) of this section,
196 except that expanding cement shall be used instead of
197 regular hydraulic cement, to a point approximately two
198 hundred feet below the lowest workable coal bed. A one
199 hundred foot plug of expanding cement shall then be placed
200 in the well beginning at the point approximately two
201 hundred feet below the lowest workable coal bed and
202 extending to a point approximately one hundred feet below
203 the lowest workable coal bed. A string of casing with an
204 outside diameter no less than four and one-half inches shall
205 then be run into the well to a point approximately one
206 hundred feet below the lowest workable coal bed and such
207 string of casing shall be circulated and cemented into the
208 surface. The casing shall then be emptied of liquid from a
209 point approximately one hundred feet below the lowest
210 workable coal bed to the surface, and a vent or other device
211 approved by the secretary shall be installed on the top of the
212 string of casing in such a manner that it will prevent liquids
213 and solids from entering the well but will permit ready
214 access to the full internal diameter of the coal protection
215 string of casing when required. The string of casing and the
216 vent or other device approved by the secretary shall extend,
217 when finally in place, a distance of no less than thirty inches
218 above ground level and shall be permanently marked with

219 the well number assigned by the secretary. Notwithstanding
220 the foregoing provisions of this subdivision, if under
221 particular circumstances a different method of plugging is
222 required to obtain the approval of another governmental
223 agency for the safe mining through of said well, the
224 secretary may approve such different method of plugging if
225 he or she finds the same to be as safe for mining through and
226 otherwise adequate to prevent gas or other fluid migration
227 from the oil and gas reservoirs as the method above
228 specified.

229 (e) Notwithstanding anything in this section to the
230 contrary, where the well to be plugged is an abandoned well
231 that has no known responsible party and the well operator is
232 also a coal operator that intends to mine through the well,
233 the well shall, at a minimum, be plugged as provided in
234 subdivisions (1) and (2) of this subsection.

235 (1) The well will be cleaned out and prepared for
236 plugging or replugging as follows:

237 (A) If the total depth of the well is less than four
238 thousand feet, the operator shall completely clean out the
239 well from the surface to at least two hundred feet below the
240 base of the lowest workable coal bed, but the secretary may
241 require cleaning to a greater depth due to excessive pressure
242 within the well. If the total depth of the well is four
243 thousand feet or greater, the operator shall completely clean
244 out the well from the surface to at least four hundred feet
245 below the base of the lowest workable coal bed. The
246 operator shall provide to the secretary all information it
247 possesses concerning the geological nature of the strata and
248 the pressure of the well, and shall remove all material from
249 the entire diameter of the well, wall to wall;

250 (B) The operator shall prepare down-hole logs for each
251 well. The logs shall consist of a caliper survey and log(s)
252 suitable for determining the top, bottom, and thickness of all

253 coal seams and potential hydrocarbon-producing strata, as
254 well as the location for a bridge plug. The secretary may
255 approve the use of a down-hole camera survey in lieu of
256 down-hole logs. In addition, the owner shall maintain a
257 journal that describes the depth of each material
258 encountered; the nature of each material encountered; the
259 bit size and type used to drill each portion of the hole; the
260 length and type of each material used to plug the well; the
261 length of casing(s) removed, perforated or ripped, or left in
262 place; any sections where casing was cut or milled; and any
263 other pertinent information concerning cleaning and sealing
264 the well. The operator shall maintain all invoices, work
265 orders, and other records relating to all work on the well as
266 part of the journal and provide to the secretary upon request;

267 (C) When cleaning, the operator shall make a diligent
268 effort to remove all the casing in the well. If it is not possible
269 to remove all the casing, then the operator shall take
270 appropriate steps to ensure that the annulus between the
271 casing and between the casings and the well walls are filled
272 with expanding cement, with a minimum five tenths of one
273 percent expansion upon setting, and contain no voids. If the
274 casing cannot be removed, it must be cut or milled at all
275 workable coal bed levels. Any casing which remains shall
276 be perforated or ripped. If the total depth of the well is less
277 than four thousand feet, perforations or rips are required
278 every fifty feet from two hundred feet below the base of the
279 lowest mineable coal bed up to one hundred feet above the
280 uppermost workable coal bed. If the total depth of the well
281 is four thousand feet or greater, perforations or rips are
282 required every fifty feet from four hundred feet below the
283 base of the lowest workable coal bed up to one hundred feet
284 above the uppermost workable coal bed. If the operator,
285 using a casing bond log, demonstrates to the satisfaction of
286 the secretary that all annuli in the well are already
287 adequately sealed with cement, then the operator shall not
288 be required to perforate or rip the casing. When multiple

289 casing and tubing strings are present in the workable coal
290 bed, any casing which remains shall be ripped or perforated
291 and filled with expanding cement in accordance with this
292 paragraph. The operator shall maintain a casing bond log
293 for each casing and tubing string if used in lieu of ripping or
294 perforating multiple strings;

295 (D) If the secretary concludes that the completely
296 cleaned well emits excessive amounts of gas, the operator
297 must place a mechanical bridge plug in the well. If the total
298 depth of the well is less than four thousand feet, the
299 mechanical bridge plug shall be placed in a competent
300 stratum at least two hundred feet below the base of the
301 lowest workable coal bed, but above the top of the
302 uppermost hydrocarbon-producing stratum. If the total
303 depth of the well is four thousand feet or greater, the
304 mechanical bridge plug shall be placed in a competent
305 stratum at least four hundred feet below the base of the
306 lowest mineable coal bed, but above the top of the
307 uppermost hydrocarbon-producing stratum: *Provided*, That
308 the secretary may require a greater distance to set the
309 mechanical bridge plug, regardless of the total depth of the
310 well, based upon excessive pressure within the well. The
311 operator shall provide the secretary with all information the
312 operator possesses concerning the geologic nature of the
313 strata and pressure of the well. If it is not possible to set a
314 mechanical bridge plug, an appropriately sized packer may
315 be used; and

316 (E) If the upper-most hydrocarbon-producing stratum is
317 within three hundred feet of the base of the lowest workable
318 coal bed, the operator shall properly place mechanical
319 bridge plugs as described in paragraph (D) of this
320 subdivision to isolate the hydrocarbon-producing stratum
321 from the expanding cement plug. Nevertheless, if the total
322 depth of the well is less than four thousand feet, the operator
323 shall place a minimum of two hundred feet of expanding
324 cement below the lowest workable coal bed. If the total

325 depth of the well is four thousand feet or greater, the
326 operator shall place a minimum of four hundred feet of
327 expanding cement below the lowest mineable coal bed:
328 *Provided*, That the secretary may require a greater distance
329 to set the mechanical bridge plug, regardless of the total
330 depth of the well, based upon excessive pressure within the
331 well.

332 (2) After the well is completely cleaned pursuant to
333 subdivision one of this subsection, the operator shall plug or
334 replug the well to the surface as follows:

335 If the total depth of the well is less than four thousand
336 feet, the operator shall pump expanding cement slurry down
337 the well to form a plug which runs from at least two hundred
338 feet below the base of the lowest workable coal bed to the
339 surface. If the total depth of the well is four thousand feet or
340 greater, the operator shall pump expanding cement slurry
341 down the well to form a plug which runs from at least four
342 hundred feet below the base of the lowest workable coal bed
343 to the surface: *Provided*, That the secretary may, regardless
344 of the total depth of the well, require a lower depth based
345 upon excessive pressure within the well. The expanding
346 cement slurry will be placed in the well under a pressure of
347 at least two hundred pounds per square inch. Portland
348 cement shall be used to fill the area from one hundred feet
349 above the top of the uppermost workable coal seam to the
350 surface: *Provided*, That the secretary may require a higher
351 distance based upon excessive pressure within the well;

352 (f) Any person may apply to the secretary for an order
353 to clean out and replug a previously plugged well in a
354 manner which will permit the safe mining through of such
355 well. Such application shall be filed with the secretary and
356 shall contain the well number, a general description of the
357 well location, the name and address of the owner of the
358 surface land upon which the well is located, a copy of or
359 record reference to a deed, lease or other document which

360 entitles the applicant to enter upon the surface land, a
361 description of the methods by which the well was previously
362 plugged, and a description of the method by which such
363 applicant proposes to clean out and replug the well. At the
364 time an application is filed with the secretary, a copy shall
365 be mailed by registered or certified mail to the owner or
366 owners of the land, and the oil and gas lessee of record, if
367 any, of the site upon which the well is located. If no
368 objection to the replugging of the well is filed by any such
369 landowner or oil and gas lessee within thirty days after the
370 filing of the application, and if the secretary determines that
371 the method proposed for replugging the well will permit the
372 safe mining through of such well, the secretary shall grant
373 the application by an order authorizing the replugging of the
374 well. Such order shall specify the method by which the well
375 shall be replugged, and copies thereof shall be mailed by
376 certified or registered mail to the applicant and to the owner
377 or owners of the land, and the oil and gas lessee, if any, of
378 the site upon which such well is located. If any such
379 landowner or oil and gas lessee objects to the replugging of
380 the well, the secretary shall notify the applicant of such
381 objection. Thereafter, the director shall schedule a hearing
382 to consider the objection, which hearing shall be held after
383 notice by registered or certified mail to the objectors and the
384 applicant. After consideration of the evidence presented at
385 the hearing, the secretary shall issue an order authorizing the
386 replugging of the well if the secretary determines that
387 replugging of the well will permit the safe mining through
388 of such well. Such order shall specify the manner in which
389 the well shall be replugged and copies thereof shall be sent
390 by registered or certified mail to the applicant and objectors.
391 The secretary shall issue an order rejecting the application
392 if the secretary determines that the proposed method for
393 replugging the well will not permit the safe mining through
394 of such well;

395 (g) All persons adversely affected, by a determination
396 or order of the secretary issued pursuant to the provisions of
397 this section shall be entitled to judicial review in accordance
398 with the provisions of articles five and six, chapter twenty-
399 nine-a of this code.

ARTICLE 11. WATER POLLUTION CONTROL ACT.

***§22-11-7b. Water quality standards; implementation of antidegradation procedures; procedure to determine compliance with the biologic component of the narrative water quality standard.**

1 (a) All authority to promulgate rules and implement
2 water quality standards is vested in the Secretary of the
3 Department of Environmental Protection.

4 (b) All meetings with the secretary or any employee of
5 the department and any interested party which are convened
6 for the purpose of making a decision or deliberating toward
7 a decision as to the form and substance of the rule governing
8 water quality standards or variances thereto shall be held in
9 accordance with the provisions of article nine-a, chapter six
10 of this code. When the secretary is considering the form and
11 substance of the rules governing water quality standards, the
12 following are not meetings pursuant to article nine-a,
13 chapter six of this code: (i) Consultations between the
14 department's employees or its consultants, contractors or
15 agents; (ii) consultations with other state or federal agencies
16 and the department's employees or its consultants,
17 contractors or agents; or (iii) consultations between the
18 secretary, the department's employees or its consultants,
19 contractors or agents with any interested party for the
20 purpose of collecting facts and explaining state and federal
21 requirements relating to a site specific change or variance.

*NOTE: This section was also amended by H. B. 2506 (Chapter 88),
which passed prior to this act.

22 (c) In order to carry out the purposes of this chapter, the
23 secretary shall promulgate legislative rules in accordance
24 with the provisions of article three, chapter twenty-nine-a of
25 this code setting standards of water quality applicable to
26 both the surface waters and groundwaters of this state.
27 Standards of quality with respect to surface waters shall
28 protect the public health and welfare, wildlife, fish and
29 aquatic life and the present and prospective future uses of
30 the water for domestic, agricultural, industrial, recreational,
31 scenic and other legitimate beneficial uses thereof. The
32 water quality standards of the secretary may not specify the
33 design of equipment, type of construction or particular
34 method which a person shall use to reduce the discharge of
35 a pollutant.

36 (d) The secretary shall establish the antidegradation
37 implementation procedures as required by 40 C. F. R.
38 131.12(a) which apply to regulated activities that have the
39 potential to affect water quality. The secretary shall propose
40 for legislative approval, pursuant to article three, chapter
41 twenty-nine-a of the code, legislative rules to establish
42 implementation procedures which include specifics of the
43 review depending upon the existing uses of the water body
44 segment that would be affected, the level of protection or
45 "tier" assigned to the applicable water body segment, the
46 nature of the activity and the extent to which existing water
47 quality would be degraded. Any final classification
48 determination of a water as a Tier 2.5 water (Water of
49 Special Concern) does not become effective until that
50 determination is approved by the Legislature through the
51 legislative rule-making process as provided in article three,
52 chapter twenty-nine-a of the code.

53 (e) All remaining variances shall be applied for and
54 considered by the secretary and any variance granted shall
55 be consistent with 33 U. S. C. Section 1311(p) of the Federal
56 Water Control Act. At a minimum, when considering an
57 application for a remaining variance the secretary shall
58 consider the data and information submitted by the

59 applicant for the variance; and comments received at a
60 public comment period and public hearing. The secretary
61 may not grant a variance without requiring the applicant to
62 improve the instream water quality as much as is reasonably
63 possible by applying best available technology
64 economically achievable using best professional judgment.
65 Any such requirement will be included as a permit
66 condition. The secretary may not grant a variance without a
67 demonstration by the applicant that the coal remining
68 operation will result in the potential for improved instream
69 water quality as a result of the remining operation. The
70 secretary may not grant a variance where he or she
71 determines that degradation of the instream water quality
72 will result from the remining operation.

73 (f) The secretary shall propose rules measuring
74 compliance with the aquatic life component of West
75 Virginia's narrative water quality standard requires
76 evaluation of the holistic health of the aquatic ecosystem
77 and a determination that the stream: (i) contains appropriate
78 trophic levels of fish, in streams that have flows sufficient
79 to support fish populations; and (ii) the aquatic community
80 is composed of benthic invertebrate assemblages sufficient
81 to perform the biological functions necessary to support fish
82 communities within the assessed reach, or, if the assessed
83 reach has insufficient flows to support a fish community, in
84 those downstream reaches where fish are present. The
85 secretary shall propose rules for legislative approval in
86 accordance with the provisions of article three, chapter
87 twenty-nine-a of this code that implement the provisions of
88 this subsection. Rules promulgated pursuant to this
89 subsection may not establish measurements for biologic
90 components of West Virginia's narrative water quality
91 standards that would establish standards less protective than
92 legislatively-approved rules that existed at the time of
93 enactment of the amendments to this subsection by the
94 Legislature during the 2012 regular session.

**CHAPTER 22A. MINERS' HEALTH, SAFETY AND
TRAINING.**

**ARTICLE 1. OFFICE OF MINERS' HEALTH, SAFETY AND
TRAINING; ADMINISTRATION; ENFORCEMENT.**

§22A-1-2. Definitions.

1 Unless the context in which used clearly requires a
2 different meaning, the following definitions apply to this
3 chapter:

4 (a) *General.* —

5 (1) Accident: The term “accident” means any mine
6 explosion, mine ignition, mine fire, or mine inundation, or
7 injury to, or death of any person.

8 (2) Agent: The term “agent” means any person charged
9 with responsibility for the operation of all or a part of a mine
10 or the supervision of the miners in a mine.

11 (3) Approved: The term “approved” means in strict
12 compliance with mining law, or, in the absence of law,
13 accepted by a recognized standardizing body or
14 organization whose approval is generally recognized as
15 authoritative on the subject.

16 (4) Face equipment: The term “face equipment” means
17 mobile or portable mining machinery having electric motors
18 or accessory equipment normally installed or operated in by
19 the last open crosscut in an entry or room.

20 (5) Imminent danger: The term “imminent danger”
21 means the existence of any condition or practice in a coal
22 mine which could reasonably be expected to cause death or
23 serious physical harm before such condition or practice can
24 be abated.

25 (6) Mine: The term “mine” includes the shafts, slopes,
26 drifts or inclines connected with, or intended in the future to
27 be connected with, excavations penetrating coal seams or

28 strata, which excavations are ventilated by one general air
29 current or divisions thereof, and connected by one general
30 system of mine haulage over which coal may be delivered
31 to one or more points outside the mine, and the surface
32 structures or equipment connected or associated therewith
33 which contribute directly or indirectly to the mining,
34 preparation or handling of coal, or construction thereof.

35 (7) Miner: The term “miner” means any individual
36 working in a coal mine.

37 (8) Operator: The term “operator” means any firm,
38 corporation, partnership or individual operating any coal
39 mine, or part thereof, or engaged in the construction of any
40 facility associated with a coal mine.

41 (9) Permissible: The term “permissible” means any
42 equipment, device or explosive that has been approved as
43 permissible by the Federal Mine Safety and Health
44 administration and/or the United States Bureau of Mines
45 and meets all requirements, restrictions, exceptions,
46 limitations and conditions attached to such classification by
47 that agency or the bureau.

48 (10) Person: The term “person” means any individual,
49 partnership, association, corporation, firm, subsidiary of a
50 corporation or other organization.

51 (11) Work of preparing the coal: The term “work of
52 preparing the coal” means the breaking, crushing, sizing,
53 cleaning, washing, drying, mixing, storing and loading of
54 bituminous coal or lignite and such other work of preparing
55 such coal as is usually done by the operator of the coal mine.

56 (b) *Office of Miners’ Health, Safety and Training.* —

57 (1) Board of appeals: The term “board of appeals”
58 means as provided for in article five of this chapter.

59 (2) Director: The term “director” means the Director of
60 the Office of Miners’ Health, Safety and Training provided
61 for in section three of this article.

62 (3) Mine inspector: The term “mine inspector” means a
63 state mine inspector provided for in section eight of this
64 article.

65 (4) Office: The term “office” means, when referring to
66 a specific office, the Office of Miners’ Health, Safety and
67 Training provided for in this article. The term “office”,
68 when used generically, includes any office, board, agency,
69 unit, organizational entity or component thereof.

70 (c) *Mine areas.* —

71 (1) Abandoned workings: The term “abandoned
72 workings” means excavation, either caved or sealed, that is
73 deserted and in which further mining is not intended, or
74 open workings which are ventilated and not inspected
75 regularly.

76 (2) Active workings: The term “active workings” means
77 all places in a mine that are ventilated and inspected
78 regularly.

79 (3) Drift: The term “drift” means a horizontal or
80 approximately horizontal opening through the strata or in a
81 coal seam and used for the same purposes as a shaft.

82 (4) Excavations and workings: The term “excavations
83 and workings” means any or all parts of a mine excavated
84 or being excavated, including shafts, slopes, drifts, tunnels,
85 entries, rooms and working places, whether abandoned or in
86 use.

87 (5) Inactive workings: The term “inactive workings”
88 includes all portions of a mine in which operations have
89 been suspended for an indefinite period, but have not been
90 abandoned.

91 (6) Mechanical working section: The term “mechanical
92 working section” means an area of a mine: (A) In which coal
93 is loaded mechanically; (B) which is comprised of a number
94 of working places that are generally contiguous; and (C)
95 which is of such size to permit necessary supervision during
96 shift operation, including pre-shift and on-shift
97 examinations and tests required by law.

98 (7) Panel: The term “panel” means workings that are or
99 have been developed off of submain entries which do not
100 exceed three thousand feet in length.

101 (8) Return air: The term “return air” means a volume of
102 air that has passed through and ventilated all the working
103 places in a mine section.

104 (9) Shaft: The term “shaft” means a vertical opening
105 through the strata that is or may be used for the purpose of
106 ventilation, drainage, and the hoisting and transportation of
107 individuals and material, in connection with the mining of
108 coal.

109 (10) Slope: The term “slope” means a plane or incline
110 roadway, usually driven to a coal seam from the surface and
111 used for the same purposes as a shaft.

112 (11) Working face: The term “working face” means any
113 place in a coal mine in which work of extracting coal from
114 its natural deposit in the earth is performed during the
115 mining cycle.

116 (12) Working place: The term “working place” means
117 the area of a coal mine in by the last open crosscut.

118 (13) Working section: The term “working section”
119 means all areas of the coal mine from the loading point of
120 the section to and including the working faces.

121 (14) Working unit: The term “working unit” means an
122 area of a mine in which coal is mined with a set of
123 production equipment; a conventional mining unit by a

124 single loading machine; a continuous mining unit by a
125 single continuous mining machine, which is comprised of a
126 number of working places.

127 (d) *Mine personnel.* —

128 (1) Assistant mine foreman: The term “assistant mine
129 foreman” means a certified person designated to assist the
130 mine foreman in the supervision of a portion or the whole
131 of a mine or of the persons employed therein.

132 (2) Certified electrician: The term “certified electrician”
133 means any person who is qualified as a mine electrician and
134 who has passed an examination given by the office, or has
135 at least three years of experience in performing electrical
136 work underground in a coal mine, in the surface work areas
137 of an underground coal mine, in a surface coal mine, in a
138 noncoal mine, in the mine equipment manufacturing
139 industry or in any other industry using or manufacturing
140 similar equipment, and has satisfactorily completed a coal
141 mine electrical training program approved by the office or
142 any person who is qualified as a mine electrician in any state
143 that recognizes certified electricians licensed in West
144 Virginia.

145 (3) Certified person: The term “certified person”, when
146 used to designate the kind of person to whom the
147 performance of a duty in connection with the operation of a
148 mine shall be assigned, means a person who is qualified
149 under the provisions of this law to perform such duty.

150 (4) Interested persons: The term “interested persons”
151 includes the operator, members of any mine safety
152 committee at the mine affected and other duly authorized
153 representatives of the mine workers and the office.

154 (5) Mine foreman: The term “mine foreman” means the
155 certified person whom the operator or superintendent shall
156 place in charge of the inside workings of the mine and of the
157 persons employed therein.

158 (6) Qualified person: The term “qualified person”
159 means a person who has completed an examination and is
160 considered qualified on record by the office.

161 (7) Shot firer: The term “shot firer” means any person
162 having had at least two years of practical experience in coal
163 mines, who has a knowledge of ventilation, mine roof and
164 timbering, and who has demonstrated his or her knowledge
165 of mine gases, the use of a flame safety lamp, and other
166 approved detecting devices by examination and certification
167 given him or her by the office.

168 (8) Superintendent: The term “superintendent” means
169 the person who has, on behalf of the operator, immediate
170 supervision of one or more mines.

171 (9) Supervisor: The term “supervisor” means a
172 superintendent, mine foreman, assistant mine foreman or
173 any person specifically designated by the superintendent or
174 mine foreman to supervise work or employees and who is
175 acting pursuant to such specific designation and
176 instructions.

177 (e) *Electrical.* —

178 (1) Armored cable: The term “armored cable” means a
179 cable provided with a wrapping of metal, usually steel wires
180 or tapes, primarily for the purpose of mechanical protection.

181 (2) Borehole cable: The term “borehole cable” means a
182 cable designed for vertical suspension in a borehole or shaft
183 and used for power circuits in the mine.

184 (3) Branch circuit: The term “branch circuit” means any
185 circuit, alternating current or direct current, connected to
186 and leading from the main power lines.

187 (4) Cable: The term “cable” means a standard conductor
188 (single conductor cable) or a combination of conductors
189 insulated from one another (multiple conductor cable).

190 (5) Circuit breaker: The term “circuit breaker” means a
191 device for interrupting a circuit between separable contacts
192 under normal or abnormal conditions.

193 (6) Delta connected: The term “delta connected” means
194 a power system in which the windings or transformers or
195 a.c. generators are connected to form a triangular phase
196 relationship, and with phase conductors connected to each
197 point of the triangle.

198 (7) Effectively grounded: The term “effectively
199 grounded” is an expression which means grounded through
200 a grounding connection of sufficiently low impedance
201 (inherent or intentionally added or both) so that fault
202 grounds which may occur cannot build up voltages in excess
203 of limits established for apparatus, circuits or systems so
204 grounded.

205 (8) Flame-resistant cable, portable: The term “flame-
206 resistant cable, portable” means a portable flame-resistant
207 cable that has passed the flame tests of the federal mine
208 safety and health administration.

209 (9) Ground or grounding conductor (mining): The term
210 “ground or grounding conductor (mining)”, also referred to
211 as a safety ground conductor, safety ground and frame
212 ground, means a metallic conductor used to connect the
213 metal frame or enclosure of any equipment, device or wiring
214 system with a mine track or other effective grounding
215 medium.

216 (10) Grounded (earthed): The term “grounded
217 (earthed)” means that the system, circuit or apparatus
218 referred to is provided with a ground.

219 (11) High voltage: The term “high voltage” means
220 voltages of more than one thousand volts.

221 (12) Lightning arrester: The term “lightning arrester”
222 means a protective device for limiting surge voltage on
223 equipment by discharging or by passing surge current; it

224 prevents continued flow of follow current to ground and is
225 capable of repeating these functions as specified.

226 (13) Low voltage: The term “low voltage” means up to
227 and including six hundred sixty volts.

228 (14) Medium voltage: The term “medium voltage”
229 means voltages from six hundred sixty-one to one thousand
230 volts.

231 (15) Mine power center or distribution center: The term
232 “mine power center or distribution center” means a
233 combined transformer or distribution unit, complete within
234 a metal enclosure from which one or more low-voltage
235 power circuits are taken.

236 (16) Neutral (derived): The term “neutral (derived)”
237 means a neutral point or connection established by the
238 addition of a “zig-zag” or grounding transformer to a
239 normally underground power system.

240 (17) Neutral point: The term “neutral point” means the
241 connection point of transformer or generator windings from
242 which the voltage to ground is nominally zero, and is the
243 point generally used for system groundings in wye-
244 connected a.c. power system.

245 (18) Portable (trailing) cable: The term “portable
246 (trailing) cable” means a flexible cable or cord used for
247 connecting mobile, portable or stationary equipment in
248 mines to a trolley system or other external source of electric
249 energy where permanent mine wiring is prohibited or is
250 impracticable.

251 (19) Wye-connected: The term “wye-connected” means
252 a power system connection in which one end of each phase
253 windings or transformers or a.c. generators are connected
254 together to form a neutral point, and a neutral conductor
255 may or may not be connected to the neutral point, and the
256 neutral point may or may not be grounded.

257 (20) Zig-zag transformer (grounding transformer): The
258 term “zig-zag transformer (grounding transformer)” means
259 a transformer intended primarily to provide a neutral point
260 for grounding purposes.

**§22A-1-5. Offices continued in the Office of Miners’ Health,
Safety and Training.**

1 (a) There are hereby continued in the Office of Miners’
2 Health, Safety and Training the following offices:

3 (1) The Board of Coal Mine Health and Safety
4 established pursuant to article six of this chapter;

5 (2) The Coal Mine Safety and Technical Review
6 Committee established pursuant to article six of this
7 chapter; and

8 (3) The Board of Appeals provided for pursuant to the
9 provisions of article five of this chapter.

10 (b) Nothing in this article may authorize the director or
11 the secretary of the Department of Commerce, Labor and
12 Environmental resources to alter, discontinue or abolish any
13 office, board or commission or the functions thereof, which
14 are established by statute.

ARTICLE 2. UNDERGROUND MINES.

§22A-2-59. First-aid equipment.

1 (a) Each operator of an underground coal mine shall
2 maintain a supply of first-aid equipment at each of the
3 following locations:

4 (1) At the mine dispatcher’s office and on the surface in
5 close proximity to the mine entry.

6 (2) At the bottom of each regularly traveled slope or
7 shaft; however, where the bottom of such slope or shaft is
8 not more than one thousand feet from the surface, such first-

9 aid supplies may be maintained on the surface at the
10 entrance of the mine.

11 (3) At a point in each working section not more than five
12 hundred feet outby the active working face or faces.

13 (b) The first-aid equipment required to be maintained
14 shall include at least the following:

15 (1) One stretcher.

16 (2) One broken-back board.

17 (3) Twenty-four triangular bandages.

18 (4) Eight four-inch bandage compresses.

19 (5) Sixteen two-inch bandage compresses.

20 (6) Twelve one-inch adhesive compresses.

21 (7) One foille.

22 (8) Two cloth blankets.

23 (9) One rubber blanket.

24 (10) Two tourniquets.

25 (11) One one-ounce bottle of aromatic spirits of
26 ammonia.

27 (12) Two inflatable plastic arm splints.

28 (13) Two inflatable plastic leg splints.

29 (14) Six small splints, metal or wooden.

30 (15) Two cold packs.

31 (16) One automated external defibrillator (AED) unit.

32 (c) All first-aid supplies required to be maintained under
33 the section shall be stored in suitable sanitary, dust-tight,

34 moisture-proof containers and such supplies shall be
35 accessible to the miners.

36 (d) No first-aid material shall be removed or diverted
37 without authorization, except in case of accident in or about
38 the mine.

39 (e) On all occasions when a person becomes sick or
40 injured underground to the extent that he or she must go to
41 the surface, he or she shall be accompanied by one or more
42 persons.

ARTICLE 2A. USE OF DIESEL-POWERED EQUIPMENT IN UNDERGROUND COAL MINES.

PART X. EXISTING RULES TO BE REVISED.

§22A-2A-1001. Existing state rules to be revised.

1 (a) By August 31, 2017, the director shall revise state
2 rules promulgated pursuant to the authority of this chapter
3 as follows:

4 (1) To reflect the abolishment of the West Virginia
5 Diesel Equipment Commission and transfer of duties and
6 responsibilities to the director, pursuant to section 301 of
7 this article;

8 (2) To reflect that a mine operator shall be permitted to
9 replace a filter or catalyst of the same make and model
10 without contacting the Office of Miners' Health, Safety and
11 Training;

12 (3) To reflect that ASE certified diesel mechanics shall
13 make repairs and adjustments to diesel fuel injection
14 systems, engine timing or exhaust emissions control and
15 conditioning systems;

16 (4) To permit a mine operator to dispose of used intake
17 air filters, exhaust diesel particulate matter filters and engine
18 oil filters in their original containers or other suitable
19 enclosed containers and to remove them from the

20 underground mine to the surface no less than once in a
21 twenty-four hour period;

22 (5) To require that records of emissions tests, 200-hour
23 maintenance tests and repairs shall be countersigned once
24 each week by the certified mine electrician or mine foreman,
25 that scheduled maintenance and an independent analysis of
26 engine oil occur at two hundred hours of engine operation,
27 and that diagnostic testing of engine operation occur at two
28 hundred hours;

29 (6) To remove the requirement that a portable carbon
30 monoxide (CO) sampling device be installed into the
31 untreated exhaust gas coupling provided in the operator's
32 cab;

33 (7) To modify the time and duration for which the CO
34 sampler must be started to measure and record CO levels
35 from every minute for five minutes to every thirty seconds
36 for ninety seconds;

37 (8) To modify the alternative condition by which
38 equipment fails under 196 C. S. R. §1-21, to omit the
39 reference to the average CO reading for untreated exhaust
40 gas is greater than twice the baseline; and

41 (9) To remove the requirement for eight hours of annual
42 diesel equipment operator refresher training separate from
43 that required by MSHA regulations.

ARTICLE 6. BOARD OF COAL MINE HEALTH AND SAFETY.

§22A-6-3. Board continued; membership; method of nomination and appointment; meetings; vacancies; quorum.

1 (a) The Board of Coal Mine Health and Safety is
2 continued, and commencing July 1, 2010, is a separate
3 independent board within the Department of Commerce.
4 The board consists of six voting members and one *ex officio*,

5 nonvoting member who are residents of this state, and who
6 are appointed as follows:

7 (1) The Governor shall appoint, by and with the advice
8 and consent of the Senate, three members to represent the
9 viewpoint of those operators in this state. When such
10 members are to be appointed, the Governor shall request
11 from the major trade association representing operators in
12 this state a list of three nominees for each such position on
13 the board. All such nominees shall be persons with special
14 experience and competence in health and safety. There shall
15 be submitted with such list a summary of the qualifications
16 of each nominee. If the full lists of nominees are submitted
17 in accordance with the provisions of this subdivision, the
18 Governor shall make the appointments from the persons so
19 nominated. For purposes of this subdivision, the major trade
20 association representing operators in this state is that
21 association which represents operators accounting for over
22 one half of the coal produced in mines in this state in the
23 year prior to the year in which the appointment is to be
24 made.

25 (2) The Governor shall appoint, by and with the advice
26 and consent of the Senate, three members who can
27 reasonably be expected to represent the viewpoint of the
28 working miners of this state. When members are to be
29 appointed, the Governor shall request from the major
30 employee organization representing coal miners within this
31 state a list of three nominees for each position on the board.
32 The highest ranking official within the major employee
33 organization representing coal miners within this state shall
34 submit a list of three nominees for each such position on the
35 board. The nominees shall have a background in health and
36 safety. The Governor shall make the appointments from the
37 requested list of nominees.

38 (3) All appointments made by the Governor under the
39 provisions of subdivisions (1) and (2) of this subsection
40 shall be with the advice and consent of the Senate; and

41 (4) The Director of the Office of Miners' Health, Safety
42 and Training or his or her designee shall serve as an *ex*
43 *officio*, nonvoting member.

44 (b) Members serving on the board on January 1, 2017,
45 shall continue to serve for a minimum of three years until
46 June 30, 2020. The term is three years. Members are eligible
47 for reappointment.

48 (c) Commencing on July 1, 2017, the board shall assume
49 all powers and responsibilities of the Board of Miners'
50 Training, Education and Certification established pursuant
51 to article seven of this chapter, the mine inspectors'
52 examining board established pursuant to article nine of this
53 chapter, and the Mine Safety Technology Task Force
54 established pursuant to article eleven of this chapter.

55 (d) The Governor shall appoint, subject to the approval
56 of a majority of the members of the board appointed under
57 subdivisions (1) and (2), subsection (a) of this section, a
58 Health and Safety Administrator in accordance with the
59 provisions of section six of this article, who shall certify all
60 official records of the board. The Health and Safety
61 Administrator shall be a full-time officer of the Board of
62 Coal Mine Health and Safety with the duties provided for in
63 section six of this article. The Health and Safety
64 Administrator shall have such education and experience as
65 the Governor deems necessary to properly investigate areas
66 of concern to the board in the development of rules
67 governing mine health and safety. The Governor shall
68 appoint as Health and Safety Administrator a person who
69 has an independent and impartial viewpoint on issues
70 involving mine safety. The Health and Safety Administrator
71 shall be a person who has not been during the two years
72 immediately preceding appointment, and is not during his
73 or her term, an officer, trustee, director, substantial
74 shareholder, contractor, consultant or employee of any coal
75 operator, or an employee or officer of an employee
76 organization or a spouse of any such person. The Health and
77 Safety Administrator shall have the expertise to draft

78 proposed rules and shall prepare such rules as are required
79 by this code and on such other areas as will improve coal
80 mine health and safety.

81 (e) The board shall meet at least once during each
82 calendar month, or more often as may be necessary, and at
83 other times upon the call of the chair, or upon the request of
84 any three members of the board. Under the direction of the
85 board, the Health and Safety Administrator shall prepare an
86 agenda for each board meeting giving priority to the
87 promulgation of rules as may be required from time to time
88 by this code, and as may be required to improve coal mine
89 health and safety. The Health and Safety Administrator shall
90 provide each member of the board with notice of the
91 meeting and the agenda as far in advance of the meeting as
92 practical, but in any event, at least five days prior thereto.
93 No meeting of the board shall be conducted unless said
94 notice and agenda are given to the board members at least
95 five days in advance, as provided herein, except in cases of
96 emergency, as declared by the director, in which event
97 members shall be notified of the board meeting and the
98 agenda: *Provided*, That upon agreement of a majority of the
99 quorum present, any scheduled meeting may be ordered
100 recessed to another day certain without further notice of
101 additional agenda.

102 When proposed rules are to be finally adopted by the
103 board, copies of such proposed rules shall be delivered to
104 members not less than five days before the meeting at which
105 such action is to be taken. If not so delivered, any final
106 adoption or rejection of rules shall be considered on the
107 second day of a meeting of the board held on two
108 consecutive days, except that by the concurrence of at least
109 four members of the board, the board may suspend this rule
110 of procedure and proceed immediately to the consideration
111 of final adoption or rejection of rules. When a member fails
112 to appear at three consecutive meetings of the board or at
113 one half of the meetings held during a one-year period, the
114 Health and Safety Administrator shall notify the member

115 and the Governor of such fact. Such member shall be
116 removed by the Governor unless good cause for absences is
117 shown.

118 (f) Whenever a vacancy on the board occurs,
119 nominations and appointments shall be made in the manner
120 prescribed in this section: *Provided*, That in the case of an
121 appointment to fill a vacancy, nominations of three persons
122 for each such vacancy shall be requested by and submitted
123 to the Governor within thirty days after the vacancy occurs
124 by the major trade association or major employee
125 organization, if any, which nominated the person whose seat
126 on the board is vacant. The vacancy shall be filled by the
127 Governor within thirty days of his or her receipt of the list
128 of nominations.

129 (g) A quorum of the board is four members which shall
130 include at least two members representing the viewpoint of
131 operators and at least two members representing the
132 viewpoint of the working miners, and the board may act
133 officially by a majority of those members who are present,
134 except that no vote of the board may be taken unless all six
135 voting members are present.

§22A-6-4. Board powers and duties.

1 (a) The board shall adopt as standard rules the “coal
2 mine health and safety provisions of this chapter”. Such
3 standard rules and any other rules shall be adopted by the
4 board without regard to the provisions of chapter twenty-
5 nine-a of this code. The Board of Coal Mine Health and
6 Safety shall devote its time toward promulgating rules in
7 those areas specifically directed by this chapter and those
8 necessary to prevent fatal accidents and injuries.

9 (b) The board shall review such standard rules and,
10 when deemed appropriate to improve or enhance coal mine
11 health and safety, revise the same or develop and
12 promulgate new rules dealing with coal mine health and
13 safety.

14 (c) The board shall develop, promulgate and revise, as
15 may be appropriate, rules as are necessary and proper to
16 effectuate the purposes of article two of this chapter and to
17 prevent the circumvention and evasion thereof, all without
18 regard to the provisions of chapter twenty-nine-a of this
19 code:

20 (1) Upon consideration of the latest available scientific
21 data in the field, the technical feasibility of standards, and
22 experience gained under this and other safety statutes, such
23 rules may expand protections afforded by this chapter
24 notwithstanding specific language therein, and such rules
25 may deal with subject areas not covered by this chapter to
26 the end of affording the maximum possible protection to the
27 health and safety of miners.

28 (2) No rules promulgated by the board shall reduce or
29 compromise the level of safety or protection afforded
30 miners below the level of safety or protection afforded by
31 this chapter.

32 (3) Any miner or representative of any miner, or any
33 coal operator has the power to petition the Circuit Court of
34 Kanawha County for a determination as to whether any rule
35 promulgated or revised reduces the protection afforded
36 miners below that provided by this chapter, or is otherwise
37 contrary to law: *Provided*, That any rule properly
38 promulgated by the board pursuant to the terms and
39 conditions of this chapter creates a rebuttable presumption
40 that said rule does not reduce the protection afforded miners
41 below that provided by this chapter.

42 (4) The director shall cause proposed rules and a notice
43 thereof to be posted as provided in section eighteen, article
44 one of this chapter. The director shall deliver a copy of such
45 proposed rules and accompanying notice to each operator
46 affected. A copy of such proposed rules shall be provided to
47 any individual by the director's request. The notice of
48 proposed rules shall contain a summary in plain language
49 explaining the effect of the proposed rules.

50 (5) The board shall afford interested persons a period of
51 not less than thirty days after releasing proposed rules to
52 submit written data or comments. The board may, upon the
53 expiration of such period and after consideration of all
54 relevant matters presented, promulgate such rules with such
55 modifications as it may deem appropriate.

56 (6) On or before the last day of any period fixed for the
57 submission of written data or comments under subdivision
58 (5) of this section, any interested person may file with the
59 board written objections to a proposed rule, stating the
60 grounds therefor and requesting a public hearing on such
61 objections. As soon as practicable after the period for filing
62 such objections has expired, the board shall release a notice
63 specifying the proposed rules to which objections have been
64 filed and a hearing requested.

65 (7) Promptly after any such notice is released by the
66 board under subdivision (6) of this section, the board shall
67 issue notice of, and hold a public hearing for the purpose of
68 receiving relevant evidence. Within sixty days after
69 completion of the hearings, the board shall make findings of
70 fact which shall be public, and may promulgate such rules
71 with such modifications as it deems appropriate. In the
72 event the board determines that a proposed rule should not
73 be promulgated or should be modified, it shall within a
74 reasonable time publish the reasons for its determination.

75 (8) All rules promulgated by the board shall be
76 published in the State Register and continue in effect until
77 modified or superseded in accordance with the provisions
78 of this chapter.

79 (d) To carry out its duties and responsibilities, the board
80 is authorized to employ such personnel, including legal
81 counsel, experts and consultants, as it deems necessary. In
82 addition, the board, within the appropriations provided for
83 by the Legislature, may conduct or contract for research and
84 studies and is entitled to the use of the services, facilities

85 and personnel of any agency, institution, school, college or
86 university of this state.

87 (e) The director shall within sixty days of a coal mining
88 fatality or fatalities provide the board with all available
89 reports regarding such fatality or fatalities.

90 The board shall review all reports and any
91 recommended rules submitted by the director, receive any
92 additional information it requests, and may, on its own
93 initiative, investigate the circumstances surrounding a coal
94 mining fatality or fatalities and ascertain the cause or causes
95 of such coal mining fatality or fatalities. In order to
96 investigate a coal mining fatality or fatalities, a majority of
97 the board must vote in favor of commencing an
98 investigation. Within ninety days of the receipt of the
99 Federal Mine Safety and Health Administration's fatal
100 accident report and the director's report and recommended
101 rules, the board shall review and consider the presentation
102 of said report and rules and the results of its own
103 investigation, if any, and, if a majority of all voting board
104 members determines that additional rules can assist in the
105 prevention of the specific type of fatality, the board shall
106 either accept and promulgate the director's recommended
107 rules, amend the director's recommended rules or draft new
108 rules as are necessary to prevent the recurrence of such
109 fatality. If the board chooses to amend the director's
110 recommended rules or draft its own rules, a vote is required
111 within one hundred twenty days as to whether to promulgate
112 the amended rule or the rule drafted by the board: *Provided*,
113 That the board may, by majority vote, find that exceptional
114 circumstances exist and the deadline cannot be met:
115 *Provided, however*, That under no circumstances shall such
116 deadline be extended by more than a total of ninety days. A
117 majority vote of the board is required to promulgate any
118 such rule.

119 The board shall annually, not later than July 1, review
120 the major causes of coal mining injuries during the previous
121 calendar year, reviewing the causes in detail, and shall

122 promulgate such rules as may be necessary to prevent the
123 recurrence of such injuries.

124 Further, the board shall, on or before January 10, of each
125 year, submit a report to the Governor, President of the
126 Senate and Speaker of the House, which report shall
127 include, but is not limited to:

128 (1) The number of fatalities during the previous
129 calendar year, the apparent reason for each fatality as
130 determined by the Office of Miners' Health, Safety and
131 Training and the action, if any, taken by the board to prevent
132 such fatality;

133 (2) Any rules promulgated by the board during the last
134 year;

135 (3) What rules the board intends to promulgate during
136 the current calendar year;

137 (4) Any problem the board is having in its effort to
138 promulgate rules to enhance health and safety in the mining
139 industry;

140 (5) Recommendations, if any, for the enactment, repeal
141 or amendment of any statute which would cause the
142 enhancement of health and safety in the mining industry;

143 (6) Any other information the board deems appropriate;

144 (7) In addition to the report by the board, as herein
145 contained, each individual member of said board has right
146 to submit a separate report, setting forth any views contrary
147 to the report of the board, and the separate report, if any,
148 shall be appended to the report of the board and be
149 considered a part thereof.

**§22A-6-6. Health and Safety Administrator; qualifications;
duties; employees; compensation.**

1 (a) The Governor shall appoint the Health and Safety
2 Administrator of the board for a term of employment of one
3 year, and the Health and Safety Administrator employed on

4 January 1, 2017 shall complete a three-year term until June
5 30, 2020, unless he or she is determined to have committed
6 misfeasance, malfeasance or nonfeasance as referenced
7 herein. The Health and Safety Administrator shall be
8 entitled to have his or her contract of employment renewed
9 on an annual basis except where such renewal is denied for
10 cause: *Provided*, That the Governor has the power at any
11 time to remove the Health and Safety Administrator for
12 misfeasance, malfeasance or nonfeasance: *Provided*,
13 *however*, That the board has the power to remove the Health
14 and Safety Administrator without cause upon the
15 concurrence of five members of the board.

16 (b) The Health and Safety Administrator shall work at
17 the direction of the board, independently of the Director of
18 the Office of Miners' Health, Safety and Training and has
19 such authority and shall perform such duties as may be
20 required or necessary to effectuate this article.

21 (c) In addition to the Health and Safety Administrator,
22 there shall be such other employees hired by the Health and
23 Safety Administrator as the board determines to be
24 necessary. The Health and Safety Administrator shall
25 provide supervision and direction to the other employees of
26 the board in the performance of their duties.

27 (d) The employees of the board shall be compensated at
28 rates determined by the board. The salary of the Health and
29 Safety Administrator shall be fixed by the Governor:
30 *Provided*, That the salary of the Health and Safety
31 Administrator shall not be reduced during his or her annual
32 term of employment or upon the renewal of his or her
33 contract for an additional term. Such salary shall be fixed
34 for any renewed term at least ninety days before the
35 commencement thereof.

36 (e) (1) Appropriations for the salaries of the Health and
37 Safety Administrator and any other employees of the board
38 and for necessary office and operating expenses shall be
39 made to a budget account established for those purposes in

40 the General Revenue Fund. Such account shall be separate
41 from any accounts or appropriations for the Office of
42 Miners' Health, Safety and Training.

43 (2) Expenditures from the funds established in section
44 three hundred ten, article two-a; section seven, article six;
45 section four, article seven; section three, article eleven of
46 this chapter shall be by the Health and Safety Administrator
47 for administrative and operating expenses, such operating
48 expenses include mine health and safety, research,
49 education and training programs as determined by the
50 entities.

51 (f) The Health and Safety Administrator shall review all
52 coal mining fatalities and major causes of injuries as
53 mandated by section four of this article. An analysis of such
54 fatalities and major causes of injuries shall be prepared for
55 consideration by the board within ninety days of the
56 occurrence of the accident.

57 (g) At the direction of the board, the administrator shall
58 also conduct an annual study of occupational health issues
59 relating to employment in and around coal mines of this
60 state and submit a report to the board with findings and
61 proposals to address the issues raised in such study. The
62 administrator is responsible for preparing the annual reports
63 required by subsection (e), section four of this article and
64 section nine of this article.

65 (h) The administrator shall provide administrative
66 assistance to the The State Coal Mine Safety and Technical
67 Review Committee, Board of Coal Mine Health and Safety,
68 and serve as the legislative liaison for budgetary issues. The
69 Administrator shall serve as an *ex officio*, nonvoting
70 member on The State Coal Mine Safety and Technical
71 Review Committee.

72 (i) The administrator shall submit to each board or
73 commission for its approval, the proposed budget of the

74 board or commission before submitting it to the Secretary
75 of Revenue.

76 (j) The administrator shall prepare and submit to the
77 Director of the Office of Miners' Health, Safety and
78 Training, no less than on a quarterly basis, a report that
79 summarizes the coal mine health and safety standard rules
80 under consideration by the Board of Coal Mine Health and
81 Safety, as well as the meetings and meeting agendas of the
82 board.

ARTICLE 7. BOARD OF MINER TRAINING, EDUCATION AND CERTIFICATION.

§22A-7-2. Board of Miner Training, Education and Certification abolished and duties imposed upon the Board of Coal Mine Health and Safety.

1 The Legislature hereby finds and declares that:

2 (a) The continued prosperity of the coal industry is of
3 primary importance to the State of West Virginia;

4 (b) The highest priority and concern of this Legislature
5 and all in the coal mining industry must be the health and
6 safety of the industry's most valuable resource - the miner;

7 (c) A high priority must also be given to increasing the
8 productivity and competitiveness of the mines in this State;

9 (d) An inordinate number of miners, working on both
10 the surface in surface mining and in and at underground
11 mines, are injured during the first few months of their
12 experience in a mine;

13 (e) These injuries result in the loss of life and serious
14 injury to miners and are an impediment to the future growth
15 of West Virginia's coal industry;

16 (f) Injuries can be avoided through proper miner
17 training, education and certification;

18 (g) Mining is a technical occupation with various
19 specialties requiring individualized training and education;
20 and

21 (h) It is the general purpose of this article to:

22 (1) Require adequate training, education and
23 meaningful certification of all persons employed in coal
24 mines;

25 (2) Require certain training and education of all
26 prospective miners and miners certified by the state;

27 (3) Authorize a stipend for prospective miners enrolled
28 in this State's miner training, education and certification
29 program;

30 (4) Direct the Director of the Office of Miners' Health,
31 Safety and Training to apply and implement the standards
32 set by the Board of Coal Mine Health and Safety by
33 establishing programs for miner and prospective miner
34 education and training; and

35 (5) Provide for a program of continuing miner education
36 for all categories of certified miners.

§22A-7-3. Definitions.

1 Unless the context in which a word or phrase appears
2 clearly requires a different meaning, the words defined in
3 section two, article one of this chapter have when used in
4 this article the meaning therein assigned to them. These
5 words include, but are not limited to, the following: Office,
6 director, mine inspector, operator, miner, shotfirer and
7 certified electrician.

8 "Board" means the Board of Coal Mine Health and
9 Safety established by section four of this article.

10 "Mine" means any mine, including a "surface mine," as
11 that term is defined in section three, article three, chapter
12 twenty-two of this code, and in section two, article four of

13 said chapter; and a “mine” as that term is defined in section
14 two, article one of this chapter.

**§22A-7-5. Additional powers and duties of the Board of Coal
Mine Health and Safety.**

1 (a) The board shall establish criteria and standards for a
2 program of education, training and examination to be
3 required of all prospective miners and miners prior to their
4 certification in any of the various miner specialties requiring
5 certification under this article or any other provision of this
6 code. The specialties include, but are not limited to,
7 underground miner, surface miner, apprentice, underground
8 mine foreman-fire boss, assistant underground mine
9 foreman-fire boss, shotfirer, mine electrician and belt
10 examiner. Notwithstanding the provisions of this section,
11 the director may by rule further subdivide the classifications
12 for certification.

13 (b) The board may require certification in other miner
14 occupational specialties: *Provided*, That no new specialty
15 may be created by the board unless certification in a new
16 specialty is made desirable by action of the federal
17 government requiring certification in a specialty not
18 enumerated in this code.

19 (c) The board may establish criteria and standards for a
20 program of preemployment education and training to be
21 required of miners working on the surface at underground
22 mines who are not certified under the provisions of this
23 article or any other provision of this code.

24 (d) The board shall set minimum standards for a
25 program of continuing education and training of certified
26 persons and other miners on an annual basis: *Provided*, That
27 the standards shall be consistent with the provisions of
28 section seven of this article. Prior to issuing the standards,
29 the board shall conduct public hearings at which the parties
30 who may be affected by its actions may be heard. The
31 education and training shall be provided in a manner

32 determined by the director to be sufficient to meet the
33 standards established by the board.

34 (e) The board may, in conjunction with any state, local
35 or federal agency or any other person or institution, provide
36 for the payment of a stipend to prospective miners enrolled
37 in one or more of the programs of miner education, training
38 and certification provided in this article or any other
39 provision of this code.

40 (f) The board may also, from time to time, conduct any
41 hearings and other oversight activities required to ensure
42 full implementation of programs established by it.

43 (g) Nothing in this article empowers the board to revoke
44 or suspend any certificate issued by the Director of the
45 Office of Miners' Health, Safety and Training.

46 (h) The board may, upon its own motion or whenever
47 requested to do so by the director, consider two certificates
48 issued by this State to be of equal value or consider training
49 provided or required by federal agencies to be sufficient to
50 meet training and education requirements set by it, the
51 director, or by the provisions of this code.

52 (i) As part of the annual training required by this section,
53 the board shall include training of certified persons and
54 other miners, instruction on miners' rights as they relate to
55 the operation of unsafe equipment as provided in section
56 seventy-one, article two of this chapter, his or her right to
57 withdrawal from unsafe conditions as provided in section
58 seventy-one-a of article two of this chapter and his or her
59 rights under section twenty-two, article one of this chapter.

§22A-7-5a. Study of miner training and education.

1 The Board of Coal Mine Health and Safety is directed
2 to conduct a study of the overall program of education,
3 training and examination associated with the various miner
4 specialties requiring certification under this article or any
5 other provision of this code. The study shall identify ways

6 to enhance miner education and training to adequately
7 reflect technological advances in coal mining techniques
8 and best practices used in modern coal mines, and improve
9 supervision of apprentice miners. Furthermore, the board
10 shall place particular emphasis in its study on ways to
11 improve education and training in the areas of proper mine
12 ventilation, methane monitoring and equipment
13 deenergization, fire-boss procedures and overall core
14 mining competencies.

**§22A-7-7. Continuing education requirements for
underground mine foreman-fire boss.**

1 (a) An underground mine foreman-fire boss certified
2 pursuant to this article on or after the effective date of this
3 section shall complete the continuing education
4 requirements in this section within two years of their
5 certification and every two years thereafter. The continuing
6 education requirements of this section may not be satisfied
7 by the completion of other training requirements mandated
8 by the provisions of this chapter.

9 (b) In order to receive continuing education credit
10 pursuant to this section, a mine foreman-fire boss shall
11 satisfactorily complete a mine foreman-fire boss continuing
12 education course approved by the board and taught by a
13 qualified instructor approved by the director. The mine
14 foreman-fire boss shall not suffer a loss in pay while
15 attending a continuing education course. The mine foreman-
16 fire boss shall submit documentation to the office certified
17 by the instructor that indicates the required continuing
18 education has been completed prior to the deadlines set forth
19 in this subsection: *Provided*, That a mine foreman-fire boss
20 may submit documentation of continuing education
21 completed in another state for approval and acceptance by
22 the board.

23 (c) The mine foreman-fire boss shall complete at least
24 eight hours of continuing education every two years.

25 (d) The content of the continuing education course shall
26 include, but not be limited to:

27 (1) Selected provisions of this chapter and 30 U. S. C. §
28 801, *et seq.*;

29 (2) Selected provisions of the West Virginia and federal
30 underground coal mine health and safety rules and
31 regulations;

32 (3) The responsibilities of a mine foreman-fire boss;

33 (4) Selected policies and memoranda of the Office of
34 Miners' Health, Safety and Training, the Board of Coal
35 Mine Health and Safety, and from any safety analysis
36 performed by the company;

37 (5) A review of fatality and accident trends in
38 underground coal mines; and

39 (6) The board shall solicit input from mining companies
40 on the substance of the training and discuss how the training
41 shall be scheduled during the year.

42 (e) The board may approve alternative training
43 programs tailored to specific mines.

44 (f) A mine foreman-fire boss who fails to complete the
45 requirements of this section shall have his or her
46 certification suspended pending completion of the
47 continuing education requirements. During the pendency of
48 the suspension, the individual may not perform statutory
49 duties assigned to a mine foreman-fire boss under West
50 Virginia law. The office shall send notice of any suspension
51 to the last address the certified mine foreman-fire boss
52 reported to the director. If the requirements are not met
53 within two years of the suspension date, the director may
54 file a petition with the Board of Appeals pursuant to the
55 procedures set forth in section thirty-one, article one of this
56 chapter and, upon determining that the requirements have
57 not been met, the Board of Appeals may revoke the mine

58 foreman-fire boss' certification, which shall not be renewed
59 except upon successful completion of the examination
60 prescribed by law for mine foremen-fire bosses or upon
61 completion of other training requirements established by the
62 board: *Provided*, That an individual having his or her mine
63 foreman-fire boss certification suspended pursuant to this
64 section who also holds a valid mine foreman-fire boss
65 certification from another state may have the suspension
66 lifted by completing training requirements established by
67 the board.

68 (g) The office shall make a program of instruction that
69 meets the requirements for continuing education set forth in
70 this section regularly available in regions of the State, based
71 on demand, for individuals possessing mine foreman-fire
72 boss certifications who are not serving in a mine foreman-
73 fire boss capacity: *Provided*, That the office may collect a
74 fee from program participants to offset the cost of the
75 program.

76 (h) The office shall make available to operators and
77 other interested parties a list of individuals whose mine
78 foreman-fire boss certification is in suspension or has been
79 revoked.

ARTICLE 9. MINE INSPECTORS' EXAMINING BOARD.

§22A-9-1. Mine Inspectors' Examining Board abolished and duties imposed upon the Board of Coal Mine Health and Safety.

1 The Mine Inspectors' Examining Board is hereby
2 abolished. All duties and responsibilities imposed upon the
3 Mine Inspectors' Examining Board are transferred and
4 hereby imposed upon the Board of Coal Mine Health and
5 Safety. On the effective date of the reenactment of this
6 article and section of the code, all equipment and records
7 necessary to effectuate the purposes of this article shall be
8 transferred to the Board of Coal Mine Health and Safety.

9 In addition to other duties expressly set forth elsewhere
10 in this article, the Board of Coal Mine Health and Safety
11 shall:

12 (1) Establish, and from time to time, revise forms of
13 application for employment as mine inspectors, which shall
14 include the applicant's social security number, and forms
15 for written examinations to test the qualifications of
16 candidates for that position;

17 (2) Adopt and promulgate reasonable rules relating to
18 the examination, qualification and certification of
19 candidates for appointment as mine inspectors, and hearing
20 for removal of inspectors, required to be held by section
21 twelve, article one of this chapter. All of such rules shall be
22 printed and a copy thereof furnished by the secretary of the
23 board to any person upon request. The board shall determine
24 whether applicants have the necessary experience to take
25 the mine inspector examination, and the examination of
26 candidates for appointment as a mine inspector shall be
27 conducted by the board and it shall rank all applicants;

28 (3) Prepare and certify to the Director of the Office of
29 Miners' Health, Safety and Training a register of qualified
30 eligible candidates for appointment as mine inspectors. The
31 register shall list all qualified eligible candidates in the order
32 of their grades, the candidate with the highest grade
33 appearing at the top of the list. After each meeting of the
34 board held to examine such candidates, and at least
35 annually, the board shall prepare and submit to the Director
36 of the Office of Miners' Health, Safety and Training a
37 revised and corrected register of qualified eligible
38 candidates for appointment as mine inspector, deleting from
39 such revised register all persons: (a) Who are no longer
40 residents of West Virginia; (b) who have allowed a calendar
41 year to expire without, in writing, indicating their continued
42 availability for such appointment; (c) who have been passed
43 over for appointment for three years; (d) who have become
44 ineligible for appointment since the board originally
45 certified that such person was qualified and eligible for

46 appointment as mine inspector; or (e) who, in the judgment
47 of the board, should be removed from the register for good
48 cause by the board;

49 (4) The board shall keep and preserve the written
50 examination papers, manuscripts, grading sheets, and other
51 papers of all applicants for appointment as mine inspector
52 for a period of two years. Specimens of the examinations
53 given, together with the correct solution of each question,
54 shall be preserved;

55 (5) The board shall issue a letter or written notice of
56 qualification to each successful eligible candidate;

57 (6) The Board of Coal Mine Health and Safety shall hear
58 and determine proceedings for the removal of mine
59 inspectors in accordance with the provisions of this article;

60 (7) The board shall hear and determine appeals of mine
61 inspectors from suspension orders made by the director
62 pursuant to the provisions of section four, article one of this
63 chapter: *Provided*, That an aggrieved inspector, in order to
64 appeal from any order of suspension, shall file such appeal
65 in writing with the Board of Coal Mine Health and Safety
66 not later than ten days after receipt of notice of suspension.
67 On such appeal the board shall affirm the act of the director
68 unless it be satisfied from a clear preponderance of the
69 evidence that the director has acted arbitrarily;

70 (8) The board and office shall make an annual report to
71 the Governor and the director concerning the administration
72 of mine inspection personnel in the state service, making
73 such recommendations as the board considers to be in the
74 public interest.

ARTICLE 11. MINE SAFETY TECHNOLOGY.

§22A-11-1. Legislative findings, purposes and intent.

1 The Legislature hereby finds and declares:

2 (1) That the first priority and concern of all persons in
3 the coal mining industry must be the health and safety of its
4 most precious resource - the miner;

5 (2) That in furtherance of this priority, the provisions of
6 article two of this chapter are designed to protect the health
7 and safety of this State's coal miners by requiring certain
8 minimum standards for, among other things, certain health
9 and safety technology used by each underground miner;

10 (3) That the proper implementation of this technology
11 in West Virginia's underground mines would benefit from
12 the specialized oversight of persons with experience and
13 competence in coal mining, coal mine health and safety and
14 the expanding role of technology; and

15 (4) That, in furtherance of provisions of this section, it
16 is the intent of the Legislature to direct that the Board of
17 Coal Mine Health and Safety, on a continuous basis,
18 evaluate and study issues relating to the commercial
19 availability and functional and operational capability of
20 existing and emerging technologies in coal mine health and
21 safety, as well as issues relating to the implementation,
22 compliance and enforcement of regulatory requirements
23 governing the technologies.

**§22A-11-2. Mine Safety Technology Task Force abolished and
duties imposed upon the Board of Coal Mine Health and
Safety.**

1 (a) The Mine Safety Technology Task Force hereby
2 abolished. All duties and responsibilities imposed upon the
3 Mine Safety Technology Task Force are transferred and
4 hereby imposed upon the Board of Coal Mine Health and
5 Safety. On the effective date of the reenactment of this
6 article and section of the code, all equipment and records
7 necessary to effectuate the purposes of this article shall be
8 transferred to the Board of Coal Mine Health and Safety.

**§22A-11-3. The Board of Coal Mine Health and Safety's
duties regarding mine technology.**

1 (a) The board shall provide technical and other
2 assistance to the office related to the implementation of the
3 new technological requirements set forth in the provisions
4 of section fifty-five, article two of this chapter, as amended
5 and reenacted during the regular session of the Legislature
6 in 2006 and requirements for other mine safety
7 technologies.

8 (b) The board, working in conjunction with the director,
9 shall continue to study issues regarding the commercial
10 availability, the functional and operational capability and
11 the implementation, compliance and enforcement of the
12 following protective equipment:

13 (1) Self-contained self-rescue devices, as provided in
14 subsection (f), section fifty-five, article two of this chapter;

15 (2) Wireless emergency communication devices, as
16 provided in subsection (g), section fifty-five, article two of
17 this chapter;

18 (3) Wireless emergency tracking devices, as provided in
19 subsection (h), section fifty-five, article two of this chapter;
20 and

21 (4) Any other protective equipment required by this
22 chapter or rules promulgated in accordance with the law that
23 the director determines would benefit from the expertise of
24 the task force.

25 (c) The board shall on a continuous basis study, monitor
26 and evaluate:

27 (1) The potential for enhancing coal mine health and
28 safety through the application of existing technologies and
29 techniques;

30 (2) Opportunities for improving the integration of
31 technologies and procedures to increase the performance
32 and survivability of coal mine health and safety systems;

33 (3) Emerging technological advances in coal mine
34 health and safety; and

35 (4) Market forces impacting the development of new
36 technologies, including issues regarding the costs of
37 research and development, regulatory certification and
38 incentives designed to stimulate the marketplace.

39 (d) On or before July 1 of each year, the board shall
40 submit a report to the Governor and the director that shall
41 include, but not be limited to:

42 (1) A comprehensive overview of issues regarding the
43 implementation of the new technological requirements set
44 forth in the provisions of section fifty-five, article two of
45 this chapter, or rules promulgated in accordance with the
46 law;

47 (2) A summary of any emerging technological advances
48 that would improve coal mine health and safety;

49 (3) Recommendations, if any, for the enactment, repeal
50 or amendment of any statute which would enhance
51 technological advancement in coal mine health and safety;
52 and

53 (4) Any other information the board considers
54 appropriate.

55 (e) In performing its duties, the board shall, where
56 possible, consult with, among others, mine engineering and
57 mine safety experts, radio communication and telemetry
58 experts and relevant state and federal regulatory personnel.

59 (f) Appropriations to the board and to effectuate the
60 purposes of this article shall be made to one or more budget
61 accounts established for that purpose.

62 (g) The board shall annually compile a proposed list of
63 approved innovative mine safety technologies and transmit
64 the list to the Director of the Office of Miners' Health,

65 Safety and Training as provided in section four, article
66 thirteen-bb, chapter eleven of this code. The list shall be
67 approved by unanimous vote of the board.

§22A-11-4. Approval of devices.

1 Prior to approving any protective equipment or device
2 that has been evaluated by the board pursuant to the
3 provisions of subsection (b), section three of this article, the
4 director shall consult with the board and review any
5 applicable written reports issued by the board and the
6 findings set forth in the reports and shall consider the
7 findings in making any approval determination.

§22A-11-5. Existing state rules to be revised.

1 By August 31, 2017, all existing state rules promulgated
2 pursuant to the authority of this chapter shall be revised to
3 reflect the changes in this chapter enacted by the Legislature
4 during the 2017 regular session.

CHAPTER 87

**(Com. Sub. for S. B. 505 - By Senators Smith and
Sypolt)**

[Passed April 4, 2017; in effect ninety days from passage.]
[Approved by the Governor on April 18, 2017.]

AN ACT to amend and reenact §22-6A-14 of the Code of West Virginia, 1931, as amended, relating to providing a five-year reclamation period following completion of the construction of a well pad for well pads designed for multiple horizontal wells.

Be it enacted by the Legislature of West Virginia:

That §22-6A-14 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 6A. NATURAL GAS HORIZONTAL WELL CONTROL ACT.

§22-6A-14. Reclamation requirements.

1 (a) The operator of a horizontal well shall reclaim the
2 land surface within the area disturbed in siting, drilling,
3 completing or producing the well in accordance with the
4 following requirements:

5 (1) Except as provided elsewhere in this article, within
6 six months after a horizontal well is drilled and completed
7 on a well pad designed for a single horizontal well, the
8 operator shall fill all the pits and impoundments that are not
9 required or allowed by state or federal law or rule or
10 agreement between the operator and the surface owner that
11 allows the impoundment to remain open for the use and
12 benefit of the surface owner (i.e. a farm pond as described
13 in section nine of this article) and remove all concrete bases,
14 drilling supplies and drilling equipment: *Provided*, That
15 impoundments or pits for which certificates have been
16 approved pursuant to section nine of this article shall be
17 reclaimed at a time and in a manner as provided in the
18 applicable certificate and said section. Within that six-
19 month period, the operator shall grade or terrace and plant,
20 seed or sod the area disturbed that is not required in
21 production of the horizontal well in accordance with the
22 erosion and sediment control plan. No pit may be used for
23 the ultimate disposal of salt water. Salt water and oil shall
24 be periodically drained or removed and properly disposed
25 of from any pit that is retained so the pit is kept reasonably
26 free of salt water and oil. Pits may not be left open
27 permanently.

28 (2) For well pads designed to contain multiple
29 horizontal wells, partial reclamation shall begin upon
30 completion of the construction of the well pad. For purposes

31 of this section, the term “partial reclamation” means grading
32 or terracing and planting or seeding the area disturbed that
33 is not required in drilling, completing or producing any of
34 the horizontal wells on the well pad in accordance with the
35 erosion and sediment control plan. This partial reclamation
36 satisfies the reclamation requirements of this section:
37 *Provided*, That the maximum period in which partial
38 reclamation satisfies the reclamation requirements of this
39 section is five years from completion of the construction of
40 the well pad. For purposes of this subdivision, construction
41 of a well pad will be deemed to be complete twelve months
42 after construction is commenced if construction of the well
43 pad is not actually completed prior to that date. Within six
44 months after expiration of the five-year maximum partial
45 reclamation period, the operator shall complete final
46 reclamation of the well pad as set forth in this subsection.

47 (3) Within six months after a horizontal well that has
48 produced oil or gas is plugged or after the plugging of a dry
49 hole, the operator shall remove all production and storage
50 structures, supplies and equipment and any oil, salt water
51 and debris and fill any remaining excavations. Within that
52 six-month period, the operator shall grade or terrace and
53 plant, seed or sod the area disturbed where necessary to bind
54 the soil and prevent substantial erosion and sedimentation.

55 (4) The operator shall reclaim the area of land disturbed
56 in siting, drilling, completing or producing the horizontal
57 well in accordance with the erosion and sediment control
58 plans approved by the secretary or the secretary’s designee
59 pursuant to this article.

60 (b) The secretary, upon written application by an
61 operator showing reasonable cause, may extend the period
62 within which reclamation must be completed, but not to
63 exceed a further six-month period. If the secretary refuses
64 to approve a request for extension, the refusal shall be by
65 order, which may be appealed pursuant to the provisions of
66 subdivision (23), subsection (a), section five of this article.

CHAPTER 88

(Com. Sub. for H. B. 2506 - By Delegates Zatezalo, G. Foster, Kessinger, Summers, Atkinson, Ambler, Phillips, Westfall and Miley)

[Passed March 28, 2017; in effect ninety days from passage.]

[Approved by the Governor on April 8, 2017.]

AN ACT to amend and reenact §22-11-7b of the Code of West Virginia, 1931, as amended, all relating to requiring permit limits to be calculated using the design flows recommended by the United States Environmental Protection Agency for the protection of human health; allowing overlapping mixing zones for calculating permit limits for drinking water criteria; and clarifying posted signage requirements.

Be it enacted by the Legislature of West Virginia:

That §22-11-7b of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 11. WATER POLLUTION CONTROL ACT.

***§22-11-7b. Water quality standards; implementation of antidegradation procedures; procedure to determine compliance with the biologic component of the narrative water quality standard.**

- 1 (a) All authority to propose rules for legislative approval
- 2 and implement water quality standards is vested in the
- 3 Secretary of the Department of Environmental Protection.

***NOTE:** This section was also amended by S. B. 687 (Chapter 86), which passed subsequent to this act.

4 (b) All meetings with the secretary or any employee of
5 the department and any interested party which are convened
6 for the purpose of making a decision or deliberating toward
7 a decision as to the form and substance of the rule governing
8 water quality standards or variances thereto shall be held in
9 accordance with article nine-a, chapter six of this code.
10 When the secretary is considering the form and substance of
11 the rules governing water quality standards, the following
12 are not meetings pursuant to article nine-a, chapter six of
13 this code: (i) Consultations between the department's
14 employees or its consultants, contractors or agents; (ii)
15 consultations with other state or federal agencies and the
16 department's employees or its consultants, contractors or
17 agents; or (iii) consultations between the secretary, the
18 department's employees or its consultants, contractors or
19 agents with any interested party for the purpose of collecting
20 facts and explaining state and federal requirements relating
21 to a site specific change or variance.

22 (c) In order to carry out the purposes of this chapter, the
23 secretary shall propose rules for legislative approval in
24 accordance with article three, chapter twenty-nine-a of this
25 code setting standards of water quality applicable to both
26 the surface waters and groundwaters of this state. Standards
27 of quality with respect to surface waters shall protect the
28 public health and welfare, wildlife, fish and aquatic life and
29 the present and prospective future uses of the water for
30 domestic, agricultural, industrial, recreational, scenic and
31 other legitimate beneficial uses thereof. The water quality
32 standards of the secretary may not specify the design of
33 equipment, type of construction or particular method which
34 a person shall use to reduce the discharge of a pollutant. For
35 implementing human health criteria for the protection of
36 drinking water, the Secretary shall calculate permit limits
37 using the harmonic mean flow and may determine the point
38 of compliance for a permittee's discharge pursuant to the
39 mixing zone provisions of the Legislative rule entitled
40 Requirements Governing Water Quality Standards, 47
41 C.S.R. 2: *Provided*, That the Secretary may allow mixing
42 zones to overlap, but not to go beyond a point one-half mile
43 upstream of a public water supply. At locations where

44 mixing zones are allowed to overlap, the Secretary shall
45 require permittees to indicate on their required signage an
46 indication that mixing zones overlap in a particular vicinity.

47 (d) The secretary shall establish the antidegradation
48 implementation procedures as required by 40 C. F. R.
49 131.12(a) which apply to regulated activities that have the
50 potential to affect water quality. The secretary shall propose
51 for legislative approval, pursuant to article three, chapter
52 twenty-nine-a of the code, legislative rules to establish
53 implementation procedures which include specifics of the
54 review depending upon the existing uses of the water body
55 segment that would be affected, the level of protection or
56 "tier" assigned to the applicable water body segment, the
57 nature of the activity and the extent to which existing water
58 quality would be degraded. Any final classification
59 determination of a water as a Tier 2.5 water (Water of
60 Special Concern) does not become effective until that
61 determination is approved by the Legislature through the
62 legislative rule-making process as provided in article three,
63 chapter twenty-nine-a of the code.

64 (e) All remaining variances shall be applied for and
65 considered by the secretary and any variance granted shall be
66 consistent with 33 U. S. C. Section 1311(p) of the Federal
67 Water Control Act. At a minimum, when considering an
68 application for a remaining variance the secretary shall consider
69 the data and information submitted by the applicant for the
70 variance; and comments received at a public comment period
71 and public hearing. The secretary may not grant a variance
72 without requiring the applicant to improve the instream water
73 quality as much as is reasonably possible by applying best
74 available technology economically achievable using best
75 professional judgment. Any such requirement shall be
76 included as a permit condition. The secretary may not grant a
77 variance without a demonstration by the applicant that the coal
78 remaining operation will result in the potential for improved
79 instream water quality as a result of the remaining operation.
80 The secretary may not grant a variance where he or she
81 determines that degradation of the instream water quality will
82 result from the remaining operation.

83 (f) The secretary shall propose rules measuring
84 compliance with the biologic component of West Virginia's
85 narrative water quality standard requires evaluation of the
86 holistic health of the aquatic ecosystem and a determination
87 that the stream: (i) Supports a balanced aquatic community
88 that is diverse in species composition; (ii) contains
89 appropriate trophic levels of fish, in streams that have flows
90 sufficient to support fish populations; and (iii) the aquatic
91 community is composed of benthic invertebrate
92 assemblages sufficient to perform the biological functions
93 necessary to support fish communities within the assessed
94 reach, or, if the assessed reach has insufficient flows to
95 support a fish community, in those downstream reaches
96 where fish are present. The secretary shall propose rules for
97 legislative approval in accordance with article three, chapter
98 twenty-nine-a of this code that implement the provisions of
99 this subsection. Rules promulgated pursuant to this
100 subsection may not establish measurements for biologic
101 components of West Virginia's narrative water quality
102 standards that would establish standards less protective than
103 requirements that exist at the time of enactment of the
104 amendments to this subsection by the Legislature during the
105 2012 regular session.



CHAPTER 89

**(Com. Sub. for H. B. 2811 - By Delegates Hanshaw,
Hartman, Kelly, Boggs, Miley, Shott, Nelson,
Anderson, Westfall and Hamrick)**

[Passed March 25, 2017; in effect ninety days from passage.]
[Approved by the Governor on April 4, 2017.]

AN ACT to amend and reenact §22-30-3 of the Code of West Virginia, 1931, as amended, relating to the definition of aboveground storage tanks to clarify and amend categories of exempt devices.

Be it enacted by the Legislature of West Virginia:

That §22-30-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 30. THE ABOVEGROUND STORAGE TANK ACT.

§22-30-3. Definitions.

1 For purposes of this article:

2 (1) “Aboveground storage tank” or “tank” or “AST”
3 means a device made to contain an accumulation of more
4 than one thousand three hundred twenty gallons of fluids
5 that are liquid at standard temperature and pressure, which
6 is constructed primarily of nonearthen materials, including
7 concrete, steel, plastic or fiberglass reinforced plastic,
8 which provide structural support, more than ninety percent
9 of the capacity of which is above the surface of the ground,
10 and includes all ancillary pipes and dispensing systems up
11 to the first point of isolation. The term includes stationary
12 devices which are permanently affixed, and mobile devices
13 which remain in one location on a continuous basis for three
14 hundred sixty-five or more days. A device meeting this
15 definition containing hazardous waste subject to regulation
16 under 40 C. F. R. Parts 264 and 265, exclusive of tanks
17 subject to regulation under 40 C. F. R. § 265.201 is included
18 in this definition but is not a regulated tank.
19 Notwithstanding any other provision of this code to the
20 contrary, the following categories of devices are not subject
21 to the provisions of this article:

22 (A) Shipping containers that are subject to state or
23 federal laws or regulations governing the transportation of
24 hazardous materials, including, but not limited to, railroad
25 freight cars subject to federal regulation under the Federal
26 Railroad Safety Act, 49 U. S. C. §§20101-2015, as
27 amended, including, but not limited to, federal regulations
28 promulgated thereunder at 49 C. F. R. Parts 172, 173 or 174;

29 (B) Barges or boats subject to federal regulation under
30 the United States Coast Guard, United States Department of
31 Homeland Security, including, but not limited to, federal
32 regulations promulgated at 33 C. F. R. 1, *et seq.* or subject
33 to other federal law governing the transportation of
34 hazardous materials.;

35 (C) Swimming pools;

36 (D) Process vessels;

37 (E) Devices containing drinking water for human or
38 animal consumption, surface water or groundwater,
39 demineralized water, noncontact cooling water or water
40 stored for fire or emergency purposes;

41 (F) Devices containing food or food-grade materials
42 used for human or animal consumption and regulated under
43 the Federal Food, Drug and Cosmetic Act (21 U. S. C. §301-
44 392);

45 (G) Except when located in a zone of critical concern, a
46 device located on a farm, the contents of which are used
47 exclusively for farm purposes and not for commercial
48 distribution.

49 (H) Devices holding wastewater that is being actively
50 treated or processed (e.g., clarifier, chlorine contact
51 chamber, batch reactor, etc.);

52 (I) Empty tanks held in inventory or offered for sale;

53 (J) Pipeline facilities, including gathering lines,
54 regulated under the Natural Gas Pipeline Safety Act of 1968
55 or the Hazardous Liquid Pipeline Safety Act of 1979, or an
56 intrastate pipeline facility regulated by the West Virginia
57 Public Service Commission or otherwise regulated under
58 any state law comparable to the provisions of either the
59 Natural Gas Pipeline Safety Act of 1968 or the Hazardous
60 Liquid Pipeline Safety Act of 1979;

61 (K) Liquid traps, atmospheric and pressure vessels, or
62 associated gathering lines related to oil or gas production
63 and gathering operations;

64 (L) Electrical equipment such as transformers, circuit
65 breakers and voltage regulator transformers;

66 (M) Devices having a capacity of two hundred ten
67 barrels or less, containing brine water or other fluids
68 produced in connection with hydrocarbon production
69 activities, that are not located in a zone of critical concern;
70 and

71 (N) Devices having a capacity of 10,000 gallons or less,
72 containing sodium chloride or calcium chloride water for
73 roadway snow and ice pretreatment, that are not located in
74 a zone of critical concern: *Provided*, That all such devices
75 exempted under subdivisions (M) and (N) of this subsection
76 must still meet the registration requirements contained in
77 section four of this article, the notice requirements
78 contained in section ten of this article, and the signage
79 requirements contained in section eleven of this article.

80 (2) "Department" means the West Virginia Department
81 of Environmental Protection.

82 (3) "First point of isolation" means the valve, pump,
83 dispenser or other device or equipment on or nearest to the
84 tank where the flow of fluids into or out of the tank may be
85 shut off manually or where it automatically shuts off in the
86 event of a pipe or tank failure.

87 (4) "Nonoperational storage tank" means an empty
88 aboveground storage tank in which fluids will not be
89 deposited or from which fluids will not be dispensed on or
90 after the effective date of this article.

91 (5) "Operator" means any person in control of, or
92 having responsibility for, the daily operation of an
93 aboveground storage tank.

94 (6) "Owner" means a person who holds title to, controls
95 or owns an interest in an aboveground storage tank,
96 including the owner immediately preceding the
97 discontinuation of its use. "Owner" does not mean a person
98 who holds an interest in a tank for financial security unless
99 the holder has taken possession of and operated the tank.

100 (7) "Person", "persons" or "people" means any
101 individual, trust, firm, owner, operator, corporation or other
102 legal entity, including the United States government, an
103 interstate commission or other body, the state or any agency,
104 board, bureau, office, department or political subdivision of
105 the state, but does not include the Department of
106 Environmental Protection.

107 (8) "Process vessel" means a tank that forms an integral
108 part of a production process through which there is a steady,
109 variable, recurring or intermittent flow of materials during
110 the operation of the process or in which a biological,
111 chemical or physical change in the material occurs. This
112 does not include tanks used for storage of materials prior to
113 their introduction into the production process or for the
114 storage of finished products or by-products of the
115 production process.

116 (9) "Public groundwater supply source" means a
117 primary source of water supply for a public water system
118 which is directly drawn from a well, underground stream,
119 underground reservoir, underground mine or other primary
120 sources of water supplies which are found underneath the
121 surface of the state.

122 (10) "Public surface water supply source" means a
123 primary source of water supply for a public water system
124 which is directly drawn from rivers, streams, lakes, ponds,
125 impoundments or other primary sources of water supplies
126 which are found on the surface of the state.

127 (11) "Public surface water influenced groundwater
128 supply source" means a source of water supply for a public

129 water system which is directly drawn from an underground
130 well, underground river or stream, underground reservoir or
131 underground mine, and the quantity and quality of the water
132 in that underground supply source is heavily influenced,
133 directly or indirectly, by the quantity and quality of surface
134 water in the immediate area.

135 (12) "Public water system" means:

136 (A) Any water supply or system which regularly
137 supplies or offers to supply water for human consumption
138 through pipes or other constructed conveyances, if serving
139 at least an average of twenty-five individuals per day for at
140 least sixty days per year, or which has at least fifteen service
141 connections, and shall include:

142 (i) Any collection, treatment, storage and distribution
143 facilities under the control of the owner or operator of the
144 system and used primarily in connection with the system;
145 and

146 (ii) Any collection or pretreatment storage facilities not
147 under such control which are used primarily in connection
148 with the system.

149 (B) A public water system does not include a bathhouse
150 located on coal company property solely for the use of its
151 employees or a system which meets all of the following
152 conditions:

153 (i) Consists only of distribution and storage facilities
154 (and does not have any collection and treatment facilities);

155 (ii) Obtains all of its water from, but is not owned or
156 operated by, a public water system which otherwise meets
157 the definition;

158 (iii) Does not sell water to any person; and

159 (iv) Is not a carrier conveying passengers in interstate
160 commerce.

161 (13) “Regulated level 1 aboveground storage tank” or
162 “level 1 regulated tank” means:

163 (A) An AST located within a zone of critical concern,
164 source water protection area, public surface water
165 influenced groundwater supply source area, or any AST
166 system designated by the secretary as a level 1 regulated
167 tank; or

168 (B) An AST that contains substances defined in section
169 101(14) of the Comprehensive Environmental Response,
170 Compensation and Liability Act (CERCLA) as a
171 “hazardous substance” (42 U. S. C. § 9601(14)); or is on
172 EPA’s “Consolidated List of Chemicals Subject to the
173 Emergency Planning and Community Right to Know Act
174 (EPCRA), CERCLA, and §112(r) of the Clean Air Act
175 (CAA)” (known as “the List of Lists”) as provided by 40 C.
176 F. R. §§ 355, 372, 302, and 68) in a concentration of one
177 percent or greater, regardless of the AST’s location, except
178 ASTs containing petroleum are not “level 1 regulated tanks”
179 based solely upon containing constituents recorded on the
180 CERCLA lists; or,

181 (C) An AST with a capacity of 50,000 gallons or more,
182 regardless of its contents or location.

183 (14) “Regulated level 2 aboveground storage tank” or
184 “level 2 regulated tank” means an AST that is located within
185 a zone of peripheral concern that is not a level 1 regulated
186 tank.

187 (15) “Regulated aboveground storage tank” or
188 “regulated tank” means an AST that meets the definition of
189 a level 1 or level 2 regulated tank.

190 (16) “Release” means any spilling, leaking, emitting,
191 discharging, escaping, or leaching of fluids from an
192 aboveground storage tank into the waters of the state or
193 escaping from secondary containment.

194 (17) "Secondary containment" means a safeguard
195 applied to one or more aboveground storage tanks that
196 prevents the discharge into the waters of the state of the
197 entire capacity of the largest single tank and sufficient
198 freeboard to contain precipitation. In order to qualify as
199 secondary containment, the barrier and containment field
200 must be sufficiently impervious to contain fluids in the
201 event of a release, and may include double-walled tanks,
202 dikes, containment curbs, pits or drainage trench enclosures
203 that safely confine the release from a tank in a facility
204 catchment basin or holding pond. Earthen dikes and similar
205 containment structures must be designed and constructed to
206 contain, for a minimum of seventy-two hours, fluid that
207 escapes from a tank.

208 (18) "Secretary" means the Secretary of the Department
209 of Environmental Protection, or his or her designee.

210 (19) "Source water protection area" for a public
211 groundwater supply source is the area within an aquifer that
212 supplies water to a public water supply well within a five-
213 year time-of-travel, and is determined by the mathematical
214 calculation of the locations from which a drop of water
215 placed at the edge of the protection area would theoretically
216 take five years to reach the well.

217 (20) "Zone of critical concern" for a public surface
218 water supply source and for a public surface water
219 influenced groundwater supply source is a corridor along
220 streams within a watershed that warrants detailed scrutiny
221 due to its proximity to the surface water intake and the
222 intake's susceptibility to potential contaminants within that
223 corridor. The zone of critical concern is determined using a
224 mathematical model that accounts for stream flows,
225 gradient and area topography. The length of the zone of
226 critical concern is based on a five-hour time-of-travel of
227 water in the streams to the intake. The width of the zone of
228 critical concern is one thousand feet measured horizontally
229 from each bank of the principal stream and five hundred feet

230 measured horizontally from each bank of the tributaries
231 draining into the principal stream.

232 (21) “Zone of peripheral concern” for a public surface
233 water supply source and for a public surface water
234 influenced groundwater supply source is a corridor along
235 streams within a watershed that warrants scrutiny due to its
236 proximity to the surface water intake and the intake’s
237 susceptibility to potential contaminants within that corridor.
238 The zone of peripheral concern is determined using a
239 mathematical model that accounts for stream flows,
240 gradient and area topography. The length of the zone of
241 peripheral concern is based on an additional five-hour time-
242 of-travel of water in the streams beyond the perimeter of the
243 zone of critical concern, which creates a protection zone of
244 ten hours above the water intake. The width of the zone of
245 peripheral concern is one thousand feet measured
246 horizontally from each bank of the principal stream and five
247 hundred feet measured horizontally from each bank of the
248 tributaries draining into the principal stream.

CHAPTER 90

**(Com. Sub. for H. B. 2404 - By Delegates Rowan,
Moye, Overington, Phillips, Hamilton, R. Romine,
Rohrbach, Kelly, Pethel, Lynch and Ferro)**

[Passed April 6, 2017; in effect ninety days from passage.]
[Approved by the Governor on April 20, 2017.]

AN ACT to amend and reenact §36-1-20 of the Code of West Virginia, 1931, as amended; and to amend and reenact §42-4-2 of said code, all relating generally to barring persons who are convicted of certain criminal offenses from acquiring property from their victims through joint tenancy or inheritance; barring a person who has been convicted of an

offense causing the death of an incapacitated adult as a principal, aider and abettor, or accessory before the fact from taking or acquiring real or personal property by survivorship when the joint tenant is a victim of the criminal offense; barring a person who has been convicted of an offense of abuse or neglect of an incapacitated adult, or a felony offense of financial exploitation of an elderly person, protected person or an incapacitated adult from taking or acquiring real or personal property by survivorship when the victim of the criminal offense if the joint holder of the title to the property and providing exceptions therefor; barring a person who has been convicted of an offense causing the death of an incapacitated adult taking or acquiring money, property, or any interest therein by descent and distribution, will, or any policy or certificate of insurance; and barring a person who has been convicted of an offense of abuse or neglect of an incapacitated adult, or a felony offense of financial exploitation of an elderly person, protected person or an incapacitated adult from taking or acquiring money, property, or any interest therein by descent and distribution, will, or any policy or certificate of insurance and providing exceptions therefor.

Be it enacted by the Legislature of West Virginia:

That §36-1-20 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §42-4-2 of said code be amended and reenacted, all to read as follows:

CHAPTER 36. ESTATES AND PROPERTY.

ARTICLE 1. CREATION OF ESTATES GENERALLY.

§36-1-20. When survivorship preserved.

- 1 (a) Section nineteen of this article does not apply to any
- 2 estate which joint tenants have as executors or trustees, nor
- 3 to an estate conveyed or devised to persons in their own
- 4 right, when it manifestly appears from the tenor of the
- 5 instrument that it was intended that the part of the one dying
- 6 should then belong to the others. Neither shall it affect the

7 mode of proceeding on any joint judgment or decree in favor
8 of, or on any contract with, two or more, one of whom dies.

9 (b) When the instrument of conveyance or ownership in
10 any estate, whether real estate or tangible or intangible
11 personal property, links multiple owners together with the
12 disjunctive “or,” such ownership shall be held as joint
13 tenants with the right of survivorship, unless expressly
14 stated otherwise.

15 (c) A person convicted of violating the provisions of
16 section one or three, article two, chapter sixty-one of this
17 code as a principal, aider and abettor or accessory before the
18 fact, or convicted of a similar provision of law of another
19 state or the United States, or who has been convicted of an
20 offense causing the death of an incapacitated adult set forth
21 in section twenty-nine-a, article two, chapter sixty-one of
22 this code, as a principal, aider and abettor or accessory
23 before the fact, or convicted of a similar provision of law of
24 another state or the United States, may not take or acquire
25 any real or personal property by survivorship pursuant to
26 this section when the victim of the criminal offense was a
27 joint holder of title to the property. The property to which
28 the convicted person would otherwise have been entitled
29 shall go to the person or persons who would have taken the
30 property if the convicted person had predeceased the victim.

31 (d) A person who has been convicted of an offense of
32 abuse or neglect of an incapacitated adult pursuant to section
33 twenty-nine, article two, chapter sixty-one of this code, a
34 felony offense of financial exploitation of an elderly person,
35 protected person or an incapacitated adult pursuant to section
36 twenty-nine-b of that article, or convicted of a similar
37 provision of law of another state or the United States, may not
38 take or acquire any real or personal property by survivorship
39 pursuant to this section, when the victim of the criminal
40 offense is a joint holder of the title to the property. The money
41 or property which the person would have otherwise have
42 received shall go to the person or persons who would have
43 taken the money or property if the convicted person had
44 predeceased the victim. This subsection does not apply if, after
45 the conviction, the victim of the offense, if competent,

46 executes a recordable instrument, sworn to, notarized and
47 witnessed by two persons that would be competent as
48 witnesses to a will of the victim, expresses a specific intent to
49 allow the person so convicted to retain his or her tenancy in the
50 property with rights of survivorship.

CHAPTER 42. DESCENT AND DISTRIBUTION.

ARTICLE 4. GENERAL PROVISIONS.

§42-4-2. Homicide bars acquisition of estate or insurance money.

1 (a) A person who has been convicted of feloniously
2 killing another, or of conspiracy in the killing of another, may
3 not take or acquire any money or property, real or personal,
4 or interest in the money or property, from the one killed or
5 conspired against, either by descent and distribution, or by
6 will, or by any policy or certificate of insurance, or otherwise;
7 but the money or the property to which the convicted person
8 would otherwise have been entitled shall go to the person or
9 persons who would have taken the money or property if the
10 convicted person had been dead at the date of the death of the
11 one killed or conspired against, unless by some rule of law or
12 equity the money or the property would pass to some other
13 person or persons.

14 (b) A person who has been convicted of an offense
15 causing the death of an incapacitated adult set forth in section
16 twenty-nine-a, article two, chapter sixty-one of this code, or
17 convicted of a similar provision of law of another state or the
18 United States, may not take or acquire any money or
19 property, real or personal, or interest in the money or
20 property, from the victim decedent, either by descent and
21 distribution, or by will, or by any policy or certificate of
22 insurance, or otherwise; but the money or the property to
23 which the convicted person would otherwise have been
24 entitled shall go to the person or persons who would have
25 taken the money or property if the convicted person had been
26 dead at the date of the death of the decedent, unless by law
27 the money or the property would pass to some other person
28 or persons.

29 (c) A person who has been convicted of an offense of
30 abuse or neglect of an incapacitated adult pursuant to section
31 twenty-nine, article two, chapter sixty-one of this code, a
32 felony offense of financial exploitation of an elderly person,
33 protected person or incapacitated adult pursuant to section
34 twenty-nine–b, article two, chapter sixty-one of this code, or
35 convicted of a similar provision of law of another state or the
36 United States, may not take or acquire any money or
37 property, real or personal, or any interest in the money or
38 property, from the victim of the offense, either by descent and
39 distribution, or by will, or by any policy or certificate of
40 insurance, or otherwise. The money or the property to which
41 the convicted person would otherwise have been entitled
42 shall go to the person or persons who would have taken the
43 money or property if the convicted person had been dead at
44 the date of the death of the victim, unless by law the money
45 or the property would pass to some other person or persons.
46 This subsection does not apply if, after the conviction, the
47 victim of the offense, if competent, executes a recordable
48 instrument, sworn to, notarized and witnessed by two persons
49 that would be competent witnesses to a will of the victim,
50 expresses a specific intent to allow the convicted person to
51 inherit or otherwise receive the money, estate or other
52 property of the victim of the offense.

CHAPTER 91

**(Com. Sub. for S. B. 358 - By Senators Trump, Sypolt
and Boso)**

[Passed April 5, 2017; in effect from passage.]
[Approved by the Governor on April 18, 2017.]

AN ACT to amend and reenact §36-9-15 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §36-9-15a, all relating generally to the trustee sale of timeshare estates; providing

that a managing entity may cause a trustee sale of the timeshare estate if the owner is delinquent to the managing entity for more than one year for assessments against the timeshare estate; clarifying that the statutory lien on the timeshare period is subordinate to any lien or security interest voluntarily granted upon the timeshare period by the owner; requiring notice of a trustee sale be recorded; requiring that notice of a trustee sale be sent to the delinquent owner and to certain holders of liens or security interests encumbering the timeshare period; requiring notice of trustee sale by publication; providing for a trustee sale at public auction if the delinquency is not cured within thirty days of notice of trustee sale; providing that a trustee sale may include multiple timeshare estates; providing that a trustee sale is prohibited if timeshare instrument expressly mandates judicial foreclosure; requiring a trustee to cause trustee's deed and disclosure to be recorded with the clerk of the county commission; and providing for a statute of limitations.

Be it enacted by the Legislature of West Virginia:

That §36-9-15 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 §36-9-15a, all to read as follows:

ARTICLE 9. WEST VIRGINIA REAL ESTATE TIMESHARING ACT.

§36-9-15. Liens for overdue assessments; mechanic's liens, insurance.

- 1 (a) The managing entity has a lien on a timeshare period
- 2 for any assessment levied against that timeshare period from
- 3 the date such assessment becomes due.

- 4 (b) The managing entity may bring an action in its name
- 5 to foreclose a lien for assessments, in the manner a mortgage
- 6 of real property is foreclosed.

7 (c) The managing entity may cause a trustee sale of the
8 timeshare estate if the owner is delinquent to the managing
9 entity for more than one year for assessments against the
10 timeshare estate: *Provided*, That a trustee sale shall be
11 effectuated as provided in section fifteen-a, article nine,
12 chapter thirty-six of this code.

13 (d) In addition to the remedies in subsections (b) and (c)
14 of this section, the managing entity may also bring an action
15 to recover a money judgment for the unpaid assessments
16 without waiving any claim of lien. However, in the case of
17 a timesharing plan in which no interest in real property is
18 conveyed, the managing entity may bring an action under
19 chapter forty-six of this code.

20 (e) The lien is effective from the date of recording a
21 claim of lien in the public records of the county or counties
22 in which the accommodations or facilities constituting the
23 timesharing plan are located. The claim of lien shall state
24 the name of the timesharing plan and identify the timeshare
25 period for which the lien is effective, state the name of the
26 purchaser, state the assessment amount due and state the due
27 dates. The lien is effective until satisfied or until barred by
28 law. The claim of lien may include only assessments which
29 are due when the claim is recorded. A claim of lien shall be
30 signed and acknowledged by an officer or agent of the
31 managing entity. Upon full payment, the person making the
32 payment is entitled to a satisfaction of the lien.

33 (f) A judgment in any action or suit brought under this
34 section shall include costs and reasonable attorney's fees for
35 the prevailing party.

36 (g) Labor performed on a unit, or materials furnished to
37 a unit, shall not be the basis for the filing of a lien pursuant
38 to the mechanic's lien law against the timeshare unit of any
39 timeshare period owner not expressly consenting to or
40 requesting the labor or materials.

41 (h) The seller, initially, and thereafter the managing
42 entity, shall be responsible for obtaining insurance to protect
43 the accommodations and facilities of the timesharing plan
44 in an amount equal to the replacement cost of such
45 accommodations and facilities.

46 (i) Notwithstanding any provision in this article, the
47 lien granted pursuant to this section shall not have priority
48 over any voluntarily granted lien or security interest in the
49 timeshare estate.

50 (j) A copy of each policy of insurance in effect shall be
51 made available for reasonable inspection by purchasers and
52 their authorized agents.

§36-9-15a. Trustee's sale of timeshare estates.

1 (a) A managing entity that desires to use a trustee sale
2 shall prepare, execute and acknowledge a notice of trustee
3 sale which shall include the following:

4 (1) The time and place of sale;

5 (2) The names of the parties to the deed under which it
6 will be made;

7 (3) The date of the deed;

8 (4) The office and book in which it is recorded;

9 (5) The terms of sale;

10 (6) The nature and amount of the owner's current
11 delinquency;

12 (7) The legal description of the owner's timeshare
13 estate;

14 (8) The name and address of the association or other
15 managing entity; and

16 (9) The name and address of the trustee designated by
17 the association or managing entity to conduct the trustee
18 sale.

19 (b) The managing entity shall record the notice of
20 trustee sale with the clerk of the county commission of the
21 county in which the timeshare estate is located and shall
22 mail by certified mail, return receipt requested, a copy of the
23 notice of trustee sale to the owner listed in the notice at the
24 last address for each delinquent timeshare period according
25 to the records of the managing entity, and, to any holder of
26 a lien or security interest against the timeshare estate being
27 sold, other than the state and the managing entity. To the
28 extent the owner is unable to be located, notice under this
29 subsection is satisfied by notice by publication as provided
30 in subsection (c) of this section.

31 (c) At least thirty days prior to the date of the trustee
32 sale, the notice of trustee sale shall be published as a Class
33 II legal advertisement in compliance with the provisions of
34 article three, chapter fifty-nine of this code and the
35 publication area for such publication shall be the county
36 where the property is located.

37 (d) A trustee appointed in a notice of delinquency may
38 conduct a trustee sale of a timeshare estate under this
39 section. The recording of a notice of trustee sale shall satisfy
40 all requirements for the trustee to appear in the chain of title
41 for the timeshare estate in order for the trustee to be entitled
42 to issue a trustee deed on completion of a trustee's sale for
43 the timeshare estate.

44 (e) If the delinquencies identified in a notice of trustee
45 sale are not cured within thirty days after the managing
46 entity mails the notice of trustee sale pursuant to subsection
47 (b) of this section, and publication is made under subsection
48 (c) of this section, the managing entity may cause the trustee
49 to conduct a trustee's sale of the delinquent owner's
50 timeshare estate at public auction.

51 (f) The trustee's sale may include multiple timeshare
52 estates owned by an owner if the owner is delinquent in
53 payment of assessments for all of the timeshare estates
54 included in the trustee's sale proceeding. The trustee's sale
55 may include timeshare estates owned by multiple owners if
56 the notice of trustee's sale provides all information required
57 by this section for each owner and timeshare estate and each
58 timeshare estate is sold separately.

59 (g) This section shall not apply to any timeshare
60 property if the timeshare instrument expressly mandates that
61 judicial foreclosure is the sole method for the managing
62 entity to foreclose or liquidate a lien securing payment of
63 assessments due to the managing entity.

64 (h) When a sale of property is made under any trustee
65 deed, there shall, within two months after the sale, be
66 returned by the trustee, to the clerk of the county
67 commission of the county wherein such deed may have been
68 first recorded, an inventory of the property sold and an
69 account of the sale. The clerk of the county commission
70 shall record the same, as provided in section nine, article
71 one, chapter thirty-eight of this code. When a report of the
72 sale of the property sold pursuant to a trustee deed is placed
73 on record by the trustee with the clerk of the county
74 commission as provided in section eight of this article, the
75 trustee shall include in a disclosure form submitted with and
76 made a part of the report of sale the information identified
77 in section eight-a, article one, chapter thirty-eight of this
78 code, to the extent applicable.

79 (i) If notice is given as provided in this section, no action
80 or proceeding to set aside a trustee sale due to the failure to
81 follow any notice, service, process or other procedural
82 requirement relating to a sale of property under a timeshare
83 instrument, shall be filed or commenced more than one year
84 from the date of the sale.

CHAPTER 92

(Com. Sub. for S. B. 581 - By Senators Trump, Woelfel and Plymale)

[Passed April 5, 2017; in effect ninety days from passage.]

[Approved by the Governor on April 18, 2017.]

AN ACT to amend and reenact §38-1-13 of the Code of West Virginia, 1931, as amended; to amend and reenact §44D-1-103 of said code; to amend said code by adding thereto a new section, designated §44D-1-113; to amend and reenact §44D-4-405 and §44D-4-414 of said code; to amend and reenact §44D-5-503b and §44D-5-505 of said code; to amend and reenact §44D-6-604 of said code; and to amend and reenact §44D-8-813 and §44D-8-817 of said code, all relating generally to trusts and their administration; eliminating requirement to give notice to trustee of substitution under certain circumstances; modifying definitions; establishing insurable interest of a trustee; clarifying scope of provisions regarding trust established for charitable purposes; increasing amount of noncharitable trust property to terminate trust without court approval; requiring self-settled spendthrift trust have one independent qualified trustee; adding reference to exceptions for self-settled spendthrift trusts to provision allowing creditor or assignee to reach amount distributed for grantor's benefit from irrevocable trust; removing reference to exceptions for self-settled spendthrift trusts to provisions allowing creditor or assignee to reach amount distributed for grantor's benefit from revocable trusts; changing references from beneficiary to interested person in limitation on actions to contest validity of revocable trust; modifying duties of trustee to inform and report to beneficiaries; granting trustee authority and requiring trustee to wind up administration of trust upon its termination; and making technical changes.

Be it enacted by the Legislature of West Virginia:

That §38-1-13 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §44D-1-103 of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §44D-1-113; that §44D-4-405 and §44D-4-414 of said code be amended and reenacted; that §44D-5-503b and §44D-5-505 of said code be amended and reenacted; that §44D-6-604 of said code be amended and reenacted; and that §44D-8-813 and §44D-8-817 of said code be amended and reenacted, all to read as follows:

CHAPTER 38. LIENS.

ARTICLE 1. VENDOR'S AND TRUST DEED LIENS.

§38-1-13. Substitution of trustees under a trust deed securing a debt.

1 (a) When a trust deed to secure a debt or obligation does
2 not by its terms prescribe a method for substitution, the
3 party secured by the trust deed, or any surety indemnified
4 by the deed, or the assignee or personal representative of
5 any secured party or surety may, if there is a death, removal,
6 declination, resignation, refusal or inability of the original
7 trustee or trustees named in the instrument, substitute a
8 trustee or trustees in his or her, or its place by a writing duly
9 signed and acknowledged and recorded in the office of the
10 clerk of the county commission where the real estate
11 covered by the trust deed is situate.

12 (b) When a substitution is made under this section of a
13 trustee or trustees of a trust deed securing a debt or
14 obligation, the substitution is effected when the party
15 secured, or a surety indemnified by the deed, or the assignee
16 or personal representative of any such secured party or
17 surety has deposited true copies of the notice of the
18 substitution in the United States mail, first class postage
19 prepaid, addressed to the last known addresses of the
20 grantor or grantors or any other person owing the debt or
21 obligation, and has presented the original of the notice to the

22 clerk of the county commission in whose office the trust
23 deed is recorded, causing the notice to be recorded and
24 indexed in a general lien book or other appropriate book in
25 which trust deeds or assignments of trust deeds are
26 recorded. There shall be appended to the notice presented
27 for recording a certificate by the party making the
28 substitution, certifying that copies of the notice were mailed
29 as required by this subsection and showing the date of the
30 mailing.

CHAPTER 44D. UNIFORM TRUST CODE.

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.

§44D-1-103. Definitions.

1 In this chapter:

2 (a) “Action”, with respect to an act of a trustee, includes
3 a failure to act.

4 (b) “Ascertainable standard” means a standard relating
5 to an individual’s health, education, support or maintenance
6 within the meaning of Section 2041(b)(1)(A) or 2514(c)(1)
7 of the Internal Revenue Code.

8 (c) “Beneficiary” means a person that:

9 (1) Has a present or future beneficial interest in a trust,
10 vested or contingent;

11 (2) In a capacity other than that of trustee, holds a power
12 of appointment over trust property; or

13 (3) A charitable organization that is expressly
14 designated in the terms of the trust instrument to receive
15 distributions.

16 (d) “Charitable trust” means a trust, or portion of a trust,
17 created for a charitable purpose described in subsection (a),
18 section four hundred five, article four of this chapter.

19 (e) “Conservator” means a person appointed by the
20 court to administer the estate and financial affairs of a
21 protected person.

22 (f) “Court” means a court of this state having proper
23 jurisdiction under section two hundred three, article two of
24 this chapter, and venue under section two hundred four of
25 said article.

26 (g) “Current beneficiary” means a beneficiary that, on
27 the date the beneficiary’s qualification is determined, is a
28 distributee or permissible distributee of trust income or
29 principal.

30 (h) “Environmental law” means a federal, state or local
31 law, rule, regulation or ordinance relating to protection of
32 the environment.

33 (i) “Grantor” means a person, including a testator, who
34 creates, or contributes property to a trust. If more than one
35 person creates or contributes property to a trust, each person
36 is a grantor of the portion of the trust property attributable
37 to that person’s contribution except to the extent another
38 person has the power to revoke or withdraw that portion.

39 (j) “Guardian” means a person appointed by the court
40 who is responsible for the personal affairs of a protected
41 person or a parent to make decisions regarding the support,
42 care, education, health and welfare of a minor. The term
43 does not include a guardian ad litem.

44 (k) “Interested person” means heirs, devisees, children,
45 spouses, creditors, beneficiaries and any others having a
46 property right in or claim against a trust or the property in a
47 trust. It also includes persons having priority for
48 appointment as personal representative and other fiduciaries
49 representing interested persons. The meaning as it relates
50 to particular persons may vary from time to time and must
51 be determined according to the particular purposes of, and
52 matter involved in, any proceeding.

53 (l) “Interests of the beneficiaries” means the beneficial
54 interests provided in the terms of the trust.

55 (m) “Internal Revenue Code” or “Internal Revenue
56 Code of 1986” has the same meaning as when used in a
57 comparable context in the laws of the United States then in
58 effect relating to income, estate, generation-skipping
59 transfer and other taxes including all amendments made to
60 the laws of the United States and amendments which have
61 been adopted and incorporated into West Virginia law by
62 the West Virginia Legislature in section nine, article twenty-
63 one, chapter eleven of this code.

64 (n) “Jurisdiction” with respect to a geographic area,
65 includes a state or country.

66 (o) “Person” means an individual, corporation, business
67 trust, estate, trust, partnership, limited liability company,
68 association, joint venture, unincorporated nonprofit
69 association, charitable organization, government,
70 governmental subdivision, agency or instrumentality,
71 public corporation or any other legal or commercial entity.

72 (p) “Power of withdrawal” means a presently
73 exercisable general power of appointment other than a
74 power:

75 (1) Exercisable by a trustee and limited by an
76 ascertainable standard; or

77 (2) Exercisable by another person only upon consent of
78 the trustee or a person holding an adverse interest.

79 (q) “Property” means anything that may be the subject
80 of ownership, whether real or personal, legal or equitable or
81 any interest therein.

82 (r) “Qualified beneficiary” means a beneficiary who, on
83 the date the beneficiary’s qualification is determined:

84 (1) Is a distributee or permissible distributee of trust
85 income or principal;

86 (2) Would be a distributee or permissible distributee of
87 trust income or principal if the interests of the distributees
88 described in paragraph (1) of this subdivision terminated on
89 that date without causing the trust to terminate; or

90 (3) Would be a distributee or permissible distributee of
91 trust income or principal if the trust terminated on that date.

92 (s) “Revocable”, as applied to a trust, means revocable
93 by the grantor without the consent of the trustee or a person
94 holding an adverse interest.

95 (t) “Spendthrift provision” means a term of a trust which
96 restrains both voluntary and involuntary transfer of a
97 beneficiary’s interest.

98 (u) “State” means a state of the United States, the
99 District of Columbia, Puerto Rico, the United States Virgin
100 Islands or any territory or insular possession subject to the
101 jurisdiction of the United States. The term includes an
102 Indian tribe or band recognized by federal law or formally
103 acknowledged by a state.

104 (v) “Terms of a trust” means the manifestation of the
105 grantor’s intent regarding a trust’s provisions as expressed
106 in the trust instrument or as may be established by other
107 evidence that would be admissible in a judicial proceeding.

108 (w) “Trust instrument” means a writing, including a
109 will, executed by the grantor that contains terms of the trust,
110 including any amendments thereto.

111 (x) “Trustee” includes an original, additional, successor
112 trustee and a cotrustee.

113 (y) “Writing” or “written instrument” does not include
114 an electronic record or electronic signature as provided in
115 chapter thirty-nine-a of this code.

§44D-1-113. Insurable interest of trustee.

1 (a) A trustee of a trust has an insurable interest in the
2 life of an individual insured under a life insurance policy
3 that is owned by the trustee of the trust acting in a fiduciary
4 capacity or that designates the trust itself as the owner if, on
5 the date the policy is issued:

6 (1) The insured is:

7 (A) A grantor of the trust; or

8 (B) An individual in whom a grantor of the trust has, or
9 would have had if living at the time the policy was issued,
10 an insurable interest as provided by the provisions of section
11 two, article six, chapter thirty-three of this code; and

12 (2) The life insurance proceeds are primarily for the
13 benefit of one or more trust beneficiaries that have an
14 insurable interest in the life of the insured as provided by
15 the provisions of section two, article six, chapter thirty-three
16 of this code.

17 (b) For purposes of this section, the term “grantor”
18 means a person that executes a trust instrument. The term
19 includes a person for which a fiduciary or agent is acting.

**ARTICLE 4. CREATION, VALIDITY, MODIFICATION
AND TERMINATION OF TRUST.****§44D-4-405. Charitable purposes; enforcement.**

1 (a) A charitable trust may be created for the relief of
2 poverty, the advancement of education or religion, the
3 promotion of health, governmental or municipal purposes
4 or other purposes the achievement of which is beneficial to
5 the community.

6 (b) If the terms of a charitable trust do not indicate a
7 particular charitable purpose or beneficiary, upon petition
8 by the trustee or a person having a special interest in the
9 trust, the court may select one or more charitable purposes

10 or beneficiaries. The selection must be consistent with the
11 grantor's intention to the extent it can be ascertained.

12 (c) The grantor of a charitable trust, trustee or a person
13 having a special interest in the trust, may maintain a
14 proceeding to enforce the trust.

15 (d) This section is not intended to override the
16 provisions of section four, article one, chapter thirty-five of
17 this code or section two, article two of said chapter,
18 concerning conveyances, devises, dedications, gifts or
19 bequests to religious organizations, and to the extent there
20 is a conflict with those sections, this section controls.

§44D-4-414. Modification or termination of uneconomic trust.

1 (a) After notice to the qualified beneficiaries, the trustee
2 of a trust consisting of a noncharitable trust property having
3 a total value less than \$200,000 may terminate the trust,
4 without the necessity of court approval, if the trustee
5 concludes that the value of the trust property is insufficient
6 to justify the cost of administration.

7 (b) The court may modify or terminate a trust or remove
8 the trustee and appoint a different trustee if it determines
9 that the value of the trust property is insufficient to justify
10 the cost of administration.

11 (c) Upon termination of a trust under this section, the
12 trustee shall distribute the trust property in a manner
13 consistent with the purposes of the trust.

14 (d) This section does not apply to an easement for
15 conservation or preservation.

ARTICLE 5. CREDITOR'S CLAIMS; SPENDTHRIFT AND DISCRETIONARY TRUSTS.

§44D-5-503b. Definitions.

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

3 (a) “Qualified trustee” means any person who is a
4 natural person residing within the state or a legal entity
5 authorized to engage in trust business within the state and
6 who maintains or arranges for custody within the state of
7 some or all of the property that has been transferred to the
8 trust by the grantor, maintains records within the state for
9 the trust on an exclusive or nonexclusive basis, prepares or
10 arranges for the preparation within the state of fiduciary
11 income tax returns for the trust, or otherwise materially
12 participates within the state in the administration of the
13 trust. A trustee is not a qualified trustee if such trustee’s
14 authority to make distributions of income or principal or
15 both are subject to the direction of someone who, were that
16 person a trustee of the trust, would not meet the
17 requirements to be a qualified trustee.

18 (b) “Independent qualified trustee” means a qualified
19 trustee who is not, and whose actions are not, subject to
20 direction by:

21 (1) The grantor;

22 (2) Any natural person who is not a resident of the state;

23 (3) Any entity that is not authorized to engage in trust
24 business within the state;

25 (4) The grantor’s spouse;

26 (5) A parent of the grantor;

27 (6) Any descendant of the grantor; or

28 (7) A sibling of the grantor.

29 (c) “Qualified interest” means a grantor’s interest in a
30 qualified self-settled spendthrift trust, to the extent that such
31 interest entitles the grantor to receive distributions of
32 income, principal, or both, in the sole discretion of an
33 independent qualified trustee. A grantor may have a
34 qualified interest in a qualified self-settled spendthrift trust

35 and also have an interest in the same trust that is not a
36 qualified interest, and the rules of section five hundred five
37 of this article shall apply to each interest of the grantor in
38 the same trust other than the grantor's qualified interest.

39 (d) "Qualified self-settled spendthrift trust" means a
40 trust if:

41 (1) The trust is irrevocable;

42 (2) The trust is created during the grantor's lifetime;

43 (3) There is, at all times when distributions could be
44 made to the grantor pursuant to the grantor's qualified
45 interest, at least one beneficiary other than the grantor:

46 (i) To whom income may be distributed, if the grantor's
47 qualified interest relates to trust income;

48 (ii) To whom principal may be distributed, if the
49 grantor's qualified interest relates to trust principal; or

50 (iii) To whom both income and principal may be
51 distributed, if the grantor's qualified interest relates to both
52 trust income and principal;

53 (4) The trust has at all times at least one qualified
54 trustee, who may be, but need not be, an independent
55 qualified trustee;

56 (5) The trust instrument expressly incorporates the laws
57 of this state to govern the validity, construction and
58 administration of the trust;

59 (6) The trust instrument includes a spendthrift
60 provision, as defined in section five hundred two of this
61 article, that restrains both voluntary and involuntary transfer
62 of the grantor's qualified interest;

63 (7) The grantor does not have the right to disapprove
64 distributions from the trust; and

65 (8) The grantor duly executes a qualified affidavit
66 before or substantially contemporaneously with the making
67 of the transfer of the asset or assets into the trust.

68 (e) “Qualified affidavit” means a duly executed affidavit
69 of the grantor which contains under oath all of the following
70 statements, or statements substantially to the effect:

71 (1) The property being transferred to the trust was not
72 derived from unlawful activities;

73 (2) The grantor has full right, title, and authority to
74 transfer the property to the trust;

75 (3) The grantor will not be rendered insolvent
76 immediately after the transfer of the property to the trust;

77 (4) The grantor does not intend to defraud any creditor
78 by transferring the property to the trust;

79 (5) There are no pending or threatened court actions
80 against the grantor, except for any court action expressly
81 identified in the affidavit or an attachment to the affidavit;

82 (6) The grantor is not involved in any administrative
83 proceeding, except for any proceeding expressly identified
84 in the affidavit or an attachment to the affidavit;

85 (7) The grantor is not indebted on account of an
86 agreement or order of court for the payment of support or
87 alimony in favor of such transferor’s spouse, former spouse
88 or children, or for a division or distribution of property
89 incident to a judicial proceeding with respect to a divorce or
90 annulment in favor of such transferor’s spouse or former
91 spouse, except for any such indebtedness expressly
92 identified in the affidavit or an attachment to the affidavit;
93 and

94 (8) The grantor does not contemplate at the time of the
95 transfer the filing for relief under the Bankruptcy Code of
96 the United States.

97 An affidavit is defective and is not a qualified affidavit
98 if it materially fails to meet the requirements set forth in this
99 subsection. An affidavit is not considered defective and is a
100 qualified affidavit if it contains any nonsubstantive
101 variances from the language set forth in this subsection, it
102 contains statements or representations in addition to those
103 required in this subsection which do not materially
104 contradict the required statements or representations or
105 there are any technical errors in the form, substance or
106 method of preparation or execution of the affidavit if those
107 errors were not the fault of the affiant and the affiant
108 reasonably relied upon another person to prepare or notarize
109 the affidavit.

§44D-5-505. Creditor's claim against grantor.

1 (a) Whether or not the terms of a trust instrument
2 contain a spendthrift provision, the following rules apply:

3 (1) During the lifetime of the grantor, the property of a
4 revocable trust is subject to claims of the grantor's creditors.

5 (2) During the lifetime of the grantor, with respect to an
6 irrevocable trust, except to the extent otherwise provided in
7 sections five hundred three-a, five hundred three-b and five
8 hundred three-c of this article, a creditor or assignee of the
9 grantor may reach the maximum amount that can be
10 distributed to or for the grantor's benefit. If a trust has more
11 than one grantor, the amount the creditor or assignee of a
12 particular grantor may reach may not exceed the grantor's
13 interest in the portion of the trust attributable to that
14 grantor's contribution.

15 (3) After the death of a grantor, and subject to the
16 grantor's right to direct the source from which liabilities will
17 be paid, the property of a trust that was revocable at the
18 grantor's death is subject to claims of the creditors of the
19 deceased grantor, to the extent the grantor's probate estate
20 is inadequate to satisfy them, and with such claims payable
21 in order of priority of the following classes:

22 (A) The costs and expenses of administration of the
23 grantor's estate;

24 (B) Reasonable funeral expenses;

25 (C) Debts and taxes with preference under federal law;

26 (D) Unpaid child support which is due and owing at the
27 time of the decedent's death;

28 (E) Debts and taxes with preference under other laws of
29 the State of West Virginia;

30 (F) Reasonable and necessary medical and hospital
31 expenses of the last illness of the decedent, including
32 compensation for persons attending the decedent during his
33 or her last illness; and

34 (G) All other claims.

35 (b) For purposes of this section:

36 (1) During the period the power may be exercised, the
37 holder of a power of withdrawal is treated in the same
38 manner as the grantor of a revocable trust to the extent of
39 the property subject to the power; and

40 (2) Upon the lapse, release or waiver of the power, the
41 holder is treated as the grantor of the trust only to the extent
42 the value of the property affected by the lapse, release or
43 waiver exceeds the greater of the amount specified in
44 Section 2041(b)(2), Section 2503(b) or Section 2514(e) of
45 the Internal Revenue Code.

ARTICLE 6. REVOCABLE TRUSTS.

§44D-6-604. Limitation on action contesting validity of revocable trust; distribution of trust property.

1 (a) (1) An interested person may commence a judicial
2 proceeding to contest the validity of a trust that was
3 revocable at the grantor's death within the earlier of:

4 (A) Two years after the grantor's death; or

5 (B) Six months after the trustee has sent the interested
6 person a copy of the trust instrument and a notice informing
7 the interested person of the trust's existence, of the trustee's
8 name and address, and of the time allowed for commencing
9 a proceeding.

10 (2) Notwithstanding subdivision (1) of this subsection:

11 (A) If the interested person is under the age of eighteen
12 years or is a convict or mentally incapacitated person, the
13 interested person has one year after he or she becomes of
14 age or the disability ceases, to commence a judicial
15 proceeding; and

16 (B) If the interested person resided out of the state at the
17 time the interested person received the trust instrument and
18 notice, the interested person has one year after receipt
19 thereof to commence the judicial proceeding.

20 (b) Upon the death of the grantor of a trust that was
21 revocable at the grantor's death, the trustee may proceed to
22 distribute the trust property in accordance with the terms of
23 the trust instrument. The trustee is not subject to liability for
24 doing so unless:

25 (1) The trustee knows of a pending judicial proceeding
26 contesting the validity of the trust; or

27 (2) A potential contestant has notified the trustee of a
28 possible judicial proceeding to contest the trust and a
29 judicial proceeding is commenced within sixty days after
30 the contestant sent the notification.

31 (c) A beneficiary of a trust that was revocable at the
32 grantor's death that is determined to have been invalid is
33 liable to return any distribution received.

ARTICLE 8. DUTIES AND POWERS OF TRUSTEE.

§44D-8-813. Duty to inform and report.

1 (a) A trustee shall keep the current beneficiaries of the trust
2 reasonably informed about the administration of the trust and

3 of the material facts necessary for them to protect their
4 interests. Unless unreasonable under the circumstances, a
5 trustee shall within a reasonable time respond to a
6 beneficiary's request for information related to the
7 administration of the trust.

8 (b) A trustee:

9 (1) Upon request of a beneficiary, shall within a
10 reasonable time furnish to the beneficiary a copy of the trust
11 instrument;

12 (2) Within a reasonable time after accepting a
13 trusteeship, shall notify the current beneficiaries of the
14 acceptance and of the trustee's name, address and telephone
15 number;

16 (3) Within a reasonable time after the date the trustee
17 acquires knowledge of the creation of an irrevocable trust,
18 or the date the trustee acquires knowledge that a formerly
19 revocable trust has become irrevocable, whether by the
20 death of the grantor or otherwise, shall notify the current
21 beneficiaries of the trust's existence, of the identity of the
22 grantor or grantors, of the right to request a copy of the trust
23 instrument, and of the right to a trustee's report as provided
24 in subsection (c) of this section; and

25 (4) Shall notify the current beneficiaries within a
26 reasonable time in advance of any change in the method or
27 rate of the trustee's compensation.

28 (c) A trustee shall send to the current beneficiaries of
29 trust income or principal, and to other qualified or
30 nonqualified beneficiaries who request it, at least annually
31 and at the termination of the trust, a report of the trust
32 property, liabilities, receipts, and disbursements, including
33 the source and amount of the trustee's compensation, a
34 listing of the trust assets and, if feasible, their respective
35 market values. Upon a vacancy in a trusteeship, unless a
36 cotrustee remains in office, a report shall be sent to the
37 current beneficiaries, and to other nonqualified or qualified

38 beneficiaries who request it or who have previously
39 requested it, by the former trustee. A personal
40 representative, conservator or guardian may send the
41 qualified beneficiaries a report on behalf of a deceased or
42 incapacitated individual who was a trustee, and the personal
43 representative, conservator or guardian shall deliver to the
44 successor trustee or trustees any books, records,
45 documentation, instruments of title, or assets of or
46 concerning the trust which are in the possession or under the
47 control of the personal representative, conservator or
48 guardian.

49 (d) A beneficiary may waive the right to a trustee's
50 report or other information otherwise required to be
51 furnished under this section. A beneficiary, with respect to
52 future reports and other information, may withdraw a
53 waiver previously given.

54 (e) The trustee may provide reports or other information
55 to beneficiaries to whom reports and other information are
56 not otherwise required to be furnished under this section.

57 (f) Subdivisions (2) and (3), subsection (b) of this
58 section do not apply to a trustee who accepts a trusteeship
59 before the effective date of this chapter, to an irrevocable
60 trust created before the effective date of this chapter, or to a
61 revocable trust that becomes irrevocable before the effective
62 date of this chapter.

§44D-8-817. Distribution upon termination.

1 (a) Upon termination or partial termination of a trust, the
2 trustee may send to the beneficiaries a proposal for
3 distribution. The right of any beneficiary to object to the
4 proposed distribution terminates if the beneficiary does not
5 notify the trustee of an objection within sixty days after the
6 proposal was sent but only if the proposal informed the
7 beneficiary of the right to object and of the time allowed for
8 objection.

9 (b) Upon the occurrence of an event terminating or
10 partially terminating a trust, the trustee shall have and
11 exercise all powers appropriate to wind up the
12 administration of the trust and shall proceed expeditiously
13 to distribute the trust property to the persons entitled to it,
14 subject to the right of the trustee to retain a reasonable
15 reserve for the payment of debts, expenses and taxes.

16 (c) A release by a beneficiary of a trustee from liability
17 for breach of trust is invalid to the extent:

18 (1) It was induced by improper conduct of the trustee;
19 or

20 (2) The beneficiary, at the time of the release, did not
21 know of the beneficiary's rights or of the material facts
22 relating to the breach.

CHAPTER 93

(H. B. 2967 - By Delegates Nelson and Boggs)
[By Request of the Tax and Revenue Department]

[Passed April 8, 2017; in effect ninety days from passage.]
[Approved by the Governor on April 24, 2017.]

AN ACT to amend and reenact §44-1-1, §44-1-6, §44-1-7, §44-1-8, §44-1-14a and §44-1-26 of the Code of West Virginia, 1931, as amended; to amend and reenact §44-3A-3 of said code; and to amend and reenact §44-5-3 of said code, all relating generally to administration of estates and trusts; waiving surety requirements for administrators of estates where grantee is sole beneficiary or sole distributee of the decedent; requiring county commission to hold hearing if application filed by interested party to compel nonresident executor otherwise exempt from bond requirements to post bond; requiring county commission to hold hearing if application filed by interested party to compel sole beneficiary to post surety; removing authority of clerk of county commission

to require bond or surety from certain executors and administrators upon knowledge; making executor or administrator not required to post surety liable upon his or her own personal recognizance in the event of default, failure or misadministration; requiring interested parties objecting to the qualifications of a personal representative or venue to file notice with the county commission sixty days after the date of first publication; transferring to State Auditor duty to administer fiduciary supervisor qualifying test; requiring State Auditor provide annual training for fiduciary supervisors not licensed to practice law in this state; authorizing action against bond surety when execution on judgment or decree against personal representative is returned without being satisfied; and making technical corrections.

Be it enacted by the Legislature of West Virginia

That §44-1-1, §44-1-6, §44-1-7, §44-1-8, §44-1-14a and §44-1-26 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §44-3A-3 of said code be amended and reenacted; and that §44-5-3 of said code be amended and reenacted, all to read as follows:

ARTICLE 1. PERSONAL REPRESENTATIVES.

§44-1-1. Executor has no powers before qualifying.

1 A person appointed by a will executor thereof shall not
 2 have the powers of executor until he or she qualifies as such
 3 by taking an oath and giving bond, unless not required to
 4 post bond by section eight of this article, before the county
 5 commission in which the will, or an authenticated copy
 6 thereof, is admitted to record, or before the clerk thereof in
 7 vacation, except that he or she may provide for the burial of
 8 the testator, pay reasonable funeral expenses and preserve
 9 the estate from waste.

§44-1-6. Bond and oath; termination of grant in certain cases.

1 At the time of the grant of administration upon the estate
 2 of any intestate, the person to whom it is granted shall, in
 3 the county commission or before the clerk granting it, give
 4 bond, unless not required to post bond by section eight of

5 this article, and take an oath that the deceased has left no
6 will so far as he or she knows, and that he or she will
7 faithfully perform the duties of the office to the best of his
8 or her judgment. If a will of the deceased be afterwards
9 admitted to record, or if, after administration is granted to a
10 creditor or other person than a distributee, any distributee
11 who shall not have before refused shall apply for
12 administration, there may be a grant of probate or
13 administration, after reasonable notice to such creditor or
14 other person theretofore appointed, in like manner as if the
15 former grant had not been made, and such former grant shall
16 thereupon cease.

§44-1-7. Penalty of bond.

1 (a) Every bond required to be given by an executor or
2 administrator shall be in a penalty equal, at the least, to the
3 full value of the personal estate of the deceased to be
4 administered; and where there is a will which authorizes the
5 executor or administrator to sell real estate, or receive the
6 rents and profits thereof, the bond shall be in a penalty
7 equal, at the least, to the full value both of such personal
8 estate and of such real estate, or of such personal estate and
9 of such rents and profits, as the case may be.

10 (b) If on the filing of the appraisal of the estate it
11 shall appear that the penalty of the bond does not comply as
12 to amount with the foregoing requirements, the county
13 commission in which, or the clerk before whom, such bond
14 was given, shall immediately notify such executor or
15 administrator of such fact and require of him or her a new
16 or additional bond, and the failure of such executor or
17 administrator to give the same within a reasonable time shall
18 be sufficient cause for his or her removal.

§44-1-8. When executor or administrator not to give bond; when surety not required.

1 (a) Subject to the provisions of section three, article five
2 of this chapter governing the appointment of a nonresident

3 of this state as an executor, where the will directs that an
4 executor shall not give bond, it shall not be required of him
5 or her, unless at the time the will is admitted to probate or
6 at any time subsequently, on the application of any person
7 interested, and after a hearing, it is required by the county
8 commission that bond ought to be given.

9 (b) No surety shall be required on the bond of the
10 executor if he or she is also the sole beneficiary of the
11 decedent, unless the will directs otherwise, and no surety
12 shall be required on the bond of the administrator if he or
13 she is the sole distributee of the decedent, unless at the time
14 the will is admitted to probate or the administrator is
15 appointed or at any time thereafter, on the application of any
16 person interested, and after a hearing, it is required by the
17 county commission that surety ought to be given.

18 (c) In all such cases where no surety is required of the
19 executor or administrator, the executor or administrator
20 shall nevertheless be liable upon his or her bond upon his or
21 her own personal recognizance in the event of default,
22 failure or misadministration by the executor or
23 administrator.

**§44-1-14a. Notice of administration of estate; time limits for
filing of objections; liability of personal representative.**

1 (a) Within thirty days of the filing of the appraisement
2 of any estate or within one hundred twenty days of the date
3 of qualification of the personal representative if an
4 appraisement is not filed as required in section fourteen of
5 this article, the clerk of the county commission shall
6 publish, once a week for two successive weeks, in a
7 newspaper of general circulation within the county of the
8 administration of the estate, a notice, which is to include:

9 (1) The name of the decedent;

10 (2) The name and address of the county commission
11 before whom the proceedings are pending;

12 (3) The name and address of the personal representative;

13 (4) The name and address of any attorney representing
14 the personal representative;

15 (5) The name and address of the fiduciary
16 commissioner, if any;

17 (6) The date of first publication;

18 (7) A statement that claims against the estate must be
19 filed within sixty days of the date of first publication in
20 accordance with article two or article three-a of this chapter;

21 (8) A statement that any person seeking to impeach or
22 establish a will must make a complaint in accordance with
23 section eleven, twelve or thirteen, article five, chapter forty-
24 one of this code;

25 (9) A statement that an interested person objecting to the
26 qualifications of the personal representative or the venue or
27 jurisdiction of the court must be filed with the county
28 commission within sixty days after the date of first
29 publication or thirty days of service of the notice, whichever
30 is later; and

31 (10) If the appraisal of the assets of the estate shows
32 the value to be \$200,000 or less, exclusive of real estate
33 specifically devised and nonprobate assets, or, if it appears
34 to the clerk that there is only one beneficiary of the probate
35 estate and that the beneficiary is competent at law, a
36 statement substantially as follows: "Settlement of the estate
37 of the following named decedents will proceed without
38 reference to a fiduciary commissioner unless within sixty
39 days from the first publication of this notice a reference is
40 requested by a party in interest or an unpaid creditor files a
41 claim and good cause is shown to support reference to a
42 fiduciary commissioner". If a party in interest requests the
43 fiduciary commissioner to conclude the administration of
44 the estate or an unpaid creditor files a claim, no further
45 notice to creditors shall be published in the newspaper, and

46 the personal representative shall be required to pay no
47 further fees, except to the fiduciary commissioner for
48 conducting any hearings, or performing any other duty as a
49 fiduciary commissioner. The time period for filing claims
50 against the estate shall expire upon the time period set out
51 in the notice to creditors published by the clerk of the county
52 commission as required in this subsection (a). If an unpaid
53 creditor files a claim, the fiduciary commissioner shall
54 conduct a hearing on the claim filed by the creditor,
55 otherwise, the fiduciary commissioner shall conclude the
56 administration of the estate as requested by the interested
57 party.

58 (11) This notice shall be published as a Class II legal
59 advertisement in compliance with the provisions of article
60 three, chapter fifty-nine of this code. The publication of
61 such notice shall be equivalent to personal service on
62 creditors, distributees and legatees.

63 (b) If no appraisal is filed within the time period
64 established pursuant to section fourteen of this article, the
65 county clerk shall send a notice to the personal
66 representative by first class mail, postage prepaid,
67 indicating that the appraisal has not been filed.

68 (c) The personal representative shall promptly make a
69 diligent search to determine the names and addresses of
70 creditors of the decedent who are reasonably ascertainable.

71 (d) The personal representative shall, within sixty days
72 after the date of first publication, serve a copy of the notice,
73 published pursuant to subsection (a) of this section, by first
74 class mail, postage prepaid or by personal service on the
75 following persons:

76 (1) If the personal representative is not the decedent's
77 surviving spouse and not the sole beneficiary or sole heir,
78 the decedent's surviving spouse, if any;

79 (2) If there is a will and the personal representative is
80 not the sole beneficiary, any beneficiaries;

81 (3) If there is not a will and the personal representative
82 is not the sole heir, any heirs;

83 (4) The trustee of any trust in which the decedent was a
84 grantor, if any; and

85 (5) All creditors identified under subsection (c) of this
86 section, other than a creditor who filed a claim as provided
87 in article two of this chapter or a creditor whose claim has
88 been paid in full.

89 (e) Any person interested in the estate who objects to the
90 qualifications of the personal representative or the venue or
91 jurisdiction of the court, shall file notice of an objection with
92 the county commission within sixty days after the date of
93 the first publication as required in subsection (a) of this
94 section or within thirty days after service of the notice as
95 required by subsection (d) of this section, whichever is later.
96 If an objection is not timely filed, the objection is forever
97 barred.

98 (f) A personal representative acting in good faith is not
99 personally liable for serving notice under this section,
100 notwithstanding a determination that notice was not
101 required by this section. A personal representative acting in
102 good faith who fails to serve the notice required by this
103 section is not personally liable. The service of the notice in
104 accordance with this subsection may not be construed to
105 admit the validity or enforceability of a claim.

106 (g) The clerk of the county commission shall collect a
107 fee of \$20 for the publication of the notice required in this
108 section.

109 (h) For purposes of this section, the term “beneficiary”
110 means a person designated in a will to receive real or
111 personal property.

§44-1-26. Action on bond of personal representative.

1 Where an execution on a judgment or decree against a
2 personal representative is returned without being satisfied,
3 there may be forthwith brought and prosecuted an action
4 against the surety in any bond given by such personal
5 representative for the faithful discharge of his or her duties.

ARTICLE 3A. OPTIONAL PROCEDURE FOR PROOF OF CLAIM.**§44-3A-3. Office of fiduciary supervisor created; general powers; qualifications; tests for qualification; training program; salary.**

1 (a) There is hereby created within the county
2 commission an office, designated the fiduciary supervisor,
3 who shall be appointed by order of the commission and
4 whose office, with the consent of the clerk of the county
5 commission, shall be housed within the office of such clerk
6 or shall be housed in such other office as the commission
7 may designate. Such fiduciary supervisor shall at the local
8 option of each such commission, be either a part-time or
9 full-time employee as may be required by the county
10 commission and shall receive such salary as may be fixed
11 by order of the county commission.

12 (b) The fiduciary supervisor shall have general
13 supervision of all fiduciary matters and of the fiduciaries or
14 personal representatives thereof and of all fiduciary
15 commissioners and of all matters referred to such
16 commissioners and shall make all ex parte settlements of the
17 accounts of such fiduciaries except as to those matters
18 referred to fiduciary commissioners for settlement.

19 (c) The county commission shall determine that the
20 person to be appointed as fiduciary supervisor is fully
21 qualified by education or experience, or both, to perform the
22 duties assigned to such office by this chapter or other
23 provisions of this code. Such person shall have the requisite
24 knowledge of the legal issues raised and problems presented

25 by any of the proceedings had and documents filed pursuant
26 to the chapter, the procedures required with respect thereto,
27 the rights of all parties and interested persons with respect
28 to such procedures and the duties to be performed in
29 examining and approving the several and various papers and
30 documents presented to the fiduciary supervisor. The State
31 Auditor shall design and supervise a test to be given to all
32 persons selected or appointed as fiduciary supervisor who
33 are not licensed to practice law in this state, if any, which
34 test shall include such matters as the Tax Commissioner
35 deems appropriate to determine the proficiency, experience,
36 knowledge and skill to perform all of the duties imposed
37 upon or to be imposed upon fiduciary supervisors generally.
38 Such test shall be administered under the authority of the
39 State Auditor by such person or persons as he or she may
40 designate either at the county wherein the fiduciary
41 supervisor is to serve or at such other place as the State
42 Auditor may designate. The results of the test given to any
43 person or persons shall be kept confidential except as to
44 those persons who have completed the same to the
45 satisfaction of the State Auditor and except as to those
46 persons who may desire their individual test results to be
47 made public. The State Auditor shall at least annually
48 conduct a training program for fiduciary supervisors who
49 are not licensed to practice law in this state. The training
50 program shall be conducted at such times and places and
51 consist of such subjects as the State Auditor may determine.
52 All fiduciary supervisors who are not licensed to practice
53 law shall be required to attend such training programs and
54 those supervisors as are so licensed may attend.

55 (d) The fiduciary supervisor shall give bond with good
56 security to be approved by the county commission in an
57 amount equal to the amount posted by the clerk of the
58 county commission in the county wherein such fiduciary
59 supervisor is to serve.

60 (e) Neither the fiduciary supervisor nor any person to
61 whom the duties of fiduciary supervisor have been

62 delegated, in whole or in part (excluding fiduciary
63 commissioners) shall engage in the practice of law, for
64 compensation or otherwise, with respect to the
65 administration of any estate or trust wherein the fiduciary
66 thereof has qualified in his or her county or with respect to
67 any proceedings before him or her or which are or may be
68 referred to a fiduciary commissioner in his or her county.
69 Nor shall a fiduciary commissioner or special fiduciary
70 commissioner engage in the practice of law with respect to
71 matters referred to him or her as such commissioner. Any
72 fiduciary supervisor or person to whom any of the functions
73 or duties of the fiduciary supervisor have been delegated or
74 fiduciary commissioner or special fiduciary commissioner
75 who so engages in the practice of law contrary to the limited
76 prohibitions of this section, shall be removed from his or her
77 office or employment and, in addition thereto, shall be
78 guilty of a misdemeanor and, upon conviction thereof, shall
79 be fined \$1,000.

ARTICLE 5. GENERAL PROVISIONS AS TO FIDUCIARIES.

§44-5-3. Appointment of nonresident; bond; service of notice and process; fees; penalty.

1 (a) Notwithstanding any other provision of law, no
2 individual who is a nonresident of this state, nor any
3 banking institution which does not maintain a main office
4 or branch office within this state nor any corporation having
5 its principal office or place of business outside this state,
6 may be appointed or act as executor, administrator, curator,
7 testamentary guardian, guardian or conservator in this state,
8 except that:

9 (1) An individual who is a nonresident of this state may
10 be appointed ancillary administrator of a nonresident
11 decedent's assets situate in this state if such nonresident
12 individual is lawfully acting as executor in said decedent's
13 state of domicile and submits letters of probate
14 authenticated by the probate authorities of the decedent's

15 state of domicile to the clerk of the county commission of
16 any county of this state wherein ancillary administration is
17 sought;

18 (2) An individual who is a nonresident of this state may
19 be appointed ancillary administrator of a nonresident
20 decedent's assets situate in this state if such nonresident
21 individual is acting as administrator in said decedent's state
22 of domicile and submits letters of administration
23 authenticated by the probate authorities of the decedent's
24 state of domicile to the clerk of the county commission of
25 any county of this state wherein ancillary administration is
26 sought;

27 (3) An individual who is a nonresident of this state may
28 be appointed and act as testamentary guardian of a
29 nonresident infant and thereby exercise dominion and
30 control over such nonresident infant's assets situate in this
31 state upon submission of authenticated documentation that
32 such nonresident testamentary guardian was so appointed at
33 the place of domicile of the nonresident infant. Such
34 authenticated documentation shall be submitted to the clerk
35 of the county commission of any county of this state
36 wherein assets belonging to such nonresident infant are
37 situate;

38 (4) An individual who is a nonresident of this state and
39 who is named executor by a resident decedent may qualify
40 and act as executor in this state;

41 (5) An individual who is a nonresident of this state may
42 be appointed and act as administrator of a resident
43 decedent's assets in this state if appointed in accordance
44 with the provisions of section four, article one of this
45 chapter;

46 (6) An individual who is a nonresident of this state may
47 be appointed as the testamentary guardian of a resident
48 infant if appointed in accordance with the provisions of
49 section one, article ten of this chapter; and

50 (7) An individual who is a nonresident of this state may
51 be appointed as guardian or conservator of a resident
52 incompetent: *Provided*, That such appointment is made in
53 accordance with the provisions of article two, chapter forty-
54 four-a of this code and if such nonresident individual may
55 otherwise qualify as guardian or conservator.

56 (b) Nonresident individuals enumerated in subsection
57 (a) of this section shall give bond with corporate surety
58 thereon, qualified to do business in this state, and the
59 amount of such bond shall not be less than double the value
60 of the personal assets and double the value of any real
61 property authorized to be sold or double the value of any
62 rents and profits from any real property which the
63 nonresident individual is authorized to receive, except that:

64 (1) Any nonresident individual enumerated in
65 subsection (a) of this section who is the spouse, parent,
66 sibling, lineal descendent or sole beneficiary of a resident or
67 nonresident decedent shall give bond with corporate surety
68 thereon qualified to do business in this state, with such
69 penalty as may be fixed pursuant to the provisions of
70 sections seven or eight, article one of this chapter, as
71 approved by the clerk of the county commission;

72 (2) Where the terms of a decedent's will directs that a
73 nonresident individual enumerated in subdivisions (1), (3),
74 (4) and (6), subsection (a) of this section named in a
75 decedent's will shall not give bond or give bond at a
76 specified amount, it shall not be required or shall be required
77 only to the extent required under the terms of the will, unless
78 at the time the will is admitted to record or at any time
79 subsequently, on the application of any person interested, or
80 from the knowledge of the commission or clerk admitting
81 the will to record, it is deemed proper that greater bond be
82 given.

83 (c) When a nonresident individual is appointed as
84 executor, administrator, testamentary guardian, guardian or
85 conservator pursuant to the provisions of subsection (a) of

86 this section, said individual thereby constitutes the clerk of
87 the county commission wherein such appointment was
88 made as his or her true and lawful attorney-in-fact upon
89 whom may be served all notices and process in any action
90 or proceeding against him or her as executor, administrator,
91 testamentary guardian, guardian or conservator or with
92 respect to such estate, and such qualification shall be a
93 manifestation of said nonresident individual's agreement
94 that any notice or process, which is served in the manner
95 hereinafter provided in this subsection, shall be of the same
96 legal force and validity as though such nonresident was
97 personally served with notice and process within this state.
98 Service shall be made by leaving the original and two copies
99 of any notice or process together with a fee of \$5 with the
100 clerk of such county commission. The fee of \$5 shall be
101 deposited with the county treasurer. Such clerk shall
102 thereupon endorse upon one copy thereof the day and hour
103 of service and shall file such copy in his or her office and
104 such service shall constitute personal service upon such
105 nonresident: *Provided*, That the other copy of such notice or
106 process shall be forthwith sent by registered or certified
107 mail, return receipt requested, deliver to addressee only, by
108 said clerk or to such nonresident at the address last furnished
109 by him or her to said clerk and either: (1) Such nonresident's
110 return receipt signed by him or her; or (2) the registered or
111 certified mail bearing thereon the stamp of the post office
112 department showing that delivery therefore was refused by
113 such nonresident is appended to the original notice or
114 process filed therewith in the office of the clerk of the
115 county commission from which such notice or process was
116 issued. No notice or process may be served on such clerk of
117 the county commission or accepted by him or her less than
118 thirty days before the return date thereof. The clerk of such
119 county commission shall keep a record in his or her office
120 of all such notices and processes and the day and hour of
121 service thereof. The provision for service of notice or
122 process herein provided is cumulative and nothing herein

123 contained shall be construed as bar to service by publication
124 where proper or the service of notice or process in any other
125 lawful mode or manner.

126 (d) The personal estate of a resident decedent, infant or
127 incompetent may not be removed from this state until the
128 inventory or appraisal of that resident decedent's, infant's
129 or incompetent's assets have been filed and any new or
130 additional bond required to satisfy the penalty specified in
131 subsection (b) of this section has been furnished. The liability
132 of a nonresident executor, administrator, testamentary
133 guardian, guardian or conservator and of any such surety shall
134 be joint and several and a civil action on any such bond may
135 be instituted and maintained against the surety,
136 notwithstanding any other provision of this code to the
137 contrary, even though no civil action has been instituted
138 against such nonresident.

139 (e) Any such nonresident who removes from this state
140 assets administered in and situate in this state without
141 complying with the provisions of this section, the provisions
142 of article eleven of this chapter or any other requirement
143 pertaining to fiduciaries generally, shall be guilty of a
144 misdemeanor and, upon conviction thereof, shall be fined
145 not more than \$1,000 or confined in the county jail for not
146 more than one year, or, in the discretion of the court, by both
147 such fine and confinement.

148 (f) If a nonresident appointed pursuant to subsection (a)
149 of this section fails or refuses to file an accounting required
150 by this chapter, and the failure continues for two months
151 after the due date, he or she may, upon notice and hearing,
152 be removed or subjected to any other appropriate order by
153 the county commission, and if his or her failure or refusal to
154 account continues for six months, he or she shall be
155 removed by the county commission.

CHAPTER 94

**(Com. Sub. for H. B. 2001 - By Delegates Lane,
Sobonya, Moore, Kessinger, N. Foster and
Householder)**

[Passed April 8, 2017; in effect ninety days from passage.]
[Approved by the Governor on April 26, 2017.]

AN ACT to amend and reenact §6B-2-1, §6B-2-2, §6B-2-2a, §6B-2-3a, §6B-2-4, §6B-2-5, §6B-2-6 and §6B-2-10 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new chapter, designated §6D-1-1, §6D-1-2, §6D-1-3 and §6D-1-4, all relating to ethics and transparency in government generally; providing that no more than two members of the Ethics Commission shall be from the same state senatorial district; providing for the disclosure of interested parties to a government contract with an actual or estimated value of at least \$100,000; defining terms; prohibiting contracting with a state agency unless business entity submits disclosure of interested parties; requiring submission of supplemental disclosure within thirty days of completion or termination of the contract; providing exceptions to the disclosure requirement for certain contracts; requiring the Ethics Commission create disclosure form; specifying contents to be included in the disclosure form; requiring state agencies to submit completed forms to the Ethics Commission; requiring the Ethics Commission to make disclosures publicly available; requiring the Ethics Commission to post disclosures on the commission website when technologically able; providing certain exceptions for state institutions of higher education; providing that state institutions of higher education are excepted if they comply with certain requirements and adopt certain policies; providing that institutions of higher education shall provide the Ethics Commission a listing of business entities that

received more than one hundred thousand dollars from the institution of higher education; providing a definition of interested parties; authorizing members of the Ethics Commission and members of the Probable Cause Review Board to participate and vote via video conferencing; clarifying and expanding the violations in which a complaint may be referred to the Probable Cause Review Board; clarifying that the Probable Cause Review Board conducts investigations and not hearings to determine probable cause; clarifying and expanding the violations in which a complaint may be initiated by the Ethics Commission; clarifying that the Probable Cause Review Board is the entity to receive evidence bearing on the issue of probable cause; clarifying that the commission and review board may ask a respondent to disclose specific amounts received from a source and request other detailed information; clarifying that both the Ethics Commission and the Probable Cause Review Board have subpoena power; clarifying that confidentiality provisions apply to both the commission and the review board; specifying that at least six members of the Ethics Commission approve of a decision on the truth or falsity of the charges against a respondent and a decision to impose sanctions; clarifying and expanding the violations in which sanctions may be imposed by the Ethics Commission; prohibiting a public official or public employee from showing favoritism or granting patronage in the employment or working conditions of his or her relative or a person with whom he or she resides; eliminating the voting prohibition on personnel matters involving a public official's spouse or relative; prohibiting public officials, except certain members of the Legislature, from voting on the employment or working conditions of the public official's relative or person with whom the public official resides; prohibiting public officials, except certain members of the Legislature, from voting on the appropriation of moneys or award of contract to a nonprofit corporation if the public official or an immediate family member is employed by, or a compensated officer or board member of, the nonprofit; providing that a public official shall publicly disclose his or her relationship prior to the vote if he,

she or an immediate family member is an uncompensated officer or board member of the nonprofit; providing that a public official's recusal shall be reflected in the meeting minutes; clarifying the timeframe in which a candidate for public office must file a financial disclosure statement and providing an exception to filing such a financial disclosure statement if the candidate has previously filed a statement for the previous calendar year; and amending statutory cross-references to reflect proper reference to other statutes.

Be it enacted by the Legislature of West Virginia:

That §6B-2-1, §6B-2-2, §6B-2-2a, §6B-2-3a, §6B-2-4, §6B-2-5, §6B-2-6 and §6B-2-10 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto a new chapter, designated §6D-1-1, §6D-1-2, §6D-1-3 and §6D-1-4, all to read as follows:

**CHAPTER 6B. PUBLIC OFFICERS AND EMPLOYEES;
ETHICS; CONFLICTS OF INTEREST; FINANCIAL
DISCLOSURE.**

**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-2-1. West Virginia Ethics Commission created; members;
appointment, term of office and oath; compensation and
reimbursement for expenses; meetings and quorum.**

1 (a) The West Virginia Ethics Commission is continued.
2 The members of the commission shall be appointed by the
3 Governor with the advice and consent of the Senate.

4 (b) No person may be appointed to the commission or
5 continue to serve as a member of the commission who:

6 (1) Holds elected or appointed office under the
7 government of the United States, the State of West Virginia
8 or any of its political subdivisions;

9 (2) Is a candidate for any political office;

10 (3) Is otherwise subject to the provisions of this chapter
11 other than by reason of his or her appointment to or service
12 on the commission; or

13 (4) Holds any political party office or participates in a
14 campaign relating to a referendum or other ballot issue:
15 *Provided*, That a member may contribute to a political
16 campaign.

17 (c) Commencing July 1, 2014, the Ethics Commission
18 shall consist of the following nine members, appointed with
19 staggered terms:

20 (1) One member who served as a member of the West
21 Virginia Legislature;

22 (2) One member who served as an elected or appointed
23 county official;

24 (3) One member who served as an elected or appointed
25 municipal official;

26 (4) One member who served as an elected county school
27 board member;

28 (5) One member from a rural area; and

29 (6) Four citizen members.

30 (d) Any Commission member in office on June 30,
31 2014, who meets one of the categories for membership set
32 out in subsection (c) of this section, may be reappointed. No
33 more than five members of the Commission shall be of the
34 same political party and no more than two members shall be
35 from the same state senatorial district.

36 (e) After the initial staggered terms, the term of office
37 for a Commission member is five years. No member shall
38 serve more than two consecutive full or partial terms. No
39 person may be reappointed to the commission until at least
40 two years have elapsed after the completion of the second
41 consecutive term. A member may continue to serve until a
42 successor has been appointed and qualified.

43 (f) All appointments shall be made by the Governor in a
44 timely manner so as not to create a vacancy for longer than
45 sixty days.

46 (g) Each member must be a resident of this state during
47 the appointment term.

48 (h) Five members of the commission constitutes a
49 quorum.

50 (i) Each member of the commission shall take and
51 subscribe to the oath or affirmation required pursuant to
52 section five, article IV of the Constitution of West Virginia.

53 (j) A member may be removed by the Governor for
54 substantial neglect of duty, gross misconduct in office or a
55 violation of this chapter, after written notice and opportunity
56 for reply.

57 (k) The commission, as appointed on July 1, 2014, shall
58 meet before August 1, 2014, at a time and place to be
59 determined by the Governor, who shall designate a member
60 to preside at that meeting until a chairperson is elected. At
61 the first meeting, the commission shall elect a chairperson
62 and any other officers as are necessary. The commission
63 shall within ninety days after the first meeting adopt rules
64 for its procedures. The commission may use the rules in
65 place on July 1, 2014, until those rules are amended or
66 revoked.

67 (l) Members of the commission shall receive the same
68 compensation and expense reimbursement as is paid to
69 members of the Legislature for their interim duties as

70 recommended by the Citizens Legislative Compensation
71 Commission and authorized by law for each day or portion
72 thereof engaged in the discharge of official duties:
73 *Provided*, That to be eligible for compensation and expense
74 reimbursement, the member must participate in a meeting
75 or adjudicatory session: *Provided, however*, That the
76 member is not eligible for expense reimbursement if he or
77 she does not attend a meeting or adjudicatory session in
78 person.

79 (m) The commission shall appoint an executive director
80 to assist the commission in carrying out its functions in
81 accordance with commission rules and with applicable law.
82 The executive director shall be paid a salary fixed by the
83 commission or as otherwise provided by law. The
84 commission shall appoint and discharge counsel and
85 employees and shall fix the compensation of employees and
86 prescribe their duties. Counsel to the commission shall
87 advise the commission on all legal matters and on the
88 instruction of the commission may commence appropriate
89 civil actions: *Provided*, That no counsel shall both advise
90 the commission and act in a representative capacity in any
91 proceeding.

92 (n) The commission may delegate authority to the
93 chairperson or the executive director to act in the name of
94 the commission between meetings of the commission,
95 except that the commission shall not delegate the power to
96 hold hearings and determine violations to the chairperson or
97 the executive director.

98 (o) The principal office of the commission shall be in
99 the seat of government, but it or its designated
100 subcommittees may meet and exercise its power at any other
101 place in the state. Meetings of the commission shall be
102 public unless:

103 (1) They are required to be private by the provisions of
104 this chapter relating to confidentiality; or

105 (2) They involve discussions of commission personnel,
106 planned or ongoing litigation, and planned or ongoing
107 investigations.

108 (p) Meetings of the commission shall be upon the call
109 of the chairperson and may be conducted by telephonic or
110 other electronic conferencing means: *Provided*, That when
111 the commission is acting as a hearing board under this
112 article, or when the Probable Cause Review Board meets to
113 receive an oral response as authorized by this article,
114 members may not participate or vote by telephonic means:
115 *Provided, however*, That participation and voting may be
116 permitted if the member attends and participates via video
117 conferencing that allows the witness and the member to
118 observe and communicate with one another. Members shall
119 be given notice of meetings held by telephone or other
120 electronic conferencing in the same manner as meetings at
121 which the members are required to attend in person.
122 Telephone or other electronic conferences shall be
123 electronically recorded and the recordings shall be retained
124 by the commission in accordance with its record retention
125 policy.

§6B-2-2. Same – General powers and duties.

1 (a) The commission shall propose rules for
2 promulgation in accordance with the provisions of chapter
3 twenty-nine-a of this code, to carry out the purposes of this
4 article.

5 (b) The commission may initiate or receive complaints
6 and make investigations, as provided in section four of this
7 article, and upon complaint by an individual of an alleged
8 violation of this chapter by a public official or public
9 employee, refer the complaint to the Review Board as
10 provided in section two-a of this article. Any person charged
11 with a violation of this chapter is entitled to the
12 administrative hearing process contained in section four of
13 this article.

14 (c) The commission may subpoena witnesses, compel
15 their attendance and testimony, administer oaths and
16 affirmations, take evidence and require by subpoena the
17 production of books, papers, records or other evidence
18 needed for the performance of the commission's duties or
19 exercise of its powers, including its duties and powers of
20 investigation.

21 (d) The commission shall, in addition to its other duties:

22 (1) Prescribe forms for reports, statements, notices and
23 other documents required by law;

24 (2) Prepare and publish manuals and guides explaining
25 the duties of individuals covered by this law; and giving
26 instructions and public information materials to facilitate
27 compliance with, and enforcement of, this act; and

28 (3) Provide assistance to agencies, officials and
29 employees in administering the provisions of this act.

30 (e) The commission may:

31 (1) Prepare reports and studies to advance the purpose
32 of the law;

33 (2) Contract for any services which cannot satisfactorily
34 be performed by its employees;

35 (3) Require the Attorney General to provide legal advice
36 without charge to the commission;

37 (4) Employ additional legal counsel;

38 (5) Request appropriate agencies of state to provide any
39 professional assistance the commission may require in the
40 discharge of its duties: *Provided*, That the commission shall
41 reimburse any agency other than the Attorney General the
42 cost of providing assistance; and

43 (6) Share otherwise confidential documents, materials
44 or information with appropriate agencies of state

45 government, provided that the recipient agrees to maintain
46 the confidentiality and privileged status of the document,
47 material or information.

§6B-2-2a. Probable Cause Review Board.

1 (a) There is hereby established a Probable Cause
2 Review Board that shall conduct investigations to determine
3 whether there is probable cause to believe that a violation of
4 the West Virginia Governmental Ethics Act has occurred.
5 The Review Board is an autonomous board, not under the
6 direction or control of the Ethics Commission. The Review
7 Board will review complaints received or initiated by the
8 Ethics Commission to make a threshold determination of
9 whether probable cause exists to believe that a violation of
10 the West Virginia Governmental Ethics Act has occurred.

11 (b) The Governor, by and with the advice and consent
12 of the Senate, shall appoint three persons as members of the
13 Review Board, each of whom shall be a resident and citizen
14 of the state. Each member of the Review Board shall hold
15 office until his or her successor has been appointed and
16 qualified. At least one member of the board must be an
17 attorney licensed by the State of West Virginia and no more
18 than two members can belong to the same political party.
19 The members of the Review Board shall be appointed for
20 overlapping terms of two years, except that the original
21 appointments shall be for terms of one, two and three years,
22 respectively. Any member whose term expires may be
23 reappointed by the Governor. In the event a Review Board
24 member is unable to complete his or her term, the Governor
25 shall appoint a person with similar qualifications to
26 complete that term. Each Review Board member shall
27 receive the same compensation and expense reimbursement
28 as provided to Ethics Commission members pursuant to
29 section one of this article. These and all other costs incurred
30 by the Review Board shall be paid from the budget of the
31 Ethics Commission.

32 (c) No person may be appointed to the Review Board or
33 continue to serve as a member of the Review Board who
34 holds elected or appointed office under the government of
35 the United States, the State of West Virginia or any of its
36 political subdivisions, or who is a candidate for any of such
37 offices, or who is a registered lobbyist, or who is otherwise
38 subject to the provisions of this chapter other than by reason
39 of his or her appointment to or service on the Review Board.
40 A Review Board member may contribute to a political
41 campaign, but no member shall hold any political party
42 office or participate in a campaign relating to a referendum
43 or other ballot issue.

44 (d) Members of the Review Board may recuse
45 themselves from a particular case upon their own motion,
46 with the approval of the Review Board, and shall recuse
47 themselves, for good cause shown, upon motion of a party.
48 The remaining members of the Review Board may, by
49 majority vote, select a temporary member to replace a
50 recused member: *Provided*, That the temporary member
51 selected to replace a recused member shall be a person who
52 meets all requirements for appointment provided by
53 subsection (c), section two-a of this article, and whose
54 political affiliation is the same as the recused member.

55 (e) The Ethics Commission shall propose, for approval
56 by the Review Board, any procedural and interpretative
57 rules governing the operation of the Review Board. The
58 commission shall propose these rules pursuant to article
59 three, chapter twenty-nine-a of the code.

60 (f) The Ethics Commission shall provide staffing and a
61 location for the Review Board to conduct hearings. The
62 Ethics Commission is authorized to employ and assign the
63 necessary professional and clerical staff to assist the Review
64 Board in the performance of its duties and commission staff
65 shall, as the commission deems appropriate, also serve as
66 staff to the Review Board. All investigations and
67 proceedings of the Review Board are deemed confidential
68 as provided in section four of this article and members of

69 the Review Board are bound to the same confidentiality
70 requirements applicable to the Ethics Commission pursuant
71 to this article.

72 (g) The Review Board may subpoena witnesses, compel
73 their attendance and testimony, administer oaths and
74 affirmations, take evidence and require by subpoena the
75 production of books, papers, records or other evidence
76 needed for the performance of the Review Board's duties.

77 (h) Upon decision by the Review Board that probable
78 cause exists to believe that a violation of this chapter has
79 occurred, commission staff shall send notice to the
80 commission members of the Review Board's finding. After
81 an ethics complaint has been submitted to the Review Board
82 in accordance with section four of this article, the
83 commission may take no further action until it receives the
84 Review Board's probable cause finding.

§6B-2-3a. Complaints.

1 (a) The commission may commence an investigation,
2 pursuant to section four of this article, on the filing of a
3 complaint duly verified by oath or affirmation, by any
4 person.

5 (b) The commission may order the executive director to
6 prepare a complaint, upon a majority affirmative vote of its
7 members, if it receives or discovers credible information
8 which, if true, would merit an inquiry into whether a
9 violation of this chapter has occurred.

10 (c) (1) No complaint may be accepted or initiated by the
11 commission against a public official or public employee
12 during the sixty days before a primary or general election at
13 which the public official or public employees is a candidate
14 for elective office.

15 (2) If a complaint is pending against a public official or
16 public employee who is also a candidate for public office,
17 then the commission shall stay the processing of the

18 complaint for the sixty-day time period preceding the
19 primary election or general election, or both, unless the
20 candidate waives the stay in writing. If the commission
21 receives a written waiver of the stay at least sixty days prior
22 to the election, and if the Review Board has not yet ruled
23 whether probable cause exists to believe there has been a
24 violation of the Ethics Act, then the Review Board will
25 process the complaint and make a probable cause
26 determination at least thirty days prior to the election:
27 *Provided, That,* the stay provisions of this subdivision do
28 not apply to complaints which have already been
29 adjudicated by the commission and are pending on appeal.

30 (3) For purposes of this subsection, any provisions of
31 this chapter setting time periods for initiating a complaint or
32 for performing any other action are considered tolled until
33 after the election at which the public official or public
34 employee candidate stands for elective office.

§6B-2-4. Processing complaints; dismissals; hearings; disposition; judicial review.

1 (a) Upon the filing of a complaint, the executive director
2 of the commission or his or her designee shall, within three
3 working days, acknowledge the receipt of the complaint by
4 first-class mail unless the complaint was initiated by the
5 commission or the complainant or his or her representative
6 personally filed the complaint with the commission and was
7 given a receipt or other acknowledgment evidencing the
8 filing of the complaint. No political party or officer,
9 employee or agent of a political party acting in his or her
10 official capacity may file a complaint for a violation of this
11 chapter with the commission. Nothing in this section
12 prohibits a private citizen, acting in that capacity, from
13 filing a verified complaint with the commission under this
14 section. Within fourteen days after the receipt of a
15 complaint, the executive director shall refer the complaint
16 to the Review Board created pursuant to section two-a of
17 this article.

18 (b) Upon the referral of a complaint by the executive
19 director pursuant to subsection (a) of this section, the
20 Review Board shall determine whether the allegations of the
21 complaint, if taken as true, would constitute a violation of
22 law upon which the commission could properly act under
23 the provisions of this chapter. If the complaint is determined
24 by a majority vote of the Review Board to be insufficient in
25 this regard, the Review Board shall dismiss the complaint.

26 (c) Upon a finding by the Review Board that the
27 complaint is sufficient, the executive director shall give
28 notice of a pending investigation to the complainant, if any,
29 and to the respondent. The notice of investigation shall be
30 mailed to the parties and, in the case of the respondent, shall
31 be mailed as certified mail, return receipt requested, marked
32 "Addressee only, personal and confidential". The notice
33 shall describe the conduct of the respondent which is alleged
34 to violate the law and a copy of the complaint shall be
35 appended to the notice mailed to the respondent. Each
36 notice of investigation shall inform the respondent that the
37 purpose of the investigation is to determine whether
38 probable cause exists to believe that a violation of law has
39 occurred which may subject the respondent to
40 administrative sanctions by the commission, criminal
41 prosecution by the state, or civil liability. The notice shall
42 further inform the respondent that he or she has a right to
43 appear before the Review Board and that he or she may
44 respond in writing to the commission within thirty days after
45 the receipt of the notice, but that no fact or allegation shall
46 be taken as admitted by a failure or refusal to timely
47 respond.

48 (d) Within the forty-five day period following the
49 mailing of a notice of investigation, the Review Board shall
50 proceed to consider: (1) The allegations raised in the
51 complaint; (2) any timely received written response of the
52 respondent; and (3) any other competent evidence gathered
53 by or submitted to the Review Board which has a proper
54 bearing on the issue of probable cause. A respondent may

55 appear before the Review Board and make an oral response
56 to the complaint. The commission shall promulgate rules
57 prescribing the manner in which a respondent may present
58 his or her oral response. The commission and Review Board
59 may ask a respondent to disclose specific amounts received
60 from a source and request other detailed information not
61 otherwise required to be set forth in a statement or report
62 filed under the provisions of this chapter if the information
63 sought is considered to be probative as to the issues raised
64 by a complaint or an investigation initiated by the
65 commission. Any information thus received shall be
66 confidential except as provided by subsection (f) of this
67 section. If a person asked to provide information fails or
68 refuses to furnish the information to the commission or
69 Review Board, the commission or Review Board may
70 exercise their subpoena power as provided in this chapter
71 and any subpoena issued by the commission or Review
72 Board shall have the same force and effect as a subpoena
73 issued by a circuit court of this state. Enforcement of any
74 subpoena may be had upon application to a circuit court of
75 the county in which the Review Board is conducting an
76 investigation through the issuance of a rule or an attachment
77 against the respondent as in cases of contempt.

78 (e) Unless consented to by both the respondent and
79 complainant, or unless the commission makes a good cause
80 determination in writing the investigation and a
81 determination as to probable cause shall not exceed eighteen
82 months.

83 (f) (1) All investigations, complaints, reports, records,
84 proceedings and other information received by the
85 commission or Review Board and related to complaints
86 made to the commission or investigations conducted by the
87 commission or Review Board pursuant to this section,
88 including the identity of the complainant or respondent, are
89 confidential and may not be knowingly and improperly
90 disclosed by any current or former member or employee of
91 the commission or the Review Board except as follows:

92 (A) Once there has been a finding that probable cause
93 exists to believe that a respondent has violated the
94 provisions of this chapter and the respondent has been
95 served by the commission with a copy of the Review
96 Board's order and the statement of charges prepared
97 pursuant to the provisions of subsection (h) of this section,
98 the complaint and all reports, records, nonprivileged and
99 nondeliberative material introduced at any probable cause
100 hearing held pursuant to the complaint cease to be
101 confidential.

102 (B) After a finding of probable cause, any subsequent
103 hearing held in the matter for the purpose of receiving
104 evidence or the arguments of the parties or their
105 representatives shall be open to the public and all reports,
106 records and nondeliberative materials introduced into
107 evidence at the hearing, as well as the commission's orders,
108 are not confidential.

109 (C) The commission may release any information
110 relating to an investigation at any time if the release has
111 been agreed to in writing by the respondent.

112 (D) The complaint and the identity of the complainant
113 shall be disclosed to a person named as respondent
114 immediately upon the respondent's request.

115 (E) Where the commission is otherwise required by the
116 provisions of this chapter to disclose information or to
117 proceed in such a manner that disclosure is necessary and
118 required to fulfill those requirements.

119 (2) If, in a specific case, the commission finds that there
120 is a reasonable likelihood that the dissemination of
121 information or opinion in connection with a pending or
122 imminent proceeding will interfere with a fair hearing or
123 otherwise prejudice the due administration of justice, the
124 commission shall order that all or a portion of the
125 information communicated to the commission to cause an
126 investigation and all allegations of ethical misconduct or

127 criminal acts contained in a complaint shall be confidential
128 and the person providing the information or filing a
129 complaint shall be bound to confidentiality until further
130 order of the commission.

131 (g) If the members of the Review Board fail to find
132 probable cause, the proceedings shall be dismissed by the
133 commission in an order signed by the members of the
134 Review Board. Copies of the order of dismissal shall be sent
135 to the complainant and served upon the respondent
136 forthwith. If the Review Board decides by a unanimous vote
137 that there is probable cause to believe that a violation under
138 this chapter has occurred, the members of the Review Board
139 shall sign an order directing the commission staff to prepare
140 a statement of charges and assign the matter for hearing to
141 the commission or a hearing examiner as the commission
142 may subsequently direct. The commission shall then
143 schedule a hearing, to be held within ninety days after the
144 date of the order, to determine the truth or falsity of the
145 charges. The commission's review of the evidence
146 presented shall be de novo. For the purpose of this section,
147 service of process upon the respondent is obtained at the
148 time the respondent or the respondent's agent physically
149 receives the process, regardless of whether the service of
150 process is in person or by certified mail.

151 (h) At least eighty days prior to the date of the hearing,
152 the commission shall serve the respondent by certified mail,
153 return receipt requested, with the statement of charges and
154 a notice of hearing setting forth the date, time and place for
155 the hearing. The scheduled hearing may be continued only
156 upon a showing of good cause by the respondent or under
157 other circumstances as the commission, by legislative rule,
158 directs.

159 (i) The commission may sit as a hearing board to
160 adjudicate the case or may permit an assigned hearing
161 examiner employed by the commission to preside at the
162 taking of evidence. The commission shall, by legislative
163 rule, establish the general qualifications for hearing

164 examiners. The legislative rule shall also contain provisions
165 which ensure that the functions of a hearing examiner will
166 be conducted in an impartial manner and describe the
167 circumstances and procedures for disqualification of
168 hearing examiners.

169 (j) A member of the commission or a hearing examiner
170 presiding at a hearing may:

171 (1) Administer oaths and affirmations, compel the
172 attendance of witnesses and the production of documents,
173 examine witnesses and parties and otherwise take testimony
174 and establish a record;

175 (2) Rule on offers of proof and receive relevant
176 evidence;

177 (3) Take depositions or have depositions taken when the
178 ends of justice will be served;

179 (4) Regulate the course of the hearing;

180 (5) Hold conferences for the settlement or simplification
181 of issues by consent of the parties;

182 (6) Dispose of procedural requests or similar matters;

183 (7) Accept stipulated agreements;

184 (8) Take other action authorized by the Ethics
185 Commission consistent with the provisions of this chapter.

186 (k) With respect to allegations of a violation under this
187 chapter, the complainant has the burden of proof. The West
188 Virginia Rules of Evidence governing proceedings in the
189 courts of this state shall be given like effect in hearings held
190 before the commission or a hearing examiner. The
191 commission shall, by rule, regulate the conduct of hearings
192 so as to provide full procedural due process to a respondent.
193 Hearings before a hearing examiner shall be recorded
194 electronically. When requested by either of the parties, the

195 presiding officer shall order a transcript, verified by oath or
196 affirmation, of each hearing held and so recorded. In the
197 discretion of the commission, a record of the proceedings
198 may be made by a certified court reporter. Unless otherwise
199 ordered by the commission, the cost of preparing a
200 transcript shall be paid by the party requesting the transcript.
201 Upon a showing of indigency, the commission may provide
202 a transcript without charge. Within fifteen days following
203 the hearing, either party may submit to the hearing examiner
204 that party's proposed findings of fact. The hearing examiner
205 shall thereafter prepare his or her own proposed findings of
206 fact and make copies of the findings available to the parties.
207 The hearing examiner shall then submit the entire record to
208 the commission for final decision.

209 (l) The recording of the hearing or the transcript of
210 testimony, as the case may be, and the exhibits, together
211 with all papers and requests filed in the proceeding, and the
212 proposed findings of fact of the hearing examiner and the
213 parties, constitute the exclusive record for decision by the
214 commission, unless by leave of the commission a party is
215 permitted to submit additional documentary evidence or
216 take and file depositions or otherwise exercise discovery.

217 (m) The commission shall set a time and place for the
218 hearing of arguments by the complainant and respondent, or
219 their respective representatives, and shall notify the parties
220 thereof. Briefs may be filed by the parties in accordance
221 with procedural rules promulgated by the commission. The
222 commission shall issue a final decision in writing within
223 forty-five days of the receipt of the entire record of a hearing
224 held before a hearing examiner or, in the case of an
225 evidentiary hearing held by the commission acting as a
226 hearing board in lieu of a hearing examiner, within twenty-
227 one days following the close of the evidence.

228 (n) A decision on the truth or falsity of the charges
229 against the respondent and a decision to impose sanctions
230 must be approved by at least six members of the
231 commission.

232 (o) Members of the commission shall recuse themselves
233 from a particular case upon their own motion with the
234 approval of the commission or for good cause shown upon
235 motion of a party. The remaining members of the
236 commission may, by majority vote, select a temporary
237 member to replace a recused member: *Provided*, That the
238 temporary member selected to replace a recused member
239 shall be a person of the same status or category, provided by
240 subsection (c), section one of this article, as the recused
241 member.

242 (p) Except for statements made in the course of official
243 duties to explain commission procedures, no member or
244 employee or former member or employee of the
245 commission may make any public or nonpublic comment
246 about any proceeding previously or currently before the
247 commission. Any member or employee or former member
248 or employee of the commission who violates this subsection
249 is subject to the penalties contained in subsection (d),
250 section ten of this article. In addition, violation of this
251 subsection by a current member or employee of the
252 commission is grounds for immediate removal from office
253 or termination of employment.

254 (q) A complainant may be assisted by a member of the
255 commission staff assigned by the commission after a
256 determination of probable cause.

257 (r) No employee of the commission assigned to
258 prosecute a complaint may participate in the commission
259 deliberations or communicate with commission members or
260 the public concerning the merits of a complaint.

261 (s) (1) If the commission finds by clear and convincing
262 evidence that the facts alleged in the complaint are true and
263 constitute a material violation of this chapter, it may impose
264 one or more of the following sanctions:

265 (A) Public reprimand;

266 (B) Cease and desist orders;

267 (C) Orders of restitution for money, things of value, or
268 services taken or received in violation of this chapter;

269 (D) Fines not to exceed \$5,000 per violation; or

270 (E) Reimbursement to the commission for the actual
271 costs of investigating and prosecuting a violation. Any
272 reimbursement ordered by the commission for its costs
273 under this paragraph shall be collected by the commission
274 and deposited into the special revenue account created
275 pursuant to section six, article one of this chapter.

276 (2) In addition to imposing the above-specified
277 sanctions, the commission may recommend to the
278 appropriate governmental body that a respondent be
279 terminated from employment or removed from office.

280 (3) The commission may institute civil proceedings in
281 the circuit court of the county in which a violation occurred
282 for the enforcement of sanctions.

283 (t) At any stage of the proceedings under this section,
284 the commission may enter into a conciliation agreement
285 with a respondent if the agreement is deemed by a majority
286 of the members of the commission to be in the best interest
287 of the state and the respondent. Any conciliation agreement
288 must be disclosed to the public: *Provided*, That negotiations
289 leading to a conciliation agreement, as well as information
290 obtained by the commission during the negotiations, shall
291 remain confidential except as may be otherwise set forth in
292 the agreement.

293 (u) Decisions of the commission involving the issuance
294 of sanctions may be appealed to the circuit court of
295 Kanawha County, only by the respondent and only upon the
296 grounds set forth in section four, article five, chapter
297 twenty-nine-a of this code.

298 (v) (1) Any person who in good faith files a verified
299 complaint or any person, official or agency who gives
300 credible information resulting in a formal complaint filed by
301 commission staff is immune from any civil liability that
302 otherwise might result by reason of such actions.

303 (2) If the commission determines, by clear and
304 convincing evidence, that a person filed a complaint or
305 provided information which resulted in an investigation
306 knowing that the material statements in the complaint or the
307 investigation request or the information provided were not
308 true; filed an unsubstantiated complaint or request for an
309 investigation in reckless disregard of the truth or falsity of
310 the statements contained therein; or filed one or more
311 unsubstantiated complaints which constituted abuse of
312 process, the commission shall:

313 (A) Order the complainant or informant to reimburse the
314 respondent for his or her reasonable costs;

315 (B) Order the complainant or informant to reimburse the
316 respondent for his or her reasonable attorney fees; and

317 (C) Order the complainant or informant to reimburse the
318 commission for the actual costs of its investigation. In
319 addition, the commission may decline to process any further
320 complaints brought by the complainant, the initiator of the
321 investigation or the informant.

322 (3) The sanctions authorized in this subsection are not
323 exclusive and do not preclude any other remedies or rights
324 of action the respondent may have against the complainant
325 or informant under the law.

326 (w) (1) If at any stage in the proceedings under this
327 section it appears to a Review Board, a hearing examiner or
328 the commission that there is credible information or
329 evidence that the respondent may have committed a
330 criminal violation, the matter shall be referred to the full
331 commission for its consideration. If, by a vote of two-thirds

332 of the members of the full commission, it is determined that
333 probable cause exists to believe a criminal violation has
334 occurred, the commission shall refer the matter to the
335 appropriate county prosecuting attorney having jurisdiction
336 for a criminal investigation and possible prosecution.
337 Deliberations of the commission with regard to referring a
338 matter for criminal investigation by a prosecuting attorney
339 shall be private and confidential. Notwithstanding any other
340 provision of this article, once a referral for criminal
341 investigation is made under the provisions of this
342 subsection, the ethics proceedings shall be held in abeyance
343 until action on the referred matter is concluded. If the
344 referral of the matter to the prosecuting attorney results in a
345 criminal conviction of the respondent, the commission may
346 resume its investigation or prosecution of the ethics
347 violation, but may not impose a fine as a sanction if a
348 violation is found to have occurred.

349 (2) If fewer than two-thirds of the full commission
350 determine that a criminal violation has occurred, the
351 commission shall remand the matter to the Review Board,
352 the hearing examiner or the commission itself as a hearing
353 board, as the case may be, for further proceedings under this
354 article.

355 (x) The provisions of this section shall apply to
356 violations of this chapter occurring after September 30,
357 1989, and within one year before the filing of a complaint:
358 *Provided*, That the applicable statute of limitations for
359 violations which occur on or after July 1, 2005, is two years
360 after the date on which the alleged violation occurred:
361 *Provided, however*, That the applicable statute of limitations
362 for violations which occur on or after July 1, 2016, is five
363 years after the date on which the alleged violation occurred.

**§6B-2-5. Ethical standards for elected and appointed officials
and public employees.**

1 (a) *Persons subject to section.* — The provisions of this
2 section apply to all elected and appointed public officials

3 and public employees, whether full or part time, in state,
4 county, municipal governments and their respective boards,
5 agencies, departments and commissions and in any other
6 regional or local governmental agency, including county
7 school boards.

8 (b) *Use of public office for private gain.* — (1) A public
9 official or public employee may not knowingly and
10 intentionally use his or her office or the prestige of his or
11 her office for his or her own private gain or that of another
12 person. Incidental use of equipment or resources available
13 to a public official or public employee by virtue of his or her
14 position for personal or business purposes resulting in de
15 minimis private gain does not constitute use of public office
16 for private gain under this subsection. The performance of
17 usual and customary duties associated with the office or
18 position or the advancement of public policy goals or
19 constituent services, without compensation, does not
20 constitute the use of prestige of office for private gain.

21 (2) Notwithstanding the general prohibition against use
22 of office for private gain, public officials and public
23 employees may use bonus points acquired through
24 participation in frequent traveler programs while traveling
25 on official government business: *Provided*, That the
26 official's or employee's participation in such program, or
27 acquisition of such points, does not result in additional costs
28 to the government.

29 (3) The Legislature, in enacting this subsection,
30 recognizes that there may be certain public officials or
31 public employees who bring to their respective offices or
32 employment their own unique personal prestige which is
33 based upon their intelligence, education, experience, skills
34 and abilities, or other personal gifts or traits. In many cases,
35 these persons bring a personal prestige to their office or
36 employment which inures to the benefit of the state and its
37 citizens. Those persons may, in fact, be sought by the state
38 to serve in their office or employment because, through their
39 unusual gifts or traits, they bring stature and recognition to

40 their office or employment and to the state itself. While the
41 office or employment held or to be held by those persons
42 may have its own inherent prestige, it would be unfair to
43 those individuals and against the best interests of the
44 citizens of this state to deny those persons the right to hold
45 public office or to be publicly employed on the grounds that
46 they would, in addition to the emoluments of their office or
47 employment, be in a position to benefit financially from the
48 personal prestige which otherwise inheres to them.
49 Accordingly, the commission is directed, by legislative rule,
50 to establish categories of public officials and public
51 employees, identifying them generally by the office or
52 employment held, and offering persons who fit within those
53 categories the opportunity to apply for an exemption from
54 the application of the provisions of this subsection.
55 Exemptions may be granted by the commission, on a case-
56 by-case basis, when it is shown that: (A) The public office
57 held or the public employment engaged in is not such that it
58 would ordinarily be available or offered to a substantial
59 number of the citizens of this state; (B) the office held or the
60 employment engaged in is such that it normally or
61 specifically requires a person who possesses personal
62 prestige; and (C) the person's employment contract or letter
63 of appointment provides or anticipates that the person will
64 gain financially from activities which are not a part of his or
65 her office or employment.

66 (4) A public official or public employee may not show
67 favoritism or grant patronage in the employment or working
68 conditions of his or her relative or a person with whom he
69 or she resides: *Provided*, That as used in this subdivision,
70 "employment or working conditions" shall only apply to
71 government employment: *Provided, however*, That
72 government employment includes only those governmental
73 entities specified in subsection (a) of this section.

74 (c) *Gifts.* — (1) A public official or public employee
75 may not solicit any gift unless the solicitation is for a
76 charitable purpose with no resulting direct pecuniary benefit

77 conferred upon the official or employee or his or her
78 immediate family: *Provided*, That no public official or
79 public employee may solicit for a charitable purpose any
80 gift from any person who is also an official or employee of
81 the state and whose position is subordinate to the soliciting
82 official or employee: *Provided, however*, That nothing
83 herein shall prohibit a candidate for public office from
84 soliciting a lawful political contribution. No official or
85 employee may knowingly accept any gift, directly or
86 indirectly, from a lobbyist or from any person whom the
87 official or employee knows or has reason to know:

88 (A) Is doing or seeking to do business of any kind with
89 his or her agency;

90 (B) Is engaged in activities which are regulated or
91 controlled by his or her agency; or

92 (C) Has financial interests which may be substantially
93 and materially affected, in a manner distinguishable from
94 the public generally, by the performance or nonperformance
95 of his or her official duties.

96 (2) Notwithstanding the provisions of subdivision (1) of
97 this subsection, a person who is a public official or public
98 employee may accept a gift described in this subdivision,
99 and there shall be a presumption that the receipt of such gift
100 does not impair the impartiality and independent judgment
101 of the person. This presumption may be rebutted only by
102 direct objective evidence that the gift did impair the
103 impartiality and independent judgment of the person or that
104 the person knew or had reason to know that the gift was
105 offered with the intent to impair his or her impartiality and
106 independent judgment. The provisions of subdivision (1) of
107 this subsection do not apply to:

108 (A) Meals and beverages;

109 (B) Ceremonial gifts or awards which have insignificant
110 monetary value;

111 (C) Unsolicited gifts of nominal value or trivial items of
112 informational value;

113 (D) Reasonable expenses for food, travel and lodging of
114 the official or employee for a meeting at which the official
115 or employee participates in a panel or has a speaking
116 engagement;

117 (E) Gifts of tickets or free admission extended to a
118 public official or public employee to attend charitable,
119 cultural or political events, if the purpose of such gift or
120 admission is a courtesy or ceremony customarily extended
121 to the office;

122 (F) Gifts that are purely private and personal in nature;
123 or

124 (G) Gifts from relatives by blood or marriage, or a
125 member of the same household.

126 (3) The commission shall, through legislative rule
127 promulgated pursuant to chapter twenty-nine-a of this code,
128 establish guidelines for the acceptance of a reasonable
129 honorarium by public officials and elected officials. The
130 rule promulgated shall be consistent with this section. Any
131 elected public official may accept an honorarium only
132 when:

133 (A) That official is a part-time elected public official;

134 (B) The fee is not related to the official's public position
135 or duties;

136 (C) The fee is for services provided by the public
137 official that are related to the public official's regular,
138 nonpublic trade, profession, occupation, hobby or
139 avocation; and

140 (D) The honorarium is not provided in exchange for any
141 promise or action on the part of the public official.

142 (4) Nothing in this section shall be construed so as to
143 prohibit the giving of a lawful political contribution as
144 defined by law.

145 (5) The Governor or his designee may, in the name of
146 the State of West Virginia, accept and receive gifts from any
147 public or private source. Any gift so obtained shall become
148 the property of the state and shall, within thirty days of the
149 receipt thereof, be registered with the commission and the
150 Division of Culture and History.

151 (6) Upon prior approval of the Joint Committee on
152 Government and Finance, any member of the Legislature
153 may solicit donations for a regional or national legislative
154 organization conference or other legislative organization
155 function to be held in the state for the purpose of deferring
156 costs to the state for hosting of the conference or function.
157 Legislative organizations are bipartisan regional or national
158 organizations in which the Joint Committee on Government
159 and Finance authorizes payment of dues or other
160 membership fees for the legislature's participation and
161 which assist this and other state legislatures and their staff
162 through any of the following:

163 (A) Advancing the effectiveness, independence and
164 integrity of legislatures in the states of the United States;

165 (B) Fostering interstate cooperation and facilitating
166 information exchange among state legislatures;

167 (C) Representing the states and their Legislatures in the
168 American federal system of government;

169 (D) Improving the operations and management of state
170 legislatures and the effectiveness of legislators and
171 legislative staff, and to encourage the practice of high
172 standards of conduct by legislators and legislative staff;

173 (E) Promoting cooperation between state legislatures in
174 the United States and Legislatures in other countries.

175 The solicitations may only be made in writing. The
176 legislative organization may act as fiscal agent for the
177 conference and receive all donations. In the alternative, a
178 bona fide banking institution may act as the fiscal agent. The
179 official letterhead of the legislature may not be used by the
180 legislative member in conjunction with the fund raising or
181 solicitation effort. The legislative organization for which
182 solicitations are being made shall file with the Joint
183 Committee on Government and Finance and with the
184 Secretary of State for publication in the State Register as
185 provided in article two of chapter twenty-nine-a of the code,
186 copies of letters, brochures and other solicitation
187 documents, along with a complete list of the names and last
188 known addresses of all donors and the amount of donations
189 received. Any solicitation by a legislative member shall
190 contain the following disclaimer:

191 “This solicitation is endorsed by [name of member].
192 This endorsement does not imply support of the soliciting
193 organization, nor of the sponsors who may respond to the
194 solicitation. A copy of all solicitations are on file with the
195 West Virginia Legislature’s Joint Committee on
196 Government and Finance, and with the Secretary of State
197 and are available for public review.”

198 (7) Upon written notice to the commission, any member
199 of the board of Public Works may solicit donations for a
200 regional or national organization conference or other
201 function related to the office of the member to be held in the
202 state for the purpose of deferring costs to the state for
203 hosting of the conference or function. The solicitations may
204 only be made in writing. The organization may act as fiscal
205 agent for the conference and receive all donations. In the
206 alternative, a bona fide banking institution may act as the
207 fiscal agent. The official letterhead of the office of the Board
208 of Public Works member may not be used in conjunction
209 with the fund raising or solicitation effort. The organization
210 for which solicitations are being made shall file with the
211 Joint Committee on Government and Finance, with the

212 Secretary of State for publication in the State Register as
213 provided in article two of chapter twenty-nine-a of the code
214 and with the commission, copies of letters, brochures and
215 other solicitation documents, along with a complete list of
216 the names and last known addresses of all donors and the
217 amount of donations received. Any solicitation by a member
218 of the board of Public Works shall contain the following
219 disclaimer: "This solicitation is endorsed by (name of
220 member of Board of Public Works.) This endorsement does
221 not imply support of the soliciting organization, nor of the
222 sponsors who may respond to the solicitation. Copies of all
223 solicitations are on file with the West Virginia Legislature's
224 Joint Committee on Government and Finance, with the
225 West Virginia Secretary of State and with the West Virginia
226 Ethics Commission and are available for public review."
227 Any moneys in excess of those donations needed for the
228 conference or function shall be deposited in the Capitol
229 Dome and Capitol Improvement Fund established in section
230 two, article four of chapter five-a of this code.

231 (d) *Interests in public contracts.* —

232 (1) In addition to the provisions of section fifteen, article
233 ten, chapter sixty-one of this code, no elected or appointed
234 public official or public employee or member of his or her
235 immediate family or business with which he or she is
236 associated may be a party to or have an interest in the profits
237 or benefits of a contract which the official or employee may
238 have direct authority to enter into, or over which he or she
239 may have control: *Provided*, That nothing herein shall be
240 construed to prevent or make unlawful the employment of
241 any person with any governmental body: *Provided*,
242 *however*, That nothing herein shall be construed to prohibit
243 a member of the Legislature from entering into a contract
244 with any governmental body, or prohibit a part-time
245 appointed public official from entering into a contract which
246 the part-time appointed public official may have direct
247 authority to enter into or over which he or she may have
248 control when the official has not participated in the review

249 or evaluation thereof, has been recused from deciding or
250 evaluating and has been excused from voting on the contract
251 and has fully disclosed the extent of his or her interest in the
252 contract.

253 (2) In the absence of bribery or a purpose to defraud, an
254 elected or appointed public official or public employee or a
255 member of his or her immediate family or a business with
256 which he or she is associated shall not be considered as
257 having a prohibited financial interest in a public contract
258 when such a person has a limited interest as an owner,
259 shareholder or creditor of the business which is awarded a
260 public contract. A limited interest for the purposes of this
261 subsection is:

262 (A) An interest which does not exceed \$1,000 in the
263 profits or benefits of the public contract or contracts in a
264 calendar year;

265 (B) An interest as a creditor of a public employee or
266 official who exercises control over the contract, or a
267 member of his or her immediate family, if the amount is less
268 than \$5,000.

269 (3) If a public official or employee has an interest in the
270 profits or benefits of a contract, then he or she may not
271 make, participate in making, or in any way attempt to use
272 his office or employment to influence a government
273 decision affecting his or her financial or limited financial
274 interest. Public officials shall also comply with the voting
275 rules prescribed in subsection (j) of this section.

276 (4) Where the provisions of subdivisions (1) and (2) of
277 this subsection would result in the loss of a quorum in a
278 public body or agency, in excessive cost, undue hardship, or
279 other substantial interference with the operation of a state,
280 county, municipality, county school board or other
281 governmental agency, the affected governmental body or
282 agency may make written application to the Ethics

283 Commission for an exemption from subdivisions (1) and (2)
284 of this subsection.

285 (e) *Confidential information.* — No present or former
286 public official or employee may knowingly and improperly
287 disclose any confidential information acquired by him or
288 her in the course of his or her official duties nor use such
289 information to further his or her personal interests or the
290 interests of another person.

291 (f) *Prohibited representation.* — No present or former
292 elected or appointed public official or public employee
293 shall, during or after his or her public employment or
294 service, represent a client or act in a representative capacity
295 with or without compensation on behalf of any person in a
296 contested case, rate-making proceeding, license or permit
297 application, regulation filing or other particular matter
298 involving a specific party or parties which arose during his
299 or her period of public service or employment and in which
300 he or she personally and substantially participated in a
301 decision-making, advisory or staff support capacity, unless
302 the appropriate government agency, after consultation,
303 consents to such representation. A staff attorney, accountant
304 or other professional employee who has represented a
305 government agency in a particular matter shall not thereafter
306 represent another client in the same or substantially related
307 matter in which that client's interests are materially adverse
308 to the interests of the government agency, without the
309 consent of the government agency: *Provided*, That this
310 prohibition on representation shall not apply when the client
311 was not directly involved in the particular matter in which
312 the professional employee represented the government
313 agency, but was involved only as a member of a class. The
314 provisions of this subsection shall not apply to legislators
315 who were in office and legislative staff who were employed
316 at the time it originally became effective on July 1, 1989,
317 and those who have since become legislators or legislative
318 staff and those who shall serve hereafter as legislators or
319 legislative staff.

320 (g) *Limitation on practice before a board, agency,*
321 *commission or department.* — Except as otherwise
322 provided in section three, four or five, article two, chapter
323 eight-a of this code: (1) No elected or appointed public
324 official and no full-time staff attorney or accountant shall,
325 during his or her public service or public employment or for
326 a period of one year after the termination of his or her public
327 service or public employment with a governmental entity
328 authorized to hear contested cases or promulgate or propose
329 rules, appear in a representative capacity before the
330 governmental entity in which he or she serves or served or
331 is or was employed in the following matters:

332 (A) A contested case involving an administrative
333 sanction, action or refusal to act;

334 (B) To support or oppose a proposed rule;

335 (C) To support or contest the issuance or denial of a
336 license or permit;

337 (D) A rate-making proceeding; and

338 (E) To influence the expenditure of public funds.

339 (2) As used in this subsection, “represent” includes any
340 formal or informal appearance before, or any written or oral
341 communication with, any public agency on behalf of any
342 person: *Provided*, That nothing contained in this subsection
343 shall prohibit, during any period, a former public official or
344 employee from being retained by or employed to represent,
345 assist or act in a representative capacity on behalf of the
346 public agency by which he or she was employed or in which
347 he or she served. Nothing in this subsection shall be
348 construed to prevent a former public official or employee
349 from representing another state, county, municipal or other
350 governmental entity before the governmental entity in
351 which he or she served or was employed within one year
352 after the termination of his or her employment or service in
353 the entity.

354 (3) A present or former public official or employee may
355 appear at any time in a representative capacity before the
356 Legislature, a county commission, city or town council or
357 county school board in relation to the consideration of a
358 statute, budget, ordinance, rule, resolution or enactment.

359 (4) Members and former members of the Legislature
360 and professional employees and former professional
361 employees of the Legislature shall be permitted to appear in
362 a representative capacity on behalf of clients before any
363 governmental agency of the state or of county or municipal
364 governments, including county school boards.

365 (5) An elected or appointed public official, full-time
366 staff attorney or accountant who would be adversely
367 affected by the provisions of this subsection may apply to
368 the Ethics Commission for an exemption from the one year
369 prohibition against appearing in a representative capacity,
370 when the person's education and experience is such that the
371 prohibition would, for all practical purposes, deprive the
372 person of the ability to earn a livelihood in this state outside
373 of the governmental agency. The Ethics Commission shall
374 by legislative rule establish general guidelines or standards
375 for granting an exemption or reducing the time period, but
376 shall decide each application on a case-by-case basis.

377 (h) *Employment by regulated persons and vendors.* —
378 (1) No full-time official or full-time public employee may
379 seek employment with, be employed by, or seek to
380 purchase, sell or lease real or personal property to or from
381 any person who:

382 (A) Had a matter on which he or she took, or a
383 subordinate is known to have taken, regulatory action within
384 the preceding twelve months; or

385 (B) Has a matter before the agency on which he or she
386 is working or a subordinate is known by him or her to be
387 working.

388 (C) Is a vendor to the agency where the official serves
389 or public employee is employed and the official or public
390 employee, or a subordinate of the official or public
391 employee, exercises authority or control over a public
392 contract with such vendor, including, but not limited to:

393 (i) Drafting bid specifications or requests for proposals;

394 (ii) Recommending selection of the vendor;

395 (iii) Conducting inspections or investigations;

396 (iv) Approving the method or manner of payment to the
397 vendor;

398 (v) Providing legal or technical guidance on the
399 formation, implementation or execution of the contract; or

400 (vi) Taking other nonministerial action which may
401 affect the financial interests of the vendor.

402 (2) Within the meaning of this section, the term
403 “employment” includes professional services and other
404 services rendered by the public official or public employee,
405 whether rendered as employee or as an independent
406 contractor; “seek employment” includes responding to
407 unsolicited offers of employment as well as any direct or
408 indirect contact with a potential employer relating to the
409 availability or conditions of employment in furtherance of
410 obtaining employment; and “subordinate” includes only
411 those agency personnel over whom the public official or
412 public employee has supervisory responsibility.

413 (3) A full-time public official or full-time public
414 employee who would be adversely affected by the
415 provisions of this subsection may apply to the Ethics
416 Commission for an exemption from the prohibition
417 contained in subdivision (1) of this subsection.

418 (A) The Ethics Commission shall by legislative rule
419 establish general guidelines or standards for granting an

420 exemption, but shall decide each application on a case-by-
421 case basis;

422 (B) A person adversely affected by the restriction on the
423 purchase of personal property may make such purchase
424 after seeking and obtaining approval from the commission
425 or in good faith reliance upon an official guideline
426 promulgated by the commission, written advisory opinions
427 issued by the commission, or a legislative rule.

428 (C) The commission may establish exceptions to the
429 personal property purchase restrictions through the adoption
430 of guidelines, advisory opinions or legislative rule.

431 (4) A full-time public official or full-time public
432 employee may not take personal regulatory action on a
433 matter affecting a person by whom he or she is employed or
434 with whom he or she is seeking employment or has an
435 agreement concerning future employment.

436 (5) A full-time public official or full-time public
437 employee may not personally participate in a decision,
438 approval, disapproval, recommendation, rendering advice,
439 investigation, inspection or other substantial exercise of
440 nonministerial administrative discretion involving a vendor
441 with whom he or she is seeking employment or has an
442 agreement concerning future employment.

443 (6) A full-time public official or full-time public
444 employee may not receive private compensation for
445 providing information or services that he or she is required
446 to provide in carrying out his or her public job
447 responsibilities.

448 (i) *Members of the Legislature required to vote.* —
449 Members of the Legislature who have asked to be excused
450 from voting or who have made inquiry as to whether they
451 should be excused from voting on a particular matter and
452 who are required by the presiding officer of the House of
453 Delegates or Senate of West Virginia to vote under the rules

454 of the particular house shall not be guilty of any violation of
455 ethics under the provisions of this section for a vote so cast.

456 (j) *Limitations on voting.* —

457 (1) Public officials, excluding members of the
458 Legislature who are governed by subsection (i) of this
459 section, may not vote on a matter:

460 (A) In which they, an immediate family member, or a
461 business with which they or an immediate family member
462 is associated have a financial interest. Business with which
463 they are associated means a business of which the person or
464 an immediate family member is a director, officer, owner,
465 employee, compensated agent, or holder of stock which
466 constitutes five percent or more of the total outstanding
467 stocks of any class.

468 (B) If a public official is employed by a financial
469 institution and his or her primary responsibilities include
470 consumer and commercial lending, the public official may
471 not vote on a matter which directly affects the financial
472 interests of a customer of the financial institution if the
473 public official is directly involved in approving a loan
474 request from the person or business appearing before the
475 governmental body or if the public official has been directly
476 involved in approving a loan for that person or business
477 within the past twelve months: *Provided*, That this
478 limitation only applies if the total amount of the loan or
479 loans exceeds \$15,000.

480 (C) The employment or working conditions of the
481 public official's relative or person with whom the public
482 official resides.

483 (D) The appropriations of public moneys or the
484 awarding of a contract to a nonprofit corporation if the
485 public official or an immediate family member is employed
486 by, or a compensated officer or board member of, the
487 nonprofit: *Provided*, That if the public official or immediate

488 family member is an uncompensated officer or board
489 member of the nonprofit, then the public official shall
490 publicly disclose such relationship prior to a vote on the
491 appropriations of public moneys or award of contract to the
492 nonprofit: *Provided, however,* That for purposes of this
493 paragraph, public disclosure shall mean disclosure of the
494 public official's, or his or her immediate family member's,
495 relationship to the nonprofit (i) on the agenda item relating
496 to the appropriation or award contract, if known at time of
497 agenda, (ii) by the public official at the meeting prior to the
498 vote, and (iii) in the minutes of the meeting.

499 (2) A public official may vote:

500 (A) If the public official, his or her spouse, immediate
501 family members or relatives or business with which they are
502 associated are affected as a member of, and to no greater
503 extent than any other member of a profession, occupation,
504 class of persons or class of businesses. A class shall consist
505 of not fewer than five similarly situated persons or
506 businesses; or

507 (B) If the matter affects a publicly traded company
508 when:

509 (i) The public official, or dependent family members
510 individually or jointly own less than five percent of the
511 issued stock in the publicly traded company and the value
512 of the stocks individually or jointly owned is less than
513 \$10,000; and

514 (ii) Prior to casting a vote the public official discloses
515 his or her interest in the publicly traded company.

516 (3) For a public official's recusal to be effective, it is
517 necessary to excuse him or herself from participating in the
518 discussion and decision-making process by physically
519 removing him or herself from the room during the period,
520 fully disclosing his or her interests, and recusing him or

521 herself from voting on the issue. The recusal shall also be
522 reflected in the meeting minutes.

523 (k) *Limitations on participation in licensing and rate-*
524 *making proceedings.* — No public official or employee may
525 participate within the scope of his or her duties as a public
526 official or employee, except through ministerial functions as
527 defined in section three, article one of this chapter, in any
528 license or rate-making proceeding that directly affects the
529 license or rates of any person, partnership, trust, business
530 trust, corporation or association in which the public official
531 or employee or his or her immediate family owns or controls
532 more than ten percent. No public official or public employee
533 may participate within the scope of his or her duties as a
534 public official or public employee, except through
535 ministerial functions as defined in section three, article one
536 of this chapter, in any license or rate-making proceeding
537 that directly affects the license or rates of any person to
538 whom the public official or public employee or his or her
539 immediate family, or a partnership, trust, business trust,
540 corporation or association of which the public official or
541 employee, or his or her immediate family, owns or controls
542 more than ten percent, has sold goods or services totaling
543 more than \$1,000 during the preceding year, unless the
544 public official or public employee has filed a written
545 statement acknowledging such sale with the public agency
546 and the statement is entered in any public record of the
547 agency's proceedings. This subsection shall not be
548 construed to require the disclosure of clients of attorneys or
549 of patients or clients of persons licensed pursuant to article
550 three, eight, fourteen, fourteen-a, fifteen, sixteen, twenty,
551 twenty-one or thirty-one, chapter thirty of this code.

552 (l) *Certain compensation prohibited.* — (1) A public
553 employee may not receive additional compensation from
554 another publicly-funded state, county or municipal office or
555 employment for working the same hours, unless:

556 (A) The public employee's compensation from one
557 public employer is reduced by the amount of compensation
558 received from the other public employer;

559 (B) The public employee's compensation from one
560 public employer is reduced on a pro rata basis for any work
561 time missed to perform duties for the other public employer;

562 (C) The public employee uses earned paid vacation,
563 personal or compensatory time or takes unpaid leave from
564 his or her public employment to perform the duties of
565 another public office or employment; or

566 (D) A part-time public employee who does not have
567 regularly scheduled work hours or a public employee who
568 is authorized by one public employer to make up, outside of
569 regularly scheduled work hours, time missed to perform the
570 duties of another public office or employment maintains
571 time records, verified by the public employee and his or her
572 immediate supervisor at least once every pay period,
573 showing the hours that the public employee did, in fact,
574 work for each public employer. The public employer shall
575 submit these time records to the Ethics Commission on a
576 quarterly basis.

577 (2) This section does not prohibit a retired public official
578 or public employee from receiving compensation from a
579 publicly-funded office or employment in addition to any
580 retirement benefits to which the retired public official or
581 public employee is entitled.

582 (m) *Certain expenses prohibited.* — No public official
583 or public employee shall knowingly request or accept from
584 any governmental entity compensation or reimbursement
585 for any expenses actually paid by a lobbyist and required by
586 the provisions of this chapter to be reported, or actually paid
587 by any other person.

588 (n) Any person who is employed as a member of the
589 faculty or staff of a public institution of higher education

590 and who is engaged in teaching, research, consulting or
591 publication activities in his or her field of expertise with
592 public or private entities and thereby derives private
593 benefits from such activities shall be exempt from the
594 prohibitions contained in subsections (b), (c) and (d) of this
595 section when the activity is approved as a part of an
596 employment contract with the governing board of the
597 institution or has been approved by the employee's
598 department supervisor or the president of the institution by
599 which the faculty or staff member is employed.

600 (o) Except as provided in this section, a person who is a
601 public official or public employee may not solicit private
602 business from a subordinate public official or public
603 employee whom he or she has the authority to direct,
604 supervise or control. A person who is a public official or
605 public employee may solicit private business from a
606 subordinate public official or public employee whom he or
607 she has the authority to direct, supervise or control when:

608 (A) The solicitation is a general solicitation directed to
609 the public at large through the mailing or other means of
610 distribution of a letter, pamphlet, handbill, circular or other
611 written or printed media; or

612 (B) The solicitation is limited to the posting of a notice
613 in a communal work area; or

614 (C) The solicitation is for the sale of property of a kind
615 that the person is not regularly engaged in selling; or

616 (D) The solicitation is made at the location of a private
617 business owned or operated by the person to which the
618 subordinate public official or public employee has come on
619 his or her own initiative.

620 (p) The commission may, by legislative rule
621 promulgated in accordance with chapter twenty-nine-a of
622 this code, define further exemptions from this section as
623 necessary or appropriate.

§6B-2-6. Financial disclosure statement; filing requirements.

1 (a) The financial disclosure statement shall be filed on
2 February 1 of each calendar year to cover the period of the
3 preceding calendar year, except insofar as may be otherwise
4 provided herein. The following persons must file the
5 financial disclosure statement required by this section with
6 the Ethics Commission:

7 (1) All elected officials in this state, including, but not
8 limited to, all persons elected statewide, all county elected
9 officials, municipal elected officials in municipalities which
10 have, by ordinance, opted to be covered by the disclosure
11 provisions of this section, all members of the several county
12 or district boards of education and all county or district
13 school board superintendents;

14 (2) All members of state boards, commissions and
15 agencies appointed by the Governor; and

16 (3) Secretaries of departments, commissioners, deputy
17 commissioners, assistant commissioners, directors, deputy
18 directors, assistant directors, department heads, deputy
19 department heads and assistant department heads.

20 A person who is required to file a financial disclosure
21 statement under this section by virtue of becoming an
22 elected or appointed public official whose office is
23 described in subdivision (1), (2) or (3) of this subsection,
24 and who assumes the office less than ten days before a filing
25 date established herein or who assumes the office after the
26 filing date, shall file a financial disclosure statement for the
27 previous twelve months no later than thirty days after the
28 date on which the person assumes the duties of the office,
29 unless the person has filed a financial disclosure statement
30 with the commission during the twelve-month period before
31 he or she assumed office.

32 (b) A candidate for public office shall file a financial
33 disclosure statement for the previous calendar year with the
34 state Ethics Commission no later than ten days after he or

35 she files a certificate of announcement, unless he or she has
36 previously filed a financial disclosure statement with the
37 state Ethics Commission for the previous calendar year.

38 The Ethics Commission shall file a duplicate copy of the
39 financial disclosure statement required in this section in the
40 following offices within ten days of the receipt of the
41 candidate's statement of disclosure:

42 (1) Municipal candidates in municipalities which have
43 opted, by ordinance, to be covered by the disclosure
44 provisions of this section, in the office of the clerk of the
45 municipality in which the candidate is seeking office;

46 (2) Legislative candidates in single county districts and
47 candidates for a county office or county school board in the
48 office of the clerk of the county commission of the county
49 in which the candidate is seeking office;

50 (3) Legislative candidates from multi-county districts
51 and congressional candidates in the office of the clerk of the
52 county commission of the county of the candidate's
53 residence.

54 After a ninety-day period following any election, the
55 clerks who receive the financial disclosure statements of
56 candidates may destroy or dispose of those statements filed
57 by candidates who were unsuccessful in the election.

58 (c) No candidate for public office may maintain his or
59 her place on a ballot and no public official may take the oath
60 of office or enter or continue upon his or her duties or
61 receive compensation from public funds unless he or she has
62 filed a financial disclosure statement with the state Ethics
63 Commission as required by the provisions of this section.

64 (d) The Ethics Commission may, upon request of any
65 person required to file a financial disclosure statement, and
66 for good cause shown, extend the deadline for filing such
67 statement for a reasonable period of time: *Provided*, That no
68 extension of time shall be granted to a candidate who has

69 not filed a financial disclosure statement for the preceding
70 filing period.

71 (e) No person shall fail to file a statement required by
72 this section.

73 (f) No person shall knowingly file a materially false
74 statement that is required to be filed under this section.

75 (g) The Ethics Commission shall publish either on the
76 Internet or by printed document made available to the
77 public, a list of all persons who have violated any Ethics
78 Commission's financial disclosure statement filing
79 deadline.

80 (h) The Ethics Commission shall, in addition to making
81 all financial disclosure statements available for inspection
82 upon request:

83 (1) Publish on the internet all financial disclosure
84 statements filed by members of the Legislature and
85 candidates for legislative office, elected members of the
86 executive department and candidates for the offices that
87 constitute the executive department, and members of the
88 Supreme Court of Appeals and candidates for the Supreme
89 Court of Appeals, commencing with those reports filed on
90 or after January 1, 2012; and

91 (2) Publish on the internet all financial disclosure
92 statements filed by any other person required to file such
93 financial disclosure statements, as the commission
94 determines resources are available to permit the Ethics
95 Commission to make such publication on the internet. The
96 commission shall redact financial disclosure statements
97 published on the internet to exclude from publication
98 personal information such as signatures, home addresses
99 and mobile and home telephone numbers.

§6B-2-10. Violations and penalties.

1 (a) Any person who violates the provisions of
2 subsection (e), (f) or (g), section five of this article or
3 violates the provisions of subdivision (1), subsection (f),

4 section four of this article is guilty of a misdemeanor and,
5 upon conviction, shall be confined in jail for a period not to
6 exceed six months or shall be fined not more than \$1,000,
7 or both. A member or employee of the commission or the
8 Review Board convicted of violating said subdivision is
9 subject to immediate removal from office or discharge from
10 employment.

11 (b) Any person who violates the provisions of
12 subsection (f), section six of this article by willfully and
13 knowingly filing a false financial statement or knowingly
14 and willfully concealing a material fact in filing the
15 statement is guilty of a misdemeanor and, upon conviction,
16 shall be fined not more than \$1,000, or confined in jail not
17 more than one year, or both.

18 (c) Any person who knowingly fails or refuses to file a
19 financial statement required by section six of this article is
20 guilty of a misdemeanor and, upon conviction, shall be fined
21 not less than \$100 nor more than \$1,000.

22 (d) If any commission member or staff knowingly
23 violates subsection (p), section four of this article, such
24 person, upon conviction thereof, shall be guilty of a
25 misdemeanor and, shall be fined not less than \$100 nor more
26 than \$1,000.

27 (e) Any person who violates the provisions of
28 subdivision (2), subsection (f), section four of this article by
29 knowingly and willfully disclosing any information made
30 confidential by an order of the commission is subject to
31 administrative sanction by the commission as provided in
32 subsection (s) of said section.

33 (f) Any person who knowingly gives false or misleading
34 material information to the commission or who induces or
35 procures another person to give false or misleading material
36 information to the commission is subject to administrative
37 sanction by the commission as provided in subsection (s),
38 section four of this article.

CHAPTER 6D. PUBLIC CONTRACTS.

ARTICLE 1. DISCLOSURE OF INTERESTED PARTIES.**§6D-1-1. Definitions.**

1 For purposes of this article:

2 (a) “Applicable contract” means a contract of a state
3 agency that has an actual or estimated value of at least
4 \$100,000: *Provided*, That this shall include a series of
5 related contracts or orders in which the cumulative total
6 exceeds \$100,000.

7 (b) “Business entity” means any entity recognized by
8 law through which business is conducted, including a sole
9 proprietorship, partnership or corporation.

10 (c) “Disclosure” shall mean a form prescribed and
11 approved by the Ethics Commission pursuant to section
12 three of this article.

13 (d) “Interested party” or “Interested parties” means: (1)
14 A business entity performing work or service pursuant to,
15 or in furtherance of, the applicable contract, including
16 specifically sub-contractors; (2) the person(s) who have an
17 ownership interest equal to or greater than 25% in the
18 business entity performing work or service pursuant to, or
19 in furtherance of, the applicable contract; and (3) the person
20 or business entity, if any, that served as a compensated
21 broker or intermediary to actively facilitate the applicable
22 contract or negotiated the terms of the applicable contract
23 with the state agency: *Provided*, That subdivision (2) shall
24 be inapplicable if a business entity is a publicly traded
25 company: *Provided, however*, That subdivision (3) shall not
26 include persons or business entities performing legal
27 services related to the negotiation or drafting of the
28 applicable contract.

29 (e) “State agency” means a board, commission, office,
30 department, or other agency in the executive, judicial or
31 legislative branch of state government, including publicly
32 funded institutions of higher education: *Provided*, That for

33 purposes of this article, the West Virginia Investment
34 Management Board shall not be deemed a state agency nor
35 subject to the requirements of this article.

**§6D-1-2. Disclosure of interested parties to a public contract;
supplemental disclosure.**

1 (a) A state agency may not enter into an applicable
2 contract that has been awarded to a business entity unless
3 and until the business entity submits to the state agency a
4 disclosure of interested parties to the applicable contract.

5 (b) The business entity shall submit the disclosure to the
6 state agency no later than when the contract is submitted to
7 the state agency for signature and approval by the state
8 agency: *Provided*, That this provision does not require
9 submission of a disclosure pursuant to this article as part of
10 a bid for the contract.

11 (c) Within thirty days following the completion or
12 termination of the applicable contract, the business entity
13 shall submit a supplemental disclosure of interested parties
14 reflecting any new or differing interested parties to the
15 contract.

§6D-1-3. Filing with Ethics Commission.

1 (a) The disclosure of interested parties must be
2 submitted on a form prescribed and approved by the Ethics
3 Commission that includes:

4 (1) A list of each interested party to the contract that is
5 known or reasonably anticipated by the contracting business
6 entity; and

7 (2) The signature of the authorized agent of the
8 contracting business entity, acknowledging that the
9 disclosure is made under oath and under penalty of perjury.

10 (b) Not later than the fifteenth day after the date the state
11 agency receives an initial or supplemental disclosure of

12 interested parties required under this section, the state
13 agency shall submit a copy of the disclosure to the Ethics
14 Commission.

15 (c) The Ethics Commission shall make copies of the
16 disclosures received from state agencies publicly available.
17 To the extent possible under existing technology or upon
18 obtaining sufficient technology, the Ethics Commission
19 shall post copies of the disclosures on the commission's
20 website.

§6D-1-4. Higher Education Compliance.

1 (a) The provisions of section two and three of this article
2 do not apply to applicable contracts of a state institution of
3 higher education, as defined in section two, article one,
4 chapter eighteen-b, if the state institution of higher
5 education complies with the requirements of this section
6 and has a policy in place that provides as follows:

7 (1) For business entities that are not registered to do
8 business with the State of West Virginia, at the time of
9 registration of a business entity seeking to enter into an
10 applicable contract with a state institution of higher
11 education, the state institution of higher education requires
12 the business entity to disclose in writing the interested
13 parties of the business entity before any applicable contracts
14 are executed;

15 (2) For business entities that are already registered to do
16 business with the State of West Virginia, and a business
17 entity is seeking to enter into an applicable contract with a
18 state institution of higher education, the state institution of
19 higher education requires the business entity to disclose in
20 writing the interested parties of the business entity before
21 any applicable contract is executed;

22 (3) Business entities are required to update any changes
23 to the list of interested parties of the business entity on a
24 periodic basis; and

25 (4) The disclosures required by this section are made in
26 writing, by an authorized agent under oath and under
27 penalty of perjury.

28 (b) The state institution of higher education shall
29 provide a report to the ethics commission on or before
30 December 31 of each year listing all business entities that
31 received more than one-hundred thousand dollars from the
32 institution of higher education during the previous fiscal
33 year, with an accompanying list of interested parties
34 provided by each such business entity.

35 (c) For purposes of this section, the term “interested
36 parties” shall not include any sub-contractors receiving less
37 than \$50,000 under an applicable contract.

CHAPTER 95

(Com. Sub. for S. B. 588 - By Senator Sypolt)

[Passed April 5, 2017; in effect ninety days from passage.]
[Approved by the Governor on April 18, 2017.]

AN ACT to amend and reenact §11-1C-2, §11-1C-4 and §11-1C-7 of the Code of West Virginia, 1931, as amended; and to amend and reenact §59-1-10 of said code, all relating to the reproduction, distribution and sale of tax maps; defining terms; specifying powers of the Property Valuation Training and Procedures Commission to promulgate rules; specifying duties of county assessors; requiring that sale, reproduction and distribution of certain records be in accordance with specified legislative rules; and specifying certain fees.

Be it enacted by the Legislature of West Virginia:

That §11-1C-2, §11-1C-4 and §11-1C-7 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that

§59-1-10 of said code be amended and reenacted, all to read as follows:

CHAPTER 11. TAXATION.

ARTICLE 1C. FAIR AND EQUITABLE PROPERTY VALUATION.

§11-1C-2. Definitions.

1 For the purposes of this article, the following words
2 shall have the meanings hereafter ascribed to them unless
3 the context clearly indicates otherwise:

4 (a) “Timberland” means any surface real property
5 except farm woodlots of not less than ten contiguous acres
6 which is primarily in forest and which, in consideration of
7 their size, has sufficient numbers of commercially valuable
8 species of trees to constitute at least forty percent normal
9 stocking of forest trees which are well distributed over the
10 growing site.

11 (b) “Managed timberland” means surface real property,
12 except farm woodlots, of not less than ten contiguous acres
13 which is devoted primarily to forest use and which, in
14 consideration of their size, has sufficient numbers of
15 commercially valuable species of trees to constitute at least
16 forty percent normal stocking of forest trees which are well
17 distributed over the growing site and that is managed
18 pursuant to a plan provided for in section ten of this article:
19 *Provided*, That none of the following may be considered as
20 managed timberland within the meaning of this article:

21 (1) Any tract or parcel of real estate, regardless of its
22 size, which is part of any subdivision that is approved or
23 exempted from approval pursuant to the provisions of a
24 planning ordinance adopted under the provisions of article
25 twenty-four, chapter eight of this code; or

26 (2) Any tract or parcel of real estate, regardless of its
27 size, which is subject to a deed restriction, deed covenant or

28 zoning regulation which limits the use of that real estate in
29 a way that precludes the commercial production and
30 harvesting of timber upon it.

31 (c) "Tax Commissioner," "commissioner" or "tax
32 department" means the State Tax Commissioner or a
33 designee of the State Tax Commissioner.

34 (d) "Valuation commission" or "commission" means
35 the commission created in section three of this article.

36 (e) "County board of education" or "board" means the
37 duly elected board of education of each county.

38 (f) "Farm woodlot" means that portion of a farm in
39 timber but may not include land used primarily for the
40 growing of timber for commercial purposes except that
41 Christmas trees, or nursery stock and woodland products,
42 such as nuts or fruits harvested for human consumption,
43 shall be considered farm products and not timber products.

44 (g) "Owner" means the person who is possessed of the
45 freehold, whether in fee or for life. A person seized or
46 entitled in fee subject to a mortgage or deed of trust securing
47 a debt or liability is deemed the owner until the mortgagee
48 or trust takes possession, after which such mortgagee or
49 trustee shall be deemed the owner. A person who has an
50 equitable estate of freehold or is a purchaser of a freehold
51 estate who is in possession before transfer of legal title is
52 also deemed the owner.

53 (h) "Electronic" means relating to technology having
54 electrical, digital, magnetic, wireless, optical,
55 electromagnetic or similar capabilities.

56 (i) "Paper" means a tax map or document that is not
57 electronic.

58 The definitions in subdivisions (f) and (g) of this section
59 shall apply to tax years beginning on or after January 1,
60 2001.

§11-1C-4. Commission powers and duties; rulemaking.

1 (a) On or before October 1, 1990, and thereafter as
2 necessary the Property Valuation Training and Procedures
3 Commission shall perform the following duties:

4 (1) Devise training and certification criteria for county
5 assessors and their employees and members of county
6 commissions, which shall include a definition of
7 “appropriate staff member” as the term is used in section six
8 of this article relating to required training, which definition
9 shall include deputy assessors as provided for in section
10 three, article two of this chapter;

11 (2) Establish uniform, statewide procedures and
12 methodologies for the mapping, visitation, identification
13 and collection of information on the different species of
14 property, which procedures and methodologies shall include
15 reasonable requirements for visitation of property, including
16 a requirement that a good faith effort be made to contact any
17 owner of owner-occupied residential property: *Provided,*
18 That the commission is not authorized to establish the
19 methods to value real and personal property, but shall have
20 the authority to approve such methods;

21 (3) Develop an outline of items to be included in the
22 county property valuation plan required in section seven of
23 this article, which shall include information to assist the
24 Property Valuation Training and Procedures Commission in
25 its determination of the distribution of state funds provided
26 pursuant to section eight of this article.

27 (b) On or before July 1, 1991, the commission shall
28 establish objective criteria for the evaluation of the
29 performance of the duties of county assessors and the Tax
30 Commissioner.

31 (c) In the event the Tax Commissioner and a county
32 assessor cannot agree on the content of the plan required
33 under section seven of this article, the commission shall
34 examine the plan and the objections of the Tax

35 Commissioner and shall resolve the dispute on or before the
36 first day of the fiscal year following the fiscal year in which
37 the plan was submitted to the commission for resolution.

38 (d) The commission may make such rules as it considers
39 necessary to carry out the provisions of this section, which
40 rules shall include procedures for the maintenance and use
41 of paper and electronic tax maps but specifically excluding
42 rules that relate to the sale, reproduction and distribution of
43 the maps and associated data. Any rules adopted by the
44 commission prior to October 1, 1990, under subsection (a)
45 of this section are exempt from the provisions of article
46 three, chapter twenty-nine-a of this code: *Provided*, That the
47 commission shall file a copy of any rule so exempted from
48 the provisions of chapter twenty-nine-a of this code with the
49 Legislative Rule-Making Review Committee created
50 pursuant to section eleven, article three of said chapter prior
51 to November 30, 1990.

52 (e) The commission may make and enter into all
53 contracts and agreements necessary or incidental to the
54 performance of its duties and the execution of its powers
55 under this article.

56 (f) In order to fund the costs of the requirements of this
57 article, the valuation commission may, on a one-time basis,
58 borrow \$5 million and distribute those funds according to
59 need and the valuation plan submitted by the counties. Upon
60 request of the valuation commission, the State Board of
61 Investments shall loan, under commercially reasonable
62 terms to be determined by the parties, up to \$5 million to the
63 valuation commission, on a one-time basis, from one of the
64 various funds administered by the State Board of
65 Investments.

66 (g) The commission shall be required, if the Tax
67 Commissioner has failed to do so, to appoint one or more
68 special assessors if it is the determination of the commission
69 that an assessor has substantially failed to perform the duties
70 required by sections seven and eight of this article. A writ

71 of mandamus shall be the proper remedy if the commission
72 fails to perform any of its duties required by law.

**§11-1C-7. Duties of county assessors; property to be appraised
at fair market value; exceptions; initial equalization;
valuation plan.**

1 (a) Except for property appraised by the State Tax
2 Commissioner under section ten of this article and property
3 appraised and assessed under article six of this chapter, all
4 assessors shall, within three years of the approval of the
5 county valuation plan required pursuant to this section,
6 appraise all real and personal property in their jurisdiction
7 at fair market value except for special valuation provided
8 for farmland and managed timberland. They shall utilize the
9 procedures and methodologies established by the Property
10 Valuation Training and Procedures Commission and the
11 valuation system established by the Tax Commissioner.

12 (b) In determining the fair market value of the property
13 in their jurisdictions, assessors may use as an aid to
14 valuation any information available on the character and
15 values of such property, including, but not limited to, the
16 updated information found on any statewide electronic data
17 processing system network established pursuant to section
18 twenty-one, article one-a of this chapter. Valuations may
19 not be based exclusively on the statewide electronic data
20 processing system network and usage of the information on
21 the files as an aid to proper valuation does not constitute an
22 implementation of the statewide mass reappraisal of
23 property.

24 (c) Before beginning the valuation process, each
25 assessor shall develop a county valuation plan for using
26 information currently available, for checking its accuracy
27 and for correcting any errors found. The plan must be
28 submitted to the Tax Commissioner on or before December
29 1, 1990, for review and approval and the plan must be
30 revised as necessary and resubmitted every three years
31 thereafter. Whenever a plan is submitted to the Tax

32 Commissioner, a copy shall also be submitted to the county
33 commission of that county and the Property Valuation
34 Training and Procedures Commission and that county
35 commission and the Property Valuation Training and
36 Procedures Commission may forward comments to the Tax
37 Commissioner. The Tax Commissioner shall respond to any
38 plan submitted or resubmitted within sixty days of its
39 receipt. The valuation process shall not begin nor shall
40 funds provided in section eight of this article be available
41 until the plan has received approval by the Tax
42 Commissioner: *Provided*, That any initial plan that has not
43 received approval by the commissioner prior to May 1,
44 1991, shall be submitted on or by such date to the valuation
45 commission for resolution prior to July 1, 1991, by which
46 date all counties shall have an approved valuation plan in
47 effect.

48 (d) Upon approval of the valuation plan, the assessor
49 shall immediately begin implementation of the valuation
50 process. Any change in value discovered subsequent to the
51 certification of values by the assessor to the county
52 commission, acting as the board of equalization and review,
53 in any given year shall be placed upon the property books
54 for the next certification of values: *Provided*, That
55 notwithstanding any other provision of this code to the
56 contrary, the Property Valuation Training and Procedures
57 Commission may authorize the Tax Commissioner to
58 approve a valuation plan and the Board of Public Works to
59 submit such a plan which would permit the placement of
60 proportionately uniform percentage changes in values on
61 the books that estimate the percentage difference between
62 the current assessed value and sixty percent of the fair
63 market value for classes or identified subclasses of property
64 and distribute the change between the two tax years
65 preceding the tax year beginning on July 1, 1993. This
66 procedure may be used in lieu of placing individual values
67 on the books at sixty percent of value as discovered or may
68 be in addition to the valuation. If this procedure is adopted
69 by a county, then property whose reevaluation is the

70 responsibility of the Board of Public Works and the state
71 Tax Commissioner shall have its values estimated and
72 placed on the books in like manner. The estimates shall be
73 based on the best information obtained by the assessor, the
74 Board of Public Works and the Tax Commissioner and the
75 changes shall move those values substantially toward sixty
76 percent of fair market value, such sixty percent to be
77 reached on or before July 1, 1993.

78 (e) (1) The county assessor shall establish and maintain
79 as official records of the county tax maps of the entire
80 county drawn to scale or aerial maps, which maps shall
81 indicate all property and lot lines, set forth dimensions or
82 areas, indicate whether the land is improved and identify the
83 respective parcels or lots by a system of numbers or symbols
84 and numbers, whereby the ownership of such parcels and
85 lots can be ascertained by reference to the appropriate
86 records: *Provided*, That all such records shall be established
87 and maintained in accordance with legislative rules
88 promulgated by the commission.

89 (2) The paper and electronic tax maps including mineral
90 boundary maps shall be made available for sale by the
91 assessor and the map sales unit of the Property Tax Division
92 of the Department of Revenue. In connection with these
93 sales the assessor and map sales unit of the Property Tax
94 Division of the Department of Revenue shall offer the
95 electronic tax maps in all available formats and with all
96 underlying map data including that necessary to tie
97 electronic parcel data to associated land book ownership
98 and related data. Sales of paper and electronic tax maps
99 shall be without limitation as to the reproduction or
100 disclosure of information contained therein or thereon by
101 the purchaser. The fees charged for the sale or reproduction
102 of paper and electronic tax maps by the assessor or the map
103 sales unit of the Property Tax Division of the Department of
104 Revenue shall be limited to those reasonably calculated to
105 reimburse it for its actual cost in making reproductions of
106 the records (i.e., the charge shall be no more than what is

107 reasonable for disclosure of the information under a
108 Freedom of Information Act request under article one,
109 chapter twenty-nine-b of this code). Tax maps are prepared
110 for taxation purposes only and the assessor and map sales
111 unit of the Property Tax Division of the Department of
112 Revenue may have no liability to any third party for any
113 errors or omissions associated therewith or in connection
114 with the use of tax maps for any other purpose.

115 (f) Willing and knowing refusal of the assessor or the
116 county commission to comply with and effect the provisions
117 of this article, or to correct any deficiencies as may be
118 ordered by the Tax Commissioner with the concurrence of
119 the valuation commission under any authority granted
120 pursuant to this article or other provisions of this code, are
121 grounds for removal from office. A removal may be
122 appealed to the circuit court.

CHAPTER 59. FEES, ALLOWANCES AND COSTS; NEWSPAPERS; LEGAL ADVERTISEMENTS.

ARTICLE 1. FEES AND ALLOWANCES.

§59-1-10. Fees to be charged by clerk of county commission.

1 For the purpose of this section, the word “page” is
2 defined as being a paper or electronic writing of not more
3 than legal size, 8 1/2” x 14”.

4 (a) When a writing is admitted to record, for receiving
5 proof of acknowledgment thereof, entering an order in
6 connection therewith, endorsing clerk’s certificate of
7 recordation thereon and indexing in a proper index, the clerk
8 of the county commission shall charge and collect the
9 following fees:

10 (1) Twenty-five dollars for a deed of conveyance (with
11 or without a plat), trust deed, fixture filing or security
12 agreement concerning real estate lease.

13 (2) Forty dollars for a trustee's report of sale for any
14 property for which additional information and filing
15 requirements are required by section eight-a, article one,
16 chapter thirty-eight of this code. Twenty dollars of each
17 recording fee received pursuant to this subdivision shall be
18 deposited into the county's General Revenue Fund and \$20
19 paid quarterly by the clerk of the county commission to the
20 West Virginia Housing Development Fund established in
21 article eighteen, chapter thirty-one of this code.

22 (3) Ten dollars for a financing, continuation,
23 termination or other statement or writing permitted to be
24 filed under chapter forty-six of this code.

25 (4) Ten dollars for a plat or map (with no deed of
26 conveyance).

27 (5) No charge for a service discharge record.

28 (6) Ten dollars for any document or writing other than
29 those referenced in subdivisions (1), (2), (3), (4) and (5) of
30 this subsection.

31 (7) One dollar for each additional page for documents
32 or writings containing more than five pages.

33 For any of the documents admitted to record pursuant to
34 this subsection, if the clerk of the county commission has
35 the technology available to receive these documents in
36 electronic form or other media, the clerk shall set a
37 reasonable fee to record these writings not to exceed the cost
38 for filing paper documents.

39 (8) Of the fees collected pursuant to subdivision (1),
40 subsection (a) of this section, \$10 shall be deposited in the
41 county general fund in accordance with section twenty-eight
42 of this article, \$5 shall be deposited in the county reappraisal
43 fund and dedicated to the operation of the assessor's office
44 mapping division, \$3 shall be deposited in the Courthouse
45 Facilities Improvement Fund created by section six, article
46 twenty-six, chapter twenty-nine of this code, \$1 to the

47 county 9-1-1 center and \$2 shall be deposited in the county
48 general fund and dedicated to the operation of the county
49 clerk's office. Four dollars of the fees collected pursuant to
50 subdivision (1), subsection (a) of this section and \$5 of the
51 fees collected pursuant to subdivision (6), subsection (a) of
52 this section shall be paid by the county clerk into the State
53 Treasury and deposited in equal amounts for deposit into the
54 Farmland Protection Fund created in article twelve, chapter
55 eight-a of this code for the benefit of the West Virginia
56 Agricultural Land Protection Authority and into the
57 Outdoor Heritage Conservation Fund created in article two-
58 g, chapter five-b of this code. The funds deposited in the
59 State Treasury pursuant to this subdivision may only be
60 used for costs, excluding personnel costs, associated with
61 purpose of land conservation, as defined in subsection (f),
62 section seven, article two-g, chapter five-b of this code.

63 (b) Five dollars for administering any oath other than
64 oaths by officers and employees of the state, political
65 subdivisions of the state or a public or quasi-public entity of
66 the state or a political subdivision of the state, taken in his
67 or her official capacity.

68 (c) Fifty-five dollars for issuance of marriage license
69 and other duties pertaining to the marriage license
70 (including preparation of the application, administrating the
71 oath, registering and recording the license, mailing
72 acknowledgment of minister's return to one of the licensees
73 and notification to a licensee after sixty days of the
74 nonreceipt of the minister's return). This fee is reduced to
75 \$35 if the applicants present a premarital education course
76 completion certificate issued pursuant to section seven
77 hundred one, article two, chapter forty-eight of this code and
78 dated within one year of the application for a marriage
79 license.

80 (1) One dollar of the marriage license fee received
81 pursuant to this subsection shall be paid by the county clerk
82 into the State Treasury as a state registration fee in the same

83 manner that license taxes are paid into the Treasury under
84 article twelve, chapter eleven of this code;

85 (2) Fifteen dollars of the marriage license fee received
86 pursuant to this subsection shall be paid by the county clerk
87 into the State Treasury for the Family Protection Shelter
88 Support Act in the same manner that license taxes are paid
89 into the Treasury under article twelve, chapter eleven of this
90 code;

91 (3) Ten dollars of the marriage license fee received
92 pursuant to this subsection shall be deposited in the
93 Courthouse Facilities Improvement Fund created by section
94 six, article twenty-six, chapter twenty-nine of this code; and

95 (4) If a premarital education course completion
96 certificate is not presented, the county clerk shall, on or
97 before the tenth day of each month, transmit \$20 of the
98 marriage license fee received pursuant to this subsection to
99 the State Treasurer for deposit in the State Treasury as
100 follows:

101 (A) Five dollars to the credit of the Family Protection
102 Shelter Support Act in the same manner that license taxes
103 are paid into the Treasury under article twelve, chapter
104 eleven of this code;

105 (B) Five dollars to the credit of the special revenue
106 account, hereby created, designated the Fund for Civil Legal
107 Services for Low Income Persons, which shall consist of all
108 gifts, grants, bequests, transfers, appropriations or other
109 donations or payments which may be received and
110 administered by the Division of Justice and Community
111 Services from any governmental entity or unit or any
112 person, firm, foundation or corporation for the purposes of
113 this section, and all interest or other return earned from
114 investment of the fund. Expenditures from the fund shall be
115 made by the Director of the Division of Justice and
116 Community Services and shall be limited to grants to
117 nonprofit agencies which provide civil legal services to low

118 income persons made at his or her discretion. Any balance
119 in the fund at the end of each fiscal year shall not revert to
120 the General Revenue Fund but shall remain in the fund and
121 be expended as provided by this section.

122 (C) Ten dollars to the credit of the Marriage Education
123 Fund created pursuant to section seven hundred two, article
124 two, chapter forty-eight of this code.

125 (d) (1) One dollar and fifty cents for a copy of any
126 writing or document, if it is not otherwise provided for.

127 (2) One dollar for each additional page if the writing or
128 documents contains more than two pages.

129 (3) One dollar for annexing the seal of the commission
130 or clerk to any paper.

131 (4) Five dollars for a certified copy of a birth certificate,
132 death certificate or marriage license.

133 (e) For copies of any record in electronic form or a
134 medium other than paper, a reasonable fee set by the clerk
135 of the county commission not to exceed the costs associated
136 with document search and duplication.



CHAPTER 96

**(Com. Sub. for H. B. 2980 - By Delegates Moore,
Summers, Shott, Hollen, Sobonya, Hanshaw, C.
Miller, Kessinger, N. Foster, O'Neal and Westfall)**

[Passed April 8, 2017; in effect ninety days from passage.]
[Approved by the Governor on April 24, 2017.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by
adding thereto a new section, designated §15-2-24d; and to

amend and reenact §59-1-11 of said code, all relating to creating a special revenue account designated the State Police Forensic Laboratory Fund; providing for funding mechanisms; clarifying funding sources; establishing parameters for expenditures from the fund; vesting administration responsibility for the fund to the superintendent; relating to fees for services rendered by circuit clerks in certain civil actions; imposing additional fees in certain civil actions that include two or more named defendants, respondents or third-party defendants; setting that fee at \$15 per defendant; providing for distribution of the additional fees between the general fund of the county in which the office of the circuit clerk is located and the State Police Forensic Laboratory Fund; and excluding John or Jane Doe defendants from the per-defendant fee.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §15-2-24d; and that §59-1-11 of said code be amended and reenacted, all to read as follows:

CHAPTER 15. PUBLIC SAFETY.

ARTICLE 2. WEST VIRGINIA STATE POLICE.

§15-2-24d. State Police Forensic Laboratory Fund.

1 The State Police Forensic Laboratory Fund is hereby
2 created within the Treasury of the state. The fund shall be
3 administered by the superintendent and shall consist of all
4 moneys made available for the operations of the State Police
5 Forensic Laboratory from any source, including, but not
6 limited to, all fees, all gifts, grants, bequests or transfers
7 from any source, any moneys that may be appropriated and
8 designated for the forensic laboratory by the Legislature and
9 all interest or other return earned from investment of the
10 fund. Expenditures from the fund shall be for the operations
11 of the State Police Forensic Laboratory and are not
12 authorized from collections but are to be made only in
13 accordance with appropriation by the Legislature and in

14 accordance with the provisions of article three, chapter
15 twelve of this code and upon the fulfillment of the
16 provisions set forth in article two, chapter eleven-b of this
17 code: *Provided*, That for the fiscal year ending June 30,
18 2018, expenditures are authorized from collections rather
19 than pursuant to an explicit appropriation by the Legislature.

**CHAPTER 59. FEES, ALLOWANCES AND COSTS;
NEWSPAPERS; LEGAL ADVERTISEMENTS.**

ARTICLE 1. FEES AND ALLOWANCES.

§59-1-11. Fees to be charged by clerk of circuit court.

1 (a) The clerk of a circuit court shall charge and collect
2 for services rendered by the clerk the following fees which
3 shall be paid in advance by the parties for whom services
4 are to be rendered:

5 (1) Except as provided in subdivisions (2) and (3) of this
6 subsection, for instituting any civil action under the Rules
7 of Civil Procedure, any statutory summary proceeding, any
8 extraordinary remedy, the docketing of civil appeals or
9 removals of civil cases from magistrate court, or any other
10 action, cause, suit or proceeding, \$200, of which \$30 shall
11 be deposited in the Courthouse Facilities Improvement
12 Fund created by section six, article twenty-six, chapter
13 twenty-nine of this code and \$45 shall be deposited in the
14 special revenue account designated the Fund for Civil Legal
15 Services for Low Income Persons, established by paragraph
16 (B), subdivision (4), subsection (c), section ten of this
17 article, and \$20 deposited in the special revenue account
18 created in section six hundred three, article twenty-six,
19 chapter forty-eight of this code to provide legal services for
20 domestic violence victims;

21 (2) For instituting an action for medical professional
22 liability, \$400, of which \$10 shall be deposited in the
23 Courthouse Facilities Improvement Fund created by section
24 six, article twenty-six, chapter twenty-nine of this code;

25 (3) Beginning on and after July 1, 1999, for instituting
26 an action for divorce, separate maintenance or annulment,
27 \$135;

28 (4) For petitioning for the modification of an order
29 involving child custody, child visitation, child support or
30 spousal support, \$85;

31 (5) For petitioning for an expedited modification of a
32 child support order, \$35;

33 (6) For filing any pleading that includes a counterclaim,
34 cross claim, third-party complaint or motion to intervene,
35 \$200, which shall be deposited in the special revenue
36 account designated the Fund for Civil Legal Services for
37 Low Income Persons, established by paragraph (B),
38 subdivision (4), subsection (c), section ten of this article:
39 *Provided*, That this subdivision and the fee it imposes does
40 not apply in family court cases nor may more than one such
41 fee be imposed on any one party in any one civil action; and

42 (7) Except for civil actions within the jurisdiction of
43 family courts, for each defendant or respondent named in
44 the initial pleading upon the institution of a civil action in
45 which there are two or more named defendants, and for each
46 additional defendant, respondent or third-party defendant
47 subsequently named in a pleading filed in the civil action,
48 \$15, payable upon the institution of the civil action or upon
49 the filing of the initial pleading that names the additional
50 defendant, respondent or third-party defendant, of which
51 \$10 shall be deposited in the general fund of the county in
52 which the office of the circuit clerk is located, and \$5 shall
53 be deposited in the State Police Forensic Laboratory Fund,
54 established under section twenty-four-d, article two, chapter
55 fifteen of this code: *Provided*, That for purposes of this
56 subdivision, “defendant or respondent named” does not
57 include those defendants or respondents identified as
58 “John/Jane Doe.”

59 (b) In addition to the foregoing fees, the following fees
60 shall be charged and collected:

61 (1) For preparing an abstract of judgment, \$5;

62 (2) For a transcript, copy or paper made by the clerk for
63 use in any other court or otherwise to go out of the office,
64 for each page, \$1;

65 (3) For issuing a suggestion and serving notice to the
66 debtor by certified mail, \$25;

67 (4) For issuing an execution, \$25;

68 (5) For issuing or renewing a suggestee execution and
69 serving notice to the debtor by certified mail, \$25;

70 (6) For vacation or modification of a suggestee
71 execution, \$1;

72 (7) For docketing and issuing an execution on a
73 transcript of judgment from magistrate court, \$3;

74 (8) For arranging the papers in a certified question, writ
75 of error, appeal or removal to any other court, \$10, of which
76 \$5 shall be deposited in the Courthouse Facilities
77 Improvement Fund created by section six, article twenty-
78 six, chapter twenty-nine of this code;

79 (9) For each subpoena, on the part of either plaintiff or
80 defendant, to be paid by the party requesting the same, 50
81 cents;

82 (10) For additional service, plaintiff or appellant, where
83 any case remains on the docket longer than three years, for
84 each additional year or part year, \$20; and

85 (11) For administering funds deposited into a federally
86 insured interest-bearing account or interest-bearing
87 instrument pursuant to a court order, \$50, to be collected from
88 the party making the deposit. A fee collected pursuant to this
89 subdivision shall be paid into the general county fund.

90 (c) In addition to the foregoing fees, a fee for the actual
91 amount of the postage and express may be charged and
92 collected for sending decrees, orders or records that have not
93 been ordered by the court to be sent by mail or express.

94 (d) The clerk shall tax the following fees for services in a
95 criminal case against a defendant convicted in such court:

96 (1) In the case of a misdemeanor, \$85; and

97 (2) In the case of a felony, \$105, of which \$10 shall be
98 deposited in the Courthouse Facilities Improvement Fund
99 created by section six, article twenty-six, chapter twenty-nine
100 of this code.

101 (e) The clerk of a circuit court shall charge and collect a
102 fee of \$25 per bond for services rendered by the clerk for
103 processing of criminal bonds and the fee shall be paid at the
104 time of issuance by the person or entity set forth below:

105 (1) For cash bonds, the fee shall be paid by the person
106 tendering cash as bond;

107 (2) For recognizance bonds secured by real estate, the fee
108 shall be paid by the owner of the real estate serving as surety;

109 (3) For recognizance bonds secured by a surety company,
110 the fee shall be paid by the surety company;

111 (4) For ten percent recognizance bonds with surety, the
112 fee shall be paid by the person serving as surety; and

113 (5) For ten percent recognizance bonds without surety,
114 the fee shall be paid by the person tendering ten percent of
115 the bail amount.

116 In instances in which the total of the bond is posted by
117 more than one bond instrument, the above fee shall be
118 collected at the time of issuance of each bond instrument
119 processed by the clerk and all fees collected pursuant to this
120 subsection shall be deposited in the Courthouse Facilities
121 Improvement Fund created by section six, article twenty-six,

122 chapter twenty-nine of this code. Nothing in this subsection
123 authorizes the clerk to collect the above fee from any person
124 for the processing of a personal recognizance bond.

125 (f) The clerk of a circuit court shall charge and collect a
126 fee of \$10 for services rendered by the clerk for processing of
127 bail piece and the fee shall be paid by the surety at the time
128 of issuance. All fees collected pursuant to this subsection
129 shall be deposited in the Courthouse Facilities Improvement
130 Fund created by section six, article twenty-six, chapter
131 twenty-nine of this code.

132 (g) No clerk is required to handle or accept for
133 disbursement any fees, cost or amounts of any other officer
134 or party not payable into the county treasury except on
135 written order of the court or in compliance with the
136 provisions of law governing such fees, costs or accounts.

137 (h) Fees for removal of civil cases from magistrate court
138 shall be collected by the magistrate court when the case is still
139 properly before the magistrate court. The magistrate court
140 clerk shall forward the fees collected to the circuit court clerk.

CHAPTER 97

**(Com. Sub. for H. B. 3048 - By Delegates R. Miller,
Marcum, Caputo and Phillips)**

[Passed April 7, 2017; in effect ninety days from passage.]
[Approved by the Governor on April 26, 2017.]

AN ACT to amend and reenact §15-5A-5 of the Code of West Virginia, 1931, as amended, relating to increasing the cap for Tier II fees for chemical inventories from a maximum of \$100 annually to \$2,500 annually.

Be it enacted by the Legislature of West Virginia:

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

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

§15-5A-5. Powers and duties of the commission.

1 The commission shall have and may exercise the
2 following powers and authority and shall perform the
3 following duties:

4 (a) Designate emergency planning districts;

5 (b) Appoint local emergency planning committees for
6 each emergency planning district and supervise and
7 coordinate the activities of such committees;

8 (c) Revise any designations and appointments made
9 under subsections (a) and (b) of this section as it deems
10 appropriate: *Provided*, That any interested person may
11 petition the state emergency response commission to
12 modify the membership of a local emergency planning
13 commission;

14 (d) Designate, if necessary, additional facilities which
15 shall be subject to the requirements of this article, provided
16 such designation is made after public notice and opportunity
17 for comment as provided under article three, chapter
18 twenty-nine-a of the code;

19 (e) Review the emergency response plans submitted by
20 the local emergency planning committees and make
21 recommendations to the local committees on revisions of
22 the plan that may be necessary to ensure coordination of
23 such plan with the plans of other emergency planning
24 districts and other existing state and local emergency
25 response plans;

26 (f) Enter into cooperative agreements with other state
27 agencies designating specific responsibilities to be
28 performed by such state agencies to implement the
29 provisions of this article;

30 (g) Promulgate procedural rules in accordance with the
31 provisions of article three, chapter twenty-nine-a of this
32 code, establishing rules of practice before the commission;

33 (h) Promulgate procedural rules in accordance with the
34 provisions of article three, chapter twenty-nine-a of this
35 code, establishing procedures for receiving and processing
36 requests from the public for information in accordance with
37 the provisions of 42 U.S.C. §11001, *et seq.*, and this article,
38 and prescribing forms and instructions for requesting such
39 information;

40 (i) Promulgate procedural rules in accordance with the
41 provisions of article three, chapter twenty-nine-a of this
42 code, prescribing forms and instructions for the submission
43 and receipt of confidential information;

44 (j) Promulgate rules establishing the following fees
45 which shall be deposited in a special account for the
46 administration of this act and which shall be reasonably
47 calculated to recover the necessary expenses incurred by the
48 Office of Emergency Services in the administration of this
49 article:

50 (1) An emergency planning notification fee not to
51 exceed \$100 to be paid by a facility when it makes the
52 emergency planning notification required under SARA,
53 Title III, sections 301 through 303;

54 (2) An inventory form fee not to exceed \$2,500 to be
55 paid annually by a facility when it submits the emergency
56 and hazardous chemical inventory forms or material safety
57 data sheet required under SARA, Title III, sections 311 and
58 312; and

59 (3) A surcharge fee not to exceed twenty percent of the
60 fee otherwise payable to be paid by facilities which fail to
61 pay the fees in paragraphs (1) and (2) in a timely manner;

62 (k) Establish an emergency planning grant program to
63 be administered by the commission. The grant programs
64 will be funded by fees collected to administer this act

65 pursuant to subdivision (j) of this section. The
66 commission shall promulgate rules which establish the
67 method of awarding such grants to local emergency
68 planning committees to assist them in performing their
69 responsibilities under this article;

70 (l) Promulgate legislative rules in accordance with the
71 provisions of article three, chapter twenty-nine-a of this
72 code necessary to implement the provisions of this article;
73 and

74 (m) The chairman of the commission may order a
75 facility owner or operator to comply with the requirements
76 of applicable federal law, this article and any rules or
77 regulations promulgated thereunder. When the chairman
78 has reasonable cause to believe that there exists a failure to
79 comply with the provisions of applicable federal law, this
80 article or any rule or regulation promulgated thereunder or
81 any order entered by the chairman, he or she may request
82 the Attorney General to commence an action for civil
83 penalties, injunctive relief or other appropriate relief to
84 enforce such provisions, rules and regulations or order.
85 Such action may be brought in any federal district court
86 having jurisdiction, or in the Circuit Court of Kanawha
87 County or the county where the facility or a major portion
88 thereof is located.

CHAPTER 98

**(Com. Sub. for S. B. 454 - By Senators Trump, Weld,
Miller and Gaunch)**

[Passed April 6, 2017; in effect ninety days from passage.]
[Approved by the Governor on April 18, 2017.]

AN ACT to repeal §38-5B-8 of the Code of West Virginia, 1931,
as amended; to amend and reenact §29-12D-1a of said code;
to amend and reenact §38-5B-5 and §38-5B-9 of said code; to

amend and reenact §49-4-716 of said code; and to amend and reenact §51-2A-8 of said code, all relating to providing more efficient collection and submission of state moneys received as a result of certain court transactions or court services; eliminating certain fees generated by suggestee executions; providing for monthly remittance of moneys collected by clerk of court from assessments on claims filed under Medical Professional Liability Act; directing clerk of court to remit certain assessments on claims filed under Medical Professional Liability Act to State Treasury; directing payment of certain sums collected pursuant to execution of judgment to be paid to judgment creditor; directing clerk of court of conviction to collect any fees collected for teen court program and remit monthly to sheriff for deposit in appropriate account; directing circuit clerk to remit moneys received for duplication of family court records to remit amounts received to State Treasury for deposit in West Virginia Supreme Court of Appeals Fund; and making technical corrections.

Be it enacted by the Legislature of West Virginia:

That §38-5B-8 of the Code of West Virginia, 1931, as amended, be repealed; that §29-12D-1a of said code be amended and reenacted; that §38-5B-5 and §38-5B-9 of said code be amended and reenacted; that §49-4-716 of said code be amended and reenacted; and that §51-2A-8 of said code be amended and reenacted, all to read as follows:

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

ARTICLE 12D. WEST VIRGINIA PATIENT INJURY COMPENSATION FUND.

§29-12D-1a. Additional funding for Patient Injury Compensation Fund; assessment on licensed physicians; assessment on hospitals; assessment on certain awards.

- 1 (a) *Annual assessment on licensed physicians.* —

2 (1) The Board of Medicine and the Board of Osteopathic
3 Medicine shall collect a biennial assessment in the amount
4 of \$125 from every physician licensed by each board for the
5 privilege of practicing medicine in this state. The
6 assessment is to be imposed and collected on forms
7 prescribed by each licensing board. The assessment shall be
8 collected as part of licensure or license renewal beginning
9 July 1, 2016, for licenses issued or renewed in calendar year
10 2016 through calendar year 2019: *Provided*, That the
11 following physicians shall be exempt from the assessment:

12 (A) A resident physician who is a graduate of a medical
13 school or college of osteopathic medicine enrolled and who
14 is participating in an accredited full-time program of post-
15 graduate medical education in this state;

16 (B) A physician who has presented suitable proof that
17 he or she is on active duty in the armed forces of the United
18 States and who will not be reimbursed by the armed forces
19 for the assessment;

20 (C) A physician who practices solely under a special
21 volunteer medical license authorized by section ten-a,
22 article three, chapter thirty of this code or section twelve-b,
23 article fourteen of said chapter;

24 (D) A physician who holds an inactive license pursuant
25 to subsection (j), section twelve, article three, chapter thirty
26 of this code or section ten, article fourteen of said chapter,
27 or a physician who voluntarily surrenders his or her license:
28 *Provided*, That a retired osteopathic physician who submits
29 to the Board of Osteopathic Medicine an affidavit asserting
30 that he or she receives no monetary remuneration for any
31 medical services provided, executed under the penalty of
32 perjury and if executed outside the State of West Virginia,
33 verified, may be considered to be licensed on an inactive
34 basis: *Provided, however*, That if a physician or osteopathic
35 physician elects to resume an active license to practice in
36 the state and the physician or osteopathic physician has not
37 paid the assessments during his or her inactive status, then

38 as a condition of receiving an active status license, the
39 physician or osteopathic physician shall pay the assessment
40 due in the year in which physicians or the osteopathic
41 physician resumes an active license; and

42 (E) A physician who practices less than forty hours a
43 year providing medical genetic services to patients within
44 this state.

45 (2) The entire proceeds of the annual assessment
46 collected pursuant to subsection (a) of this section shall be
47 dedicated to the Patient Injury Compensation Fund. The
48 Board of Medicine and the Board of Osteopathic Medicine
49 shall promptly pay over to the Board of Risk and Insurance
50 Management all amounts collected pursuant to this
51 subsection for deposit in the fund.

52 (3) Notwithstanding any provision of the code to the
53 contrary, a physician required to pay the annual assessment
54 who fails to do so shall not be granted a license or renewal
55 of an existing license by the Board of Medicine or the Board
56 of Osteopathic Medicine. Any license which expires as a
57 result of a failure to pay the required assessment shall not
58 be reinstated or reactivated until the assessment is paid in
59 full.

60 (b) *Assessment on trauma centers.* — From July 1, 2016
61 through June 30, 2020, an assessment of \$25 shall be levied
62 by the Board of Risk and Insurance Management on trauma
63 centers for each trauma patient treated at a health care
64 facility designated by the Office of Emergency Medical
65 Services as a trauma center, as reported to the West Virginia
66 Trauma Registry. Beginning July 1, 2016, and annually
67 thereafter until June 30, 2020, the Board of Risk and
68 Insurance Management shall assess each trauma center for
69 trauma patients treated from January 1 to December 31 of
70 the previous year: *Provided*, That the assessment to be
71 collected by the Board of Risk and Insurance Management
72 on June 30, 2017, shall be based on each trauma patient
73 treated from January 1, 2016, to December 31, 2016.

74 (c) *Assessment on claims filed under the Medical*
75 *Professional Liability Act.* — From July 1, 2016, through
76 June 30, 2020, an assessment of one percent of the gross
77 amount of any settlement or judgment in a qualifying claim
78 shall be levied.

79 (1) For purposes of this subsection, a qualifying claim
80 is any claim for which a screening certificate of merit, as
81 that term is defined in section six, article seven-b, chapter
82 fifty-five of this code, is required.

83 (2) For any assessment levied pursuant to this
84 subsection for which a judgment is entered by a court, the
85 date of the entry of judgment shall be used to determine
86 applicability of this provision. The defendant or defendants
87 shall remit the assessment to the clerk of the court in which
88 the qualified claim was filed. The clerk of the court shall
89 then remit the assessment monthly to the State Treasury to
90 be deposited in the fund.

91 (3) For any assessment levied pursuant to this
92 subsection on a settlement entered into by the parties, the
93 date on which the agreement is formalized in writing by the
94 parties shall be used to determine applicability of this
95 provision. At the time that an action alleging a qualified
96 claim is dismissed by the parties, the assessment shall be
97 paid to the clerk of the court, who shall then remit the
98 assessment to the State Treasury to be deposited in the fund.
99 Collected assessments shall be remitted no less often than
100 monthly. If a qualifying claim is settled prior to the filing
101 of an action, the claimant, or his or her counsel, shall remit
102 the payment to the Board of Risk and Insurance
103 Management within sixty days of the date of the settlement
104 agreement to be paid into the fund.

105 (d) *Termination of assessments.* — The requirements of
106 this section shall terminate on the dates set forth in this
107 section or sooner if the liability of the Patient Injury
108 Compensation Fund has been paid or has been funded in its
109 entirety. The Board of Risk and Insurance Management

110 shall submit a report to the Joint Committee of Government
111 and Finance each year beginning January 1, 2018, giving
112 recommendations based on actuarial analysis of the fund's
113 liability. The recommendations shall include, but not be
114 limited to, discontinuance of the assessments provided for
115 in this section, closure of the fund and transfer of the fund's
116 liability.

CHAPTER 38. LIENS.

ARTICLE 5B. SUGGESTION OF THE STATE AND POLITICAL SUBDIVISIONS; GARNISHMENT AND SUGGESTION OF PUBLIC OFFICERS.

§38-5B-5. Service of suggestee execution and vacating or modifying order.

1 An execution issued under this article against money
2 due and owing or to become due and owing from the state,
3 or a state agency which shall be payable on the warrant of
4 the State Auditor for the payment thereof directed to the
5 judgment debtor must be served upon the State Auditor at
6 his or her office in Charleston. In the case of money payable
7 directly by any state agency the execution shall be served
8 upon the auditor of such agency or, lacking such, upon the
9 officer thereof whose duty it is to audit and/or to issue
10 warrants, checks or orders for the payment of such claims.
11 Such service shall be made by exhibiting and at the same
12 time delivering a true copy of the original execution, to the
13 proper officer, or to a person in his or her office designated
14 and authorized by the State Auditor or head of such
15 department, institution or agency, as the case may be, by
16 writing filed in such office to receive it. Service of such an
17 execution may be made by mail by the court or the clerk of
18 the court who issued the execution or by the officer to whom
19 the same is delivered or by any credible person, by
20 enclosing the original suggestee execution in a postpaid
21 wrapper addressed to the proper officer and agency together
22 with a true copy of the suggestee execution. Service by mail
23 shall not be deemed to be complete until duly admitted and

24 until the original execution shall have been returned to the
25 court or the clerk of the court who issued said execution.
26 Such admission shall be made as soon as may be in the
27 regular course of administration after receipt of the
28 execution. The admission may be subscribed by the officer
29 upon whom the service is required by this section to be
30 made or by a person in his or her office designated and
31 authorized by the State Auditor or the head of a state agency,
32 as the case may be, by writing filed in such office to admit
33 service of suggestee executions.

34 A suggestee execution against a political subdivision of
35 the state shall be served upon the auditor thereof or the
36 officer who, or the clerk of the board or any body which is
37 charged with the duty of auditing and/or issuing warrants,
38 checks or orders for the payment of such claims, in like
39 manner as service hereunder upon state officers, except that
40 service by mail shall not be sufficient or binding.

41 Service of a vacating or modifying order issued
42 pursuant to section six of this article shall be made in the
43 manner herein prescribed for the service of a suggestee
44 execution.

**§38-5B-9. Payments in satisfaction of execution; liability of
officer for payment or failure to pay; action against
political subdivision failing to pay; declaratory judgment
as to right against state.**

1 It shall be the duty of the proper officer, after service of
2 an execution under this article, bearing the notation required
3 by section four of this article if directed against salary or
4 wages, to pay to the judgment creditor such sums as may be
5 or shall thereafter become due to the judgment debtor from
6 the suggestee, or the amount thereof prescribed in section
7 three of this article in the case of salary or wages, during the
8 life of the execution until it shall be wholly satisfied. The
9 proper officer or suggestee upon whom the execution or any
10 renewal execution is served shall once every ninety days
11 during the life of such execution and any renewal execution

12 pay over as aforesaid the full amount of money payable,
13 held or retained pursuant to such execution or renewal
14 execution during the preceding ninety days.

15 A public officer who shall either pay over or fail or
16 refuse to pay over, in satisfaction of such execution, money
17 due the judgment debtor shall be personally liable therefor
18 only if he or she shall have acted in bad faith, even though
19 such payment or failure or refusal to pay shall have been in
20 violation of the rights of one or more parties in interest.

21 If a political subdivision be the suggestee and shall fail
22 or refuse to pay over to the judgment creditor the amount
23 due the judgment debtor or the required percentage thereof
24 in the case of salary or wages, it shall be liable to an action
25 therefor by the judgment creditor named in the execution
26 and the amount recovered in the action shall be applied
27 toward the payment of the execution.

28 No judgment may be recovered against the state as
29 suggestee but a judgment creditor may bring an action
30 against the proper officer for a declaratory judgment
31 establishing his or her right to have sums due or to become
32 due to his or her judgment debtor or from the state or a state
33 agency applied in satisfaction of a suggestee execution
34 issued on his or her judgment pursuant to this article. Such
35 an action may be brought against the State Auditor only in
36 the circuit court of Kanawha County. Costs shall be in the
37 discretion of the court.

CHAPTER 49. CHILD WELFARE.

ARTICLE 4. COURT ACTIONS.

§49-4-716. Teen court program; alternative; suitability; unsuccessful cooperation; requirements; fees.

1 (a) Notwithstanding any provision of this article to the
2 contrary, any county or municipality may choose to institute
3 a teen court program in accordance with this section.

4 (b) A juvenile may be given the option of proceeding in
5 a teen court program as an alternative to the filing of a
6 formal proceeding pursuant to section seven hundred four
7 or section seven hundred fourteen of this article if:

8 (1) The juvenile is alleged to have committed a status
9 offense or an act of delinquency that would be a
10 misdemeanor if committed by an adult;

11 (2) The juvenile is alleged to have violated a municipal
12 ordinance over which municipal court and state court have
13 concurrent jurisdiction; or

14 (3) The juvenile is otherwise subject to the provisions of
15 this article.

16 (c) If the circuit court or municipal court finds that the
17 offender is a suitable candidate for the teen court program,
18 it may extend the option to enter the program as an
19 alternative procedure. A juvenile may not enter the teen
20 court program unless he or she and his or her parent or
21 guardian consent to participating in the program.

22 (d) Any juvenile who does not successfully cooperate
23 in, and complete, the teen court program and any disposition
24 imposed during the juvenile's participation shall be returned
25 to the circuit court for further disposition as provided by
26 section seven hundred twelve or seven hundred fourteen of
27 this article, as the case may be, or returned to the municipal
28 court for further disposition for cases originating in
29 municipal court consistent with any applicable ordinance.

30 (e) The following provisions apply to all teen court
31 programs:

32 (1) The judge for each teen court proceeding shall be an
33 acting or retired circuit court judge or an active member of
34 the West Virginia State Bar, who serves on a voluntary
35 basis.

36 (2) Any juvenile who selects the teen court program as
37 an alternative disposition shall agree to serve thereafter on
38 at least two occasions as a teen court juror.

39 (3) Volunteer students from grades seven through
40 twelve of the schools within the county shall be selected to
41 serve as defense attorney, prosecuting attorney, court clerk,
42 bailiff and jurors for each proceeding.

43 (4) Disposition in a teen court proceeding shall consist
44 of requiring the juvenile to perform sixteen to forty hours of
45 community service, the duration and type of which shall be
46 determined by the teen court jury from a standard list of
47 available community service programs provided by the
48 county juvenile probation system and a standard list of
49 alternative consequences that are consistent with the
50 purposes of this article. The performance of the juvenile
51 shall be monitored by the county juvenile probation system
52 for cases originating in the circuit court's jurisdiction, or
53 municipal teen court coordinator or other designee for cases
54 originating in the municipal court's jurisdiction. The
55 juvenile shall also perform at least two sessions of teen court
56 jury service and, if considered appropriate by the circuit
57 court judge or teen court judge, participate in an education
58 program. Nothing in this section may be construed so as to
59 deny availability of the services provided under section
60 seven hundred twelve of this article to juveniles who are
61 otherwise eligible for the service.

62 (f) The rules for administration, procedure and
63 admission of evidence shall be determined by the chief
64 circuit judge or teen court judge, but in no case may the
65 court require a juvenile to admit the allegation against him
66 or her as a prerequisite to participation in the teen court
67 program. A copy of these rules shall be provided to every
68 teen court participant.

69 (g) Each county or municipality that operates, or wishes
70 to operate, a teen court program as provided in this section
71 is hereby authorized to adopt a mandatory fee of up to \$5 to

72 be assessed as provided in this subsection. Municipal courts
73 may assess a fee pursuant to this section upon authorization
74 by the city council of the municipality. The clerk of the court
75 of conviction shall collect the fees established in this
76 subsection. Assessments collected by the clerk of the court
77 pursuant to this subsection shall be deposited into an
78 account specifically for the operation and administration of
79 the municipal teen court program. Assessments collected by
80 the clerk of the circuit court or magistrate court pursuant to
81 this subsection shall be remitted monthly to the sheriff for
82 deposit into an account specifically for the operation and
83 administration of the county teen court program.

84 (h) Any mandatory fee established by a county
85 commission or city council in accordance with this
86 subsection shall be paid by the defendant on a judgment of
87 guilty or a plea of nolo contendere for each violation
88 committed in the county or municipality of any felony,
89 misdemeanor or any local ordinance, including traffic
90 violations and moving violations but excluding municipal
91 parking ordinances. Municipalities operating teen courts are
92 authorized to use fees assessed in municipal court pursuant
93 to this subsection for operation of a teen court in their
94 municipality.

CHAPTER 51. COURTS AND THEIR OFFICERS.

ARTICLE 2A. FAMILY COURTS.

§51-2A-8. Rules of practice and procedure; applicability of rules of evidence; record of hearings; duties of clerk of circuit court.

1 (a) Pleading, practice and procedure in matters before a
2 family court judge are governed by rules of practice and
3 procedure for family law promulgated by the Supreme
4 Court of Appeals.

5 (b) The West Virginia Rules of Evidence apply to
6 proceedings before a family court judge.

7 (c) Hearings before a family court shall be recorded
8 electronically. A magnetic tape or other electronic recording
9 medium on which a hearing is recorded shall be indexed and
10 securely preserved by the secretary-clerk of the family court
11 judge and shall not be placed in the case file in the office of
12 the circuit clerk: *Provided*, That upon the request of the
13 family court judge, the magnetic tapes or other electronic
14 recording media shall be stored by the clerk of the circuit
15 court. When requested by either of the parties, a family court
16 judge shall provide a duplicate copy of the tape or other
17 electronic recording medium of each hearing held. For
18 evidentiary purposes, a duplicate of such electronic
19 recording prepared by the secretary-clerk shall be a
20 “writing” or “recording” as those terms are defined in rule
21 1001 of the West Virginia Rules of Evidence and unless the
22 duplicate is shown not to reflect the contents accurately, it
23 shall be treated as an original in the same manner that data
24 stored in a computer or similar data is regarded as an
25 original under such rule. The party requesting the copy shall
26 pay the circuit clerk an amount equal to the actual cost of
27 the tape or other medium or the sum of \$5, whichever is
28 greater. Unless otherwise ordered by the court, the
29 preparation of a transcript and the payment of the cost
30 thereof shall be the responsibility of the party requesting the
31 transcript. The circuit clerk shall remit those amounts
32 received monthly to the State Treasury for deposit in the
33 West Virginia Supreme Court of Appeals fund designated
34 for receipt of such moneys.

35 (d) The recording of the hearing or the transcript of
36 testimony, as the case may be, and the exhibits, together
37 with all documents filed in the proceeding, constitute the
38 exclusive record and, on payment of lawfully prescribed
39 costs, shall be made available to the parties.

40 (e) In any proceeding in which a party has filed an
41 affidavit that he or she is financially unable to pay the fees
42 and costs, the family court judge shall determine whether
43 either party is financially able to pay the fees and costs

44 based on the information set forth in the affidavit or on any
45 evidence submitted at the hearing. If a family court judge
46 determines that either party is financially able to pay the fees
47 and costs, the family court judge shall assess the payment of
48 such fees and costs accordingly as part of an order. The
49 provisions of this subsection do not alter or diminish the
50 provisions of section one, article two, chapter fifty-nine of
51 this code.

52 (f) The clerks of the circuit court shall have, within the
53 scope of the jurisdiction of family courts, all the duties and
54 powers prescribed by law that clerks exercise on behalf of
55 circuit courts: *Provided*, That a family court judge may not
56 require the presence or attendance of a circuit clerk or
57 deputy circuit clerk at any hearing before the family court.

CHAPTER 99

(S. B. 547 - By Senator Blair)

[Passed April 8, 2017; in effect ninety days from passage.]
[Approved by the Governor on April 24, 2017.]

AN ACT to amend and reenact §59-1-2 and §59-1-2b of the Code of West Virginia, 1931, as amended, all relating to fees to be paid to the Secretary of State; increasing certain fees for corporations; providing that fees remain until legislative rules to approve new fees are approved by Legislature; creating a new fee for expedited service; reducing fees on certain election-related services; and creating new fees for certain election services.

Be it enacted by the Legislature of West Virginia:

That §59-1-2 and §59-1-2b of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 1. FEES AND ALLOWANCES.**§59-1-2. Fees to be charged by Secretary of State.**

1 (a) Except as may be otherwise provided in this code,
2 the Secretary of State shall charge for services rendered in
3 his or her office the following fees to be paid by the person
4 to whom the service is rendered at the time it is done:

5 (1) For filing, recording, indexing, preserving a record
6 of and issuing a certificate relating to the formation,
7 amendment, change of name, registration of trade name,
8 merger, consolidation, conversion, renewal, dissolution,
9 termination, cancellation, withdrawal revocation and
10 reinstatement of business entities organized within the state,
11 as follows:

12 (A) Articles of incorporation of for-profit corporation,
13 \$100;

14 (B) Articles of incorporation of nonprofit corporation, \$25;

15 (C) Articles of organization of limited liability company,
16 \$100;

17 (D) Agreement of a general partnership, \$50;

18 (E) Certificate of a limited partnership, \$100;

19 (F) Agreement of a voluntary association, \$50;

20 (G) Articles of organization of a business trust, \$50;

21 (H) Amendment or correction of articles of
22 incorporation, including change of name or increase of
23 capital stock, in addition to any applicable license tax, \$25;

24 (I) Amendment or correction, including change of
25 name, of articles of organization of business trust, limited
26 liability partnership, limited liability company or
27 professional limited liability company or of certificate of

28 limited partnership or agreement of voluntary association,
29 \$25;

30 (J) Amendment and restatement of articles of
31 incorporation, certificate of limited partnership, agreement
32 of voluntary association or articles of organization of
33 limited liability partnership, limited liability company or
34 professional limited liability company or business trust,
35 \$25;

36 (K) Registration of trade name, otherwise designated as
37 a true name, fictitious name or D. B. A. (doing business as)
38 name for any domestic business entity as permitted by law,
39 \$25;

40 (L) Articles of merger of two corporations, limited
41 partnerships, limited liability partnerships, limited liability
42 companies or professional limited liability companies,
43 voluntary associations or business trusts, \$25;

44 (M) Plus for each additional party to the merger in
45 excess of two, \$15;

46 (N) Statement of conversion, when permitted, from one
47 business entity into another business entity, in addition to
48 the cost of filing the appropriate documents to organize the
49 surviving entity, \$25;

50 (O) Articles of dissolution of a corporation, voluntary
51 association or business trust, or statement of dissolution of
52 a general partnership, \$25;

53 (P) Revocation of voluntary dissolution of a
54 corporation, voluntary association or business trust, \$15;

55 (Q) Articles of termination of a limited liability
56 company, cancellation of a limited partnership or statement
57 of withdrawal of limited liability partnership, \$25;

58 (R) Reinstatement of a limited liability company or
59 professional limited liability company after administrative
60 dissolution, \$25.

61 (2) For filing, recording, indexing, preserving a record
62 of and issuing a certificate relating to the registration,
63 amendment, change of name, merger, consolidation,
64 conversion, renewal, withdrawal or termination within this
65 state of business entities organized in other states or
66 countries, as follows:

67 (A) Certificate of authority of for-profit corporation, \$100;

68 (B) Certificate of authority of nonprofit corporation, \$50;

69 (C) Certificate of authority of foreign limited liability
70 companies, \$150;

71 (D) Certificate of exemption from certificate of authority,
72 \$25;

73 (E) Registration of a general partnership, \$50;

74 (F) Registration of a limited partnership, \$150;

75 (G) Registration of a limited liability partnership for
76 two-year term, \$500;

77 (H) Registration of a voluntary association, \$50;

78 (I) Registration of a trust or business trust, \$50;

79 (J) Amendment or correction of certificate of authority
80 of a foreign corporation, including change of name or
81 increase of capital stock, in addition to any applicable
82 license tax, \$25;

83 (K) Amendment or correction of certificate of limited
84 partnership, limited liability partnership, limited liability
85 company or professional limited liability company,
86 voluntary association or business trust, \$25;

87 (L) Registration of trade name, otherwise designated as
88 a true name, fictitious name or D. B. A. (doing business as)
89 name for any foreign business entity as permitted by law,
90 \$25;

91 (M) Amendment and restatement of certificate of
92 authority or of registration of a corporation, limited
93 partnership, limited liability partnership, limited liability
94 company or professional limited liability company,
95 voluntary association or business trust, \$25;

96 (N) Articles of merger of two corporations, limited
97 partnerships, limited liability partnerships, limited liability
98 companies or professional limited liability companies,
99 voluntary associations or business trusts, \$25;

100 (O) Plus, for each additional party to the merger in
101 excess of two, \$5;

102 (P) Statement of conversion, when permitted, from one
103 business entity into another business entity, in addition to
104 the cost of filing the appropriate articles or certificate to
105 organize the surviving entity, \$25;

106 (Q) Certificate of withdrawal or cancellation of a
107 corporation, limited partnership, limited liability partnership,
108 limited liability company, voluntary association or business,
109 trust \$25;

110 Notwithstanding any other provision of this section to
111 the contrary, after June 30, 2008, the fees described in this
112 subdivision that are collected for the issuance of a certificate
113 relating to the initial registration of a corporation, limited
114 partnership, domestic limited liability company or foreign
115 limited liability company shall be deposited in the general
116 administrative fees account established by this section.

117 (3) For receiving, filing and recording a change of the
118 principal or designated office, change of the agent of
119 process and/or change of officers, directors, partners,
120 members or managers, as the case may be, of a corporation,

121 limited partnership, limited liability partnership, limited
122 liability company or other business entity as provided by
123 law, \$15.

124 (4) For receiving, filing and preserving a reservation of
125 a name for each one hundred twenty days or for any other
126 period in excess of seven days prescribed by law for a
127 corporation, limited partnership, limited liability
128 partnership or limited liability company, \$15;

129 (5) For issuing a certificate relating to a corporation or
130 other business entity, as follows:

131 (A) Certificate of good standing of a domestic or foreign
132 corporation, \$10;

133 (B) Certificate of existence of a domestic limited
134 liability company and certificate of authorization foreign
135 limited liability company, \$10;

136 (C) Certificate of existence of any business entity,
137 trademark or service mark registered with the Secretary of
138 State, \$10;

139 (D) Certified copy of corporate charter or comparable
140 organizing documents for other business entities, \$15;

141 (E) Plus, for each additional amendment, restatement or
142 other additional document, \$5;

143 (F) Certificate of registration of the name of a foreign
144 corporation, limited liability company, limited partnership
145 or limited liability partnership, \$25;

146 (G) And for the annual renewal of the name registration,
147 \$10;

148 (H) Any other certificate not specified in this
149 subdivision, \$10.

150 (6) For issuing a certificate other than those relating to
151 business entities, as provided in this subsection, as follows:

152 (A) Certificate or apostille relating to the authority of
153 certain public officers, including the membership of boards
154 and commissions, \$10;

155 (B) Plus, for each additional certificate pertaining to the
156 same transaction, \$5;

157 (C) Any other certificate not specified in this
158 subdivision, \$10;

159 (D) For acceptance, indexing and recordation of service
160 of process any corporation, limited partnership, limited
161 liability partnership, limited liability company, voluntary
162 association, business trust, insurance company, person or
163 other entity as permitted by law, \$15;

164 (E) For shipping and handling expenses for execution of
165 service of process by certified mail upon any defendant
166 within the United States, which fee is to be deposited to the
167 special revenue account established in this section for the
168 operation of the office of the Secretary of State, \$5;

169 (F) For shipping and handling expenses for execution of
170 service of process upon any defendant outside the United
171 States by registered mail, which fee is to be deposited to the
172 special revenue account established in this section for the
173 operation of the office of the Secretary of State, \$15;

174 (7) For a search of records of the office conducted by
175 employees of or at the expense of the Secretary of State
176 upon request, as follows:

177 (A) For any search of archival records maintained at
178 sites other than the office of the Secretary of State no less
179 than, \$10;

180 (B) For searches of archival records maintained at sites
181 other than the office of the Secretary of State which require
182 more than one hour, for each hour or fraction of an hour
183 consumed in making a search, \$10;

184 (C) For any search of records maintained on site for the
185 purpose of obtaining copies of documents or printouts of
186 data, \$5;

187 (D) For any search of records maintained in electronic
188 format which requires special programming to be performed
189 by the state information services agency or other vendor any
190 actual cost, but not less than, \$25;

191 (E) The cost of the search is in addition to the cost of
192 any copies or printouts prepared or any certificate issued
193 pursuant to or based on the search.

194 (F) For recording any paper for which no specific fee is
195 prescribed, \$5.

196 (8) For producing and providing photocopies or
197 printouts of electronic data of specific records upon request,
198 as follows:

199 (A) For a copy of any paper or printout of electronic
200 data, if one sheet, \$1;

201 (B) For each sheet after the first, 50 cents;

202 (C) For sending the copies or lists by fax transmission,
203 \$5;

204 (D) For producing and providing photocopies of lists,
205 reports, guidelines and other documents produced in
206 multiple copies for general public use, a publication price to
207 be established by the Secretary of State at a rate
208 approximating \$2 plus 10 cents per page and rounded to the
209 nearest dollar;

210 (E) For electronic copies of records obtained in data
211 format on disk, the cost of the record in the least expensive
212 available printed format, plus, for each required disk, which
213 shall be provided by the Secretary of State, \$5.

214 (b) The Secretary of State may propose rules for
215 legislative approval, in accordance with the provisions of
216 article three, chapter twenty-nine-a of this code, for charges
217 for online electronic access to database information or other
218 information maintained by the Secretary of State.

219 (c) For any other work or service not enumerated in this
220 section, the fee prescribed elsewhere in this code or a rule
221 promulgated under the authority of this code.

222 (d) The records maintained by the Secretary of State are
223 prepared and indexed at the expense of the state and those
224 records shall not be obtained for commercial resale without
225 the written agreement of the state to a contract including
226 reimbursement to the state for each instance of resale.

227 (e) The Secretary of State may provide printed or
228 electronic information free of charge as he or she considers
229 necessary and efficient for the purpose of informing the
230 general public or the news media.

231 (f) There is hereby continued in the State Treasury a
232 special revenue account to be known as the Service Fees and
233 Collections Account. Expenditures from the account shall
234 be used for the operation of the office of the Secretary of
235 State and are not authorized from collections, but are to be
236 made only in accordance with appropriation by the
237 Legislature and in accordance with the provisions of article
238 three, chapter twelve of this code and upon the fulfillment
239 of the provisions set forth in article two, chapter five-a of
240 this code. Notwithstanding any other provision of this code
241 to the contrary, except as provided in subsection (h) of this
242 section and section two-a of this article, one half of all the
243 fees and service charges established in the following
244 sections and for the following purposes shall be deposited
245 by the Secretary of State or other collecting agency to that
246 special revenue account and used for the operation of the
247 office of the Secretary of State:

248 (1) The annual attorney-in-fact fee for corporations and
249 limited partnerships established in section five, article
250 twelve-c, chapter eleven of this code;

251 (2) The fees received for the sale of the State Register,
252 Code of State Rules and other copies established by rule and
253 authorized by section seven, article two, chapter twenty-
254 nine-a of this code;

255 (3) The registration fees, late fees and legal settlements
256 charged for registration and enforcement of the charitable
257 organizations and professional solicitations established in
258 sections five, nine and fifteen-b, article nineteen, chapter
259 twenty-nine of this code;

260 (4) The annual attorney-in-fact fee for limited liability
261 companies as designated in section one hundred eight,
262 article one, chapter thirty-one-b of this code and established
263 in section two hundred eleven, article two of said chapter:
264 *Provided*, That after June 30, 2008, the annual report fees
265 designated in section one hundred eight, article one, chapter
266 thirty-one-b of this code shall upon collection, be deposited
267 in the General Administrative Fees Account described in
268 subsection (h) of this section;

269 (5) The filing fees and search and copying fees for
270 uniform commercial code transactions established by
271 section five hundred twenty-five, article nine, chapter forty-
272 six of this code;

273 (6) The annual attorney-in-fact fee for licensed insurers
274 established in section twelve, article four, chapter thirty-
275 three of this code;

276 (7) The fees for the application and record maintenance
277 of all notaries public established by section twenty, article
278 four, chapter thirty-nine of this code;

279 (8) The fees for registering credit service organizations
280 as established by section five, article six-c, chapter forty-
281 six-a of this code;

282 (9) The fees for registering and renewing a West
283 Virginia limited liability partnership as established by
284 section one, article ten, chapter forty-seven-b of this code;

285 (10) The filing fees for the registration and renewal of
286 trademarks and service marks established in section
287 seventeen, article two, chapter forty-seven of this code;

288 (11) All fees for services, the sale of photocopies and
289 data maintained at the expense of the Secretary of State as
290 provided in this section; and

291 (12) All registration, license and other fees collected by
292 the Secretary of State not specified in this section.

293 (g) Any balance in the service fees and collections
294 account established by this section which exceeds \$500,000
295 as of June 30, 2003, and each year thereafter, shall be
296 expired to the state fund, General Revenue Fund

297 (h) (1) Effective July 1, 2008, there is hereby created in
298 the State Treasury a special revenue account to be known as
299 the General Administrative Fees Account. Expenditures
300 from the account shall be used for the operation of the office
301 of the Secretary of State and are not authorized from
302 collections, but are to be made only in accordance with
303 appropriation by the Legislature and in accordance with the
304 provisions of article three, chapter twelve of this code and
305 upon the fulfillment of the provisions set forth in article two,
306 chapter eleven-b of this code: *Provided*, That for the fiscal
307 year ending June 30, 2009, expenditures are authorized
308 from collections rather than pursuant to an appropriation by
309 the Legislature. Any balance in the account at the end of
310 each fiscal year shall not revert to the General Revenue
311 Fund, but shall remain in the fund and be expended as
312 provided by this subsection.

313 (2) After June 30, 2008, all the fees and service charges
314 established in section two-a of this article for the following
315 purposes shall be collected and deposited by the Secretary

316 of State or other collecting agency in the general
317 administrative fees account and used for the operation of the
318 office of the Secretary of State:

319 (A) The annual report fees paid to the Secretary of State
320 by corporations, limited partnerships, domestic limited
321 liability companies and foreign limited liability companies;

322 (B) The fees for the issuance of a certificate relating to
323 the initial registration of a corporation, limited partnership,
324 domestic limited liability company or foreign limited
325 liability company described in subdivision (2), subsection
326 (a) of this section; and

327 (C) The fees for the purchase of date and updates related
328 to the state's Business Organizations Database described in
329 section two-a of this article.

330 (i) There is continued in the office of the Secretary of
331 State a noninterest-bearing, escrow account to be known as
332 the Prepaid Fees and Services Account. This account shall
333 be for the purpose of allowing customers of the Secretary of
334 State to prepay for services, with payment to be held in
335 escrow until services are rendered. Payments deposited in
336 the account shall remain in the account until services are
337 rendered by the Secretary of State and at that time the fees
338 will be reallocated to the appropriate general or special
339 revenue accounts. There shall be no fee charged by the
340 Secretary of State to the customer for the use of this account
341 and the customer may request the return of any moneys
342 maintained in the account at any time without penalty. The
343 assets of the prepaid fees and services account do not
344 constitute public funds of the state and are available solely
345 for carrying out the purposes of this section.

346 (j) A veteran-owned business, as defined in paragraph
347 thirteen, subsection (a), section two-a of this article,
348 commenced on or after July 1, 2015, is exempt from paying
349 the fees prescribed in paragraphs (A), (B), (C), (D), (E), (F)
350 and (G), subdivision (1), subsection (a) of this section.

351 (k) Notwithstanding any other provisions of this article,
352 after July 1, 2017, the Secretary of State may offer a fee for
353 expedited services which shall not exceed, \$500.

354 (l) The fees provided for in this section shall remain in
355 effect until such time as the Legislature has approved rules
356 promulgated by the Secretary of State, in accordance with
357 the provisions of article three, chapter twenty-nine-a of this
358 code, establishing a schedule of fees for services.

§59-1-2b. Purchase of voter registration lists and election data; fees.

1 (a) Except as may be otherwise provided in this code,
2 the Secretary of State shall charge the following fees for
3 data originating in the statewide voter registration system to
4 be paid by the person for whom the service is rendered at
5 the time it is performed:

- 6 (1) Election Cycle Subscription Service\$1,000
- 7 (2) Statewide Voter Registration List\$500
- 8 (3) Master Voter History List Export\$500
- 9 (4) Statewide Early Voters List\$200
- 10 (5) Statewide Absentee Requests List\$200
- 11 (6) Statewide Absentee Received List\$200
- 12 (7) Partial Voter Registration List Current hourly rate
- 13 (8) Voter History List Current hourly rate
- 14 (9) Complex Research Query Current hourly rate
- 15 (10) Update to a request made under
- 16 subdivision (2), (4), (5), or (6) of this
- 17 subsection during the election year
- 18 in which the list was requested..... Current hourly rate

19 (11) Update to a request made under
 20 subdivision (3) between the day
 21 following the request date and
 22 the completion of voter history
 23 as required by section eighteen,
 24 article two, chapter three of this code
 25 for the next succeeding primary,
 26 general or odd-year election Current hourly rate

27 (b) For the purposes of this section, "Election Cycle
 28 Subscription Service" includes:

29 (1) Statewide Registered Voter List updated monthly
 30 throughout the year and updated daily starting thirty days
 31 prior to election day through election day;

32 (2) Master Voter History List Export following
 33 certification of the primary, general and odd-year elections;

34 (3) Statewide All Mail-in Absentee Request List and
 35 Statewide Public Received Mail-in Absentee List for the
 36 primary, general and odd-year elections, updated daily
 37 starting thirty days prior to election day through ten days
 38 following election day; and

39 (4) Statewide Early Voters List for the primary, general
 40 and odd-year elections, updated daily starting on the first
 41 day of early voting through election day.

42 (c) At the time that a request is made under subdivision
 43 (7), (8) or (9), subsection (a) of this section, the current
 44 hourly rate, as determined by the Secretary of State, shall be
 45 communicated to the prospective purchaser along with an
 46 estimate of the number of hours needed to fulfill the request
 47 before any list is compiled.

48 (d) Net proceeds from the sale of data originating in the
 49 statewide voter registration system, along with any interest
 50 on such funds, shall be deposited into the State Election
 51 Fund as set forth in subsection (b), section forty-eight,
 52 article one, chapter three of this code.

53 (e) The fees provided for in this section shall remain in
54 effect until such time as the Legislature has approved rules
55 promulgated by the Secretary of State, in accordance with
56 the provisions of article three, chapter twenty-nine-a of this
57 code, establishing a schedule of fees for services.

CHAPTER 100

**(Com. Sub. for H. B. 2935 - By Mr. Speaker (Mr.
Armstead) , Delegates Hanshaw, Ambler, Hill, Boggs
and Baldwin)**

[Passed April 8, 2017; in effect ninety days from passage.]
[Approved by the Governor on April 26, 2017.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §4-15-1; and to amend said code by adding thereto a new article, designated §29-31-1, §29-31-2, §29-31-3 and §29-31-4, all relating to state flood protection generally; establishing a Joint Legislative Committee on Flooding and providing for duties; establishing the Resiliency and Flood Protection Planning Act; providing legislative findings and purpose; creating the State Resiliency Office within the Development Office in the Department of Commerce; establishing a State Resiliency Office Board; providing certain duties and authorities of the State Resiliency Office; and requiring reporting to 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 §4-15-1; and that said code be amended by adding there to a new article, designated §29-31-1, §29-31-2, §29-31-3 and §29-31-4, all to read as follows:

CHAPTER 4. THE LEGISLATURE.**ARTICLE 15. JOINT LEGISLATIVE COMMITTEE ON FLOODING.****§4-15-1. Establishing a Joint Legislative Committee on Flooding.**

1 (a) The President of the Senate and the Speaker of the
2 House of Delegates shall each appoint five members of their
3 respective houses, at least two of whom shall be members
4 of the minority party, and at least one shall be a member of
5 the Committee on Government Organization, to serve on an
6 interim committee charged with studying flood damage
7 reduction and flood plain management. The President and
8 the Speaker shall each designate a Chair from among the
9 five committee members of their respective houses. This
10 committee shall be known as the “Joint Legislative
11 Committee on Flooding” and shall study all activities
12 relating to flood protection and shall make
13 recommendations to the Joint Committee on Government
14 and Finance, which offer solutions to reduce the reality and
15 threat of future loss of life and property damages associated
16 with flooding.

17 (b) The expenses of the committee are to be approved
18 by the Joint Committee on Government and Finance and
19 paid from legislative appropriations.

20 (c) The Chair of the State Resiliency Office, created
21 pursuant to article thirty, chapter twenty-nine of this code,
22 shall report quarterly to the committee, and shall prepare an
23 annual report to the committee no later than December 31
24 of each year.

25 (d) The Chairs of the committee shall report annually,
26 each January, to the Joint Committee on Government and
27 Finance, with any proposals or legislation as may be
28 deemed necessary to prevent or reduce the risk of flooding
29 in this state.

**CHAPTER 29. MISCELLANEOUS BOARDS AND
OFFICERS.**

**ARTICLE 31. STATE RESILIENCY AND FLOOD
PROTECTION PLAN ACT.**

§29-31-1. Short title; legislative findings; purpose.

1 (a) This article may be known and cited as the
2 “Resiliency and Flood Protection Planning Act”.

3 (b) The West Virginia Legislature finds that:

4 (1) Flooding has affected each of the fifty-five counties
5 and thirty-two major watersheds within the state;

6 (2) Over the past fifty-two years, more than two hundred
7 and eighty-two West Virginians have died in floods;

8 (3) Between January 1996 and January 2017, there have
9 been twenty-seven federal disaster declarations in West
10 Virginia involving flooding; and

11 (4) In June 2016 much of West Virginia suffered
12 devastating flooding.

13 (5) Despite the many state and federal flood protection
14 programs and projects, flooding continues to be West
15 Virginia’s most common and widespread natural disaster.

16 (c) It is the purpose of this article to provide a
17 comprehensive and coordinated statewide resiliency and
18 flood protection planning program to save lives, and
19 develop community and economic resiliency plans
20 including, but not limited to, reducing or mitigating flood
21 damage while supporting economic growth and protecting
22 the environment.

§29-31-2. State Resiliency Office.

1 (a) The State Resiliency Office is hereby created. The
2 office shall be organized within the Development Office in

3 the Department of Commerce as the recipient of disaster
4 recovery and resiliency funds, excluding federal Stafford
5 Act funds, and the coordinating agency of recovery and
6 resiliency efforts, including matching funds for other
7 disaster recovery programs, excluding those funds and
8 efforts under the direct control of the State Coordinating
9 Officer designated by the Governor for a particular event.
10 The State Resiliency Office Board is also established and
11 shall consist of the following eight members: the Secretary
12 of the Department of Commerce or his or her designee; The
13 Director of the Division of Natural Resources or his or her
14 designee; the Secretary of the Department of Environmental
15 Protection or his or her designee; the Executive Director of
16 the State Conservation Agency or his or her designee; the
17 Secretary of the Department of Military Affairs and Public
18 Safety or his or her designee; the Secretary of
19 Transportation or his or her designee; the Adjutant General
20 of the West Virginia National Guard or his or her designee;
21 and the Director of the Division of Homeland Security and
22 Emergency Management within the Department of Military
23 Affairs and Public Safety or his or her designee.

24 (b) The Secretary of the Department of Commerce shall
25 be the chair of the State Resiliency Office Board. In the
26 absence of the chair, any member designated by the
27 members present may act as chair.

28 (c) The board shall meet no less than once each calendar
29 quarter at the time and place designated by the chair. All
30 decisions of the board shall be decided by a majority vote of
31 the members.

32 (d) The chair shall provide adequate staff from their
33 respective office, to ensure the meetings of the board are
34 properly noticed, meetings of the board are facilitated,
35 board meeting minutes are taken, records and
36 correspondence kept and that reports of the board are
37 produced timely.

§29-31-3. Authority of State Resiliency Office; authority of board.

1 The State Resiliency Office, through its board may:

2 (1) Serve as coordinator of all economic and community
3 resiliency planning and implementation efforts, including
4 but not limited to flood protection programs and activities
5 in the state;

6 (2) Annually review the state flood protection plan and
7 update the plan no less than biannually;

8 (3) Recommend legislation to reduce or mitigate flood
9 damage;

10 (4) Report to the Joint Legislative Committee on
11 Flooding at least quarterly;

12 (5) Catalog, maintain and monitor a listing of current
13 and proposed capital expenditures to reduce or mitigate
14 flood damage or other resiliency efforts;

15 (6) Coordinate planning of flood projects with federal
16 agencies;

17 (7) Improve professional management of flood plains;

18 (8) Provide education and outreach on flooding issues
19 to the citizens of this state;

20 (9) Establish a single web site integrating all agency
21 flood information;

22 (10) Monitor federal funds and initiatives that become
23 available for disaster recovery and economic and
24 community resiliency;

25 (11) Pursue additional funds and resources to assist not
26 only with long term recovery efforts but also long term
27 community and state wide resiliency efforts;

28 (12) Coordinate, integrate and expand planning efforts
29 in the state for hazard mitigation, long-term disaster
30 recovery and economic diversification;

31 (13) Coordinate long-term disaster recovery efforts in
32 response to disasters as they occur;

33 (14) Establish and facilitate regular communication
34 between federal, state, local and private sector agencies and
35 organizations to further economic and disaster resilience;
36 and

37 (15) Take all other actions necessary and proper to
38 effectuate the purposes of this article.

**§29-31-4. Reporting to the Joint Legislative Committee on
Flooding.**

1 (a) The chair of the board of the State Resiliency Office
2 shall report, at a minimum of quarterly, to the Joint
3 Legislative Committee on Flooding, created pursuant to
4 article fifteen, chapter four of this code, in sufficient detail
5 for the committee to be aware of the activities of the board
6 to assure progress toward reducing and mitigating flood
7 damage within this state while respecting and complying
8 with the Takings Clause of the United States Constitution,
9 the West Virginia Constitution, and related precedential
10 court opinions, and to develop legislative recommendations.

11 (b) The chair of the council shall submit an annual
12 report to the committee by December 31 of each year, along
13 with any recommended legislation, budget requests and a
14 summary of the activities of the board for the previous year.

CHAPTER 101

(Com. Sub. for S. B. 204 - By Senators Boso, Blair and Facemire)

[Passed April 8, 2017; in effect ninety days from passage.]

[Approved by the Governor on April 26, 2017.]

AN ACT to amend and reenact §5-1-22 of the Code of West Virginia, 1931, as amended, relating to filling vacancies in offices by appointment of the Governor; requiring certain appointments be made within ninety days; authorizing temporary appointments; and providing requirements for persons appointed temporarily to fill vacancies.

Be it enacted by the Legislature of West Virginia:

That §5-1-22 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 1. THE GOVERNOR.

§5-1-22. Vacancies in offices filled by appointment of Governor; Senate action; bond requirements; filling vacancies in other appointive offices.

1 (a) In case of a vacancy, during the recess of the Senate,
2 in any office, which vacancy the Governor is authorized to
3 fill by and with the advice and consent of the Senate, the
4 Governor shall, by appointment within ninety days, fill such
5 vacancy until the next meeting of the Senate, when the
6 Governor shall submit to the Senate a nomination to fill such
7 vacancy and, upon confirmation of such nomination by the
8 Senate, by a vote of a majority of all the members elected to
9 the Senate, taken by yeas and nays, the person so nominated
10 and confirmed shall hold said office during the remainder of
11 the term for which his or her predecessor in office was

12 appointed, and until his or her successor shall be appointed
13 and qualified. No person whose nomination for office has
14 been rejected by the Senate shall again be nominated for the
15 same office during the session in which his or her
16 nomination was so rejected, unless at the request of the
17 Senate, nor shall the person be appointed to the same office
18 during the recess of the Senate. No appointee who resigns
19 from any such office prior to confirmation, or whose name
20 has not been submitted for confirmation while the Senate is
21 in session, shall be eligible, during the recess of the Senate,
22 to hold any office the nomination for which must be
23 confirmed by the Senate.

24 (b) Any person appointed to temporarily fill a vacancy
25 shall possess the qualifications required by law for that
26 vacant position, and may only remain in the vacated
27 position for a maximum of ninety days.

28 (c) If an employee of a state agency is temporarily
29 appointed to fill a vacancy, the employee may fill such
30 vacancy without resigning from the position he or she
31 ordinarily holds: *Provided*, That the employee's
32 compensation shall be the greater of:

33 (1) The employee's regular salary in his or her usual
34 position; or

35 (2) The salary for the office the employee temporarily
36 fills.

37 (d) If a vacancy is temporarily filled by a person not
38 otherwise employed by any agency of the State of West
39 Virginia, then that person shall be compensated at a rate no
40 greater than that of the salary for the office that person
41 temporarily fills.

42 (e) The bond, if any, required by law to be given by any
43 officer so temporarily appointed by the Governor, shall be
44 in such penalty as is required by law of the incumbent of
45 such office.

46 (f) Any vacancy in any other office filled by
47 appointment, or in any office hereafter created to be filled
48 by appointment, shall be filled by the same person, court or
49 body authorized to make appointment to such office for the
50 full term thereof.



CHAPTER 102

**(Com. Sub. for S. B. 221 - By Senators Blair and
Maroney)**

[Passed April 7, 2017; in effect ninety days from passage.]
[Approved by the Governor on April 26, 2017.]

AN ACT to amend and reenact §5-16-4 of the Code of West Virginia, 1931, as amended, relating to the composition of the Public Employees Insurance Agency Finance Board; reducing the number of members; and changing the experience requirements for members.

Be it enacted by the Legislature of West Virginia:

That §5-16-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 16. WEST VIRGINIA PUBLIC EMPLOYEES INSURANCE ACT.

§5-16-4. Public Employees Insurance Agency Finance Board continued; qualifications, terms and removal of members; quorum; compensation and expenses; termination date.

1 (a) The Public Employees Insurance Agency Finance
2 Board is continued and consists of the Secretary of the
3 Department of Administration or his or her designee and
4 eight members appointed by the Governor, with the advice
5 and consent of the Senate, for terms of four years and each

6 may serve until his or her successor is appointed and
7 qualified. Members may be reappointed for successive
8 terms. No more than five members, including the Secretary
9 of the Department of Administration, may be of the same
10 political party. Effective July 1, 2017, members of the board
11 shall satisfy the qualification requirements provided for by
12 subsection (b) of this section: *Provided*, That any member
13 serving upon the effective date of this section who does not
14 satisfy a requirement of subsection (b) may continue to
15 serve until his or her successor has been appointed and
16 qualified. The Governor shall make appointments necessary
17 to satisfy the requirements of subsection (b) to staggered
18 terms as determined by the Governor.

19 (b) (1) Of the eight members appointed by the Governor
20 with advice and consent of the Senate:

21 (A) One member shall represent the interests of
22 education employees. The member must hold a bachelor's
23 degree, must have obtained teacher certification, must be
24 employed as a teacher for a period of at least three years
25 prior to his or her appointment and must remain a teacher
26 for the duration of his or her appointment to remain eligible
27 to serve on the board.

28 (B) One member shall represent the interests of public
29 employees. The member must be employed to perform full-
30 or part-time service for wages, salary or remuneration for a
31 public body for a period of at least three years prior to his or
32 her appointment and must remain an employee of a public
33 body for the duration of his or her appointment to remain
34 eligible to serve on the board.

35 (C) One member shall represent the interests of retired
36 employees. The member must meet the definition of retired
37 employee as provided in section two of this article.

38 (D) One member shall represent the interests of a
39 participating political subdivision. The member must have
40 been employed by a political subdivision for a period of at

41 least three years prior to his or her appointment and must
42 remain an employee of a political subdivision for the
43 duration of his or her appointment to remain eligible to serve
44 on the board. The member may not be an elected official.

45 (E) Four members must be selected from the public at
46 large, meeting the following requirements:

47 (i) One member selected from the public at large must
48 generally have knowledge and expertise relating to the
49 financing, development or management of employee benefit
50 programs;

51 (ii) One member selected from the public at large must
52 have at least three years of experience in the insurance
53 benefits business;

54 (iii) One member selected from the public at large must
55 be a certified public accountant with at least three years of
56 experience with financial management and employee
57 benefits program experience; and

58 (iv) One member selected from the public at large must
59 be a health care actuary or certified public accountant with
60 at least three years of financial experience with the health
61 care marketplace.

62 (2) No member of the board may be a registered
63 lobbyist.

64 (3) All appointments shall be selected to represent the
65 different geographical areas within the state and all
66 members shall be residents of West Virginia. No member
67 may be removed from office by the Governor except for
68 official misconduct, incompetence, neglect of duty, neglect
69 of fiduciary duty or other specific responsibility imposed by
70 this article or gross immorality.

71 (c) The Secretary of the Department of Administration
72 shall serve as chair of the finance board, which shall meet at
73 times and places specified by the call of the chair or upon

74 the written request to the chair of at least two members. The
75 Director of the Public Employees Insurance Agency shall
76 serve as staff to the board. Notice of each meeting shall be
77 given in writing to each member by the director at least three
78 days in advance of the meeting. Five members shall
79 constitute a quorum. The board shall pay each member the
80 same compensation and expense reimbursement that is paid
81 to members of the Legislature for their interim duties for
82 each day or portion of a day engaged in the discharge of
83 official duties.

84 (d) Upon termination of the board and notwithstanding
85 any provisions in this article to the contrary, the director is
86 authorized to assess monthly employee premium
87 contributions and to change the types and levels of costs to
88 employees only in accordance with this subsection. Any
89 assessments or changes in costs imposed pursuant to this
90 subsection shall be implemented by legislative rule
91 proposed by the director for promulgation pursuant to the
92 provisions of article three, chapter twenty-nine-a of this
93 code. Any employee assessments or costs previously
94 authorized by the finance board shall then remain in effect
95 until amended by rule of the director promulgated pursuant
96 to this subsection.

CHAPTER 103

**(Com. Sub. for H. B. 2897 - By Delegates Criss and
Lane)**

[Passed April 8, 2017; in effect ninety days from passage.]
[Approved by the Governor on April 26, 2017.]

AN ACT to amend and reenact §5-22-1 of the Code of West Virginia, 1931, as amended; to amend and reenact §8-16-5 of said code; to amend and reenact §16-12-11 of said code; to

amend and reenact §16-13-3 of said code; to amend and reenact §16-13A-7 of said code; to amend and reenact §21-1D-5; and to amend and reenact §21-11-11 of said code, all relating generally to competitive bidding for public construction contracts; defining the term “alternates”; limiting the number of alternates that may be included on any solicitation of bids for government construction contracts; establishing procedures for acceptance of alternate bids and determination of the lowest qualified responsible bidder; providing procedures for the required submission of a list of subcontractors who will perform more than \$25,000 of work on certain projects; providing procedures for the required submission of a drug-free workplace affidavit for any solicitation for a public improvement contract; and providing procedures for the required submission of a contractor’s license number with certain bid documents; prohibiting public construction contracts from being awarded to bidders that are in default on monetary obligations owed to the state or a political subdivision; and exempting competitive bidding requirements on certain contracts for emergency repairs.

Be it enacted by the Legislature of West Virginia:

That §5-22-1 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §8-16-5 of said code be amended and reenacted; that §16-12-11 of said code be amended and reenacted; that §16-13-3 of said code be amended and reenacted; that §16-13A-7 of said code be amended and reenacted; that §21-1D-5 of said code be amended and reenacted; and that §21-11-11 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 22. GOVERNMENT CONSTRUCTION CONTRACTS.

§5-22-1. Bidding required; government construction contracts to go to lowest qualified responsible bidder; procedures to be followed in awarding government construction projects; penalties for violation of procedures and requirements debarment; exceptions.

1 (a) This section and the requirements in this section may
2 be referred to as the West Virginia Fairness In Competitive
3 Bidding Act.

4 (b) As used in this section:

5 (1) “Lowest qualified responsible bidder” means the
6 bidder that bids the lowest price and that meets, as a
7 minimum, all the following requirements in connection with
8 the bidder’s response to the bid solicitation. The bidder shall
9 certify that it:

10 (A) Is ready, able and willing to timely furnish the labor
11 and materials required to complete the contract;

12 (B) Is in compliance with all applicable laws of the State
13 of West Virginia; and

14 (C) Has supplied a valid bid bond or other surety
15 authorized or approved by the contracting public entity.

16 (2) “The state and its subdivisions” means the State of
17 West Virginia, every political subdivision thereof, every
18 administrative entity that includes such a subdivision, all
19 municipalities and all county boards of education.

20 (3) “State spending unit” means a department, agency
21 or institution of the state government for which an
22 appropriation is requested, or to which an appropriation is
23 made by the Legislature.

24 (4) “Alternates” means any additive options or
25 alternative designs included in a solicitation for competitive
26 bids that are different from and priced separately from what
27 is included in a base bid.

28 (c) The state and its subdivisions shall, except as
29 provided in this section, solicit competitive bids for every
30 construction project exceeding \$25,000 in total cost. A
31 vendor who has been debarred pursuant to sections thirty-
32 three-b through thirty-three-f, inclusive, article three,
33 chapter five-a of this code may not bid on or be awarded a
34 contract under this section. All bids submitted pursuant to
35 this chapter shall include a valid bid bond or other surety as
36 approved by the State of West Virginia or its subdivisions.

37 (d) Following the solicitation of bids, the construction
38 contract shall be awarded to the lowest qualified responsible
39 bidder who shall furnish a sufficient performance and
40 payment bond. The state and its subdivisions may reject all
41 bids and solicit new bids on the project.

42 (e) Any solicitation of bids shall include no more than
43 seven alternates. Alternates, if accepted, shall be accepted
44 in the order in which they are listed on the bid form:
45 *Provided*, That a public entity may accept an alternate out
46 of the listed order if acceptance would not affect
47 determination of the lowest qualified responsible bidder.
48 Any unaccepted alternate contained within a bid shall expire
49 one hundred fifty days after the date of the opening of bids
50 for review.

51 Determination of the lowest qualified responsible
52 bidder shall be based on the sum of the base bid and any
53 alternates accepted.

54 (f) The apparent low bidder on a contract valued at more
55 than \$250,000 for the construction, alteration, decoration,
56 painting or improvement of a new or existing building or
57 structure with a state spending unit shall submit a list of all
58 subcontractors who will perform more than \$25,000 of work
59 on the project including labor and materials. This section
60 does not apply to other construction projects such as
61 highway, mine reclamation, water or sewer projects. The list
62 shall include the names of the bidders and the license
63 numbers as required by article eleven, chapter twenty-one

64 of this code. This information shall be provided to the state
65 spending unit within one business day of the opening of bids
66 for review prior to the awarding of a construction contract.
67 If the apparent low bidder fails to submit the subcontractor
68 list, the spending unit shall promptly request by telephone
69 and electronic mail that the low bidder and second low
70 bidder provide the subcontractor list within one business
71 day of the request. Failure to submit the subcontractor list
72 within one business day of receiving the request shall result
73 in disqualification of the bid. A subcontractor list may not
74 be required if the bidder provides notice in the bid
75 submission or in response to a request for a subcontractor
76 list that no subcontractors who will perform more than
77 \$25,000 of work will be used to complete the project.

78 (g) Written approval must be obtained from the state
79 spending unit before any subcontractor substitution is
80 permitted. Substitutions are not permitted unless:

81 (1) The subcontractor listed in the original bid has filed
82 for bankruptcy;

83 (2) The state spending unit refuses to approve a
84 subcontractor in the original bid because the subcontractor
85 is under a debarment pursuant to section thirty-three-d,
86 article three, chapter five-a of this code or a suspension
87 under section thirty-two, article three, chapter five-a of this
88 code; or

89 (3) The contractor certifies in writing that the
90 subcontractor listed in the original bill fails, is unable or
91 refuses to perform the subcontract.

92 (h) The contracting public entity may not award the
93 contract to a bidder which fails to meet the minimum
94 requirements set out in this section. As to a prospective low
95 bidder which the contracting public entity determines not to
96 have met one or more of the requirements of this section or
97 other requirements as determined by the public entity in the
98 written bid solicitation, prior to the time a contract award is

99 made, the contracting public entity shall document in
100 writing and in reasonable detail the basis for the
101 determination and shall place the writing in the bid file.
102 After the award of a bid under this section, the bid file of the
103 contracting public agency and all bids submitted in response
104 to the bid solicitation shall be open and available for public
105 inspection.

106 (i) The contracting public entity shall not award a
107 contract pursuant to this section to any bidder that is known
108 to be in default on any monetary obligation owed to the state
109 or a political subdivision of the state, including, but not
110 limited to, obligations related to payroll taxes, property
111 taxes, sales and use taxes, fire service fees, or other fines or
112 fees. Any governmental entity may submit to the Division
113 of Purchasing information which identifies vendors that
114 qualify as being in default on a monetary obligation to the
115 entity. The contracting public entity shall take reasonable
116 steps to verify whether the lowest qualified bidder is in
117 default pursuant to this subsection prior to awarding a
118 contract.

119 (j) A public official or other person who individually or
120 together with others knowingly makes an award of a
121 contract under this section in violation of the procedures and
122 requirements of this section is subject to the penalties set
123 forth in section twenty-nine, article three, chapter five-a of
124 the Code of West Virginia.

125 (k) No officer or employee of this state or of a public
126 agency, public authority, public corporation or other public
127 entity and no person acting or purporting to act on behalf of
128 an officer or employee or public entity may require that a
129 performance bond, payment bond or surety bond required
130 or permitted by this section be obtained from a particular
131 surety company, agent, broker or producer.

132 (l) All bids shall be open in accordance with the
133 provisions of section two of this article, except design-build

134 projects which are governed by article twenty-two-a of this
135 chapter and are exempt from these provisions.

136 (m) Nothing in this section applies to:

137 (1) Work performed on construction or repair projects
138 by regular full-time employees of the state or its
139 subdivisions;

140 (2) Prevent students enrolled in vocational educational
141 schools from being utilized in construction or repair projects
142 when the use is a part of the student's training program;

143 (3) Emergency repairs to building components, systems,
144 and public infrastructure. For the purpose of this
145 subdivision, the term emergency repairs means repairs that
146 if not made immediately will seriously impair the use of
147 building components, systems, and public infrastructure or
148 cause danger to persons using the building components,
149 systems, and public infrastructure; and

150 (4) A situation where the state or subdivision thereof
151 reaches an agreement with volunteers, or a volunteer group,
152 in which the governmental body will provide construction
153 or repair materials, architectural, engineering, technical or
154 other professional services and the volunteers will provide
155 the necessary labor without charge to, or liability upon, the
156 governmental body.

CHAPTER 8. MUNICIPAL CORPORATIONS.

ARTICLE 16. MUNICIPAL PUBLIC WORKS; REVENUE BOND FINANCING.

PART III. GENERAL POWERS AND AUTHORITY.

§8-16-5. Powers of board.

1 (a) The board shall have plenary power and authority to
2 take all steps and proceedings, and to make and enter into all
3 contracts or agreements necessary, appropriate, useful,
4 convenient or incidental to the performance of its duties and

5 the execution of its powers and authority under this article:
6 *Provided*, That any contract or agreement relating to the
7 financing, or the construction, reconstruction, establishment,
8 acquisition, improvement, renovation, extension, enlargement,
9 increase, equipment, operation or maintenance of any such
10 works, and any trust indenture with respect thereto as hereafter
11 provided for, shall be approved by the governing body or
12 bodies.

13 (b) The board may employ engineers, architects,
14 inspectors, superintendents, managers, collectors, attorneys
15 and such other employees as in its judgment may be
16 necessary in the execution of its powers and duties, and may
17 fix their compensation, all of whom shall do such work as
18 the board may direct. All compensation and expenses
19 incurred in carrying out the provisions of this article shall
20 be paid solely from funds provided under the authority of
21 this article, and the board shall not exercise or carry out any
22 power or authority herein given it so as to bind said board
23 or any municipality beyond the extent to which money shall
24 have been, or may be provided under the authority of this
25 article.

26 (c) No contract or agreement with any contractor or
27 contractors for labor or materials, or both, exceeding in
28 amount the sum of \$25,000 shall be made without
29 advertising for bids, which bids shall be publicly opened
30 and an award made to the lowest responsible bidder, with
31 power and authority in the board to reject any and all bids.

32 (d) After the construction, reconstruction,
33 establishment, acquisition, renovation or equipment of any
34 such works, the board shall maintain, operate, manage and
35 control the same, and may order and complete any
36 improvements, extensions, enlargements, increase or repair
37 (including replacements) of and to the works that the board
38 may consider expedient, if funds therefor be available, or
39 are made available, as provided in this article, and shall
40 establish rules for the use, maintenance and operation of the
41 works, and do all things necessary or expedient for the

42 successful operation thereof, and for stormwater systems
43 and associated stormwater management programs, those
44 activities which include, but are not limited to, stormwater
45 and surface runoff water quality improvement activities
46 necessary to comply with all federal and state requirements.
47 All public ways or public works damaged or destroyed by
48 the board in carrying out its authority under this article shall
49 be restored or repaired by the board and placed in their
50 original condition, as nearly as practicable, if requested so
51 to do by proper authority, out of the funds provided under
52 the authority of this article.

53 (e) Emergency repairs shall be exempt from the bidding
54 requirements of subsection (c) of this section. For the
55 purpose of this subdivision, the term emergency repairs
56 means repairs that if not made immediately will seriously
57 impair the use of building components, systems, and public
58 infrastructure or cause danger to persons using the building
59 components, systems, and public infrastructure.

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 12. SANITARY DISTRICTS FOR SEWAGE DISPOSAL.

§16-12-11. Letting contracts; manner and cost of building additions or extensions; contracts to respond to emergency situations.

1 All contracts for work to be done by such sanitary
2 district, the expense of which will exceed \$25,000, shall be
3 let to the lowest responsible bidder therefor. The board of
4 trustees shall cause to be published a notice informing the
5 public and contractors of the general nature of the work and
6 of the fact that detailed plans, drawings and specifications
7 are on file in the office of such board of trustees and calling
8 for sealed proposals for the construction of the work to be
9 done at a date not earlier than ten days after the last of such
10 publications, such notice to be published as a Class II legal
11 advertisement in compliance with the provisions of article

12 three, chapter fifty- nine of this code, and the publication
13 area for such publication shall be the sanitary district. Said
14 board of trustees shall require each bidder to deposit with
15 his or her respective bid a certified check for an amount not
16 less than two and one-half percent of the engineer's estimate
17 of such work to insure the execution of the contract for
18 which such bid is made. The board of trustees may impose
19 such conditions as it may deem necessary upon the bidders
20 with regard to bond and surety, guaranteeing the good faith
21 and responsibility of such bidders, and the faithful
22 performance of such work according to contract, or for any
23 other purpose. The board of trustees shall have the right to
24 reject any and all bids, but if it does reject all bids, before
25 other bids may be received notices shall be published as
26 originally required. The board of trustees shall have power
27 to let portions of said proposed work under different
28 contracts.

29 Any additions or extensions to any sewage disposal
30 plant, or sewers or drains or any other work constructed
31 under the provisions of this article, shall be built under
32 contract entered into under the provisions of this section in
33 the same manner as the contract for the original plant or
34 work. The cost of such additions or extensions, and of any
35 additional lands or rights-of-ways acquired by said board,
36 may be met by the sale of additional bonds to be issued and
37 sold by the trustees, and the levy of taxes and/or the
38 collection of service charges to retire such bonds, all as
39 provided in this article.

40 Emergency repairs shall be exempt from the bidding
41 requirements of this section. For the purpose of this section,
42 the term emergency repairs means repairs that if not made
43 immediately will seriously impair the use of building
44 components, systems, and public infrastructure or cause
45 danger to persons using the building components, systems,
46 and public infrastructure.

ARTICLE 13. SEWAGE WORKS AND STORMWATER WORKS.

§16-13-3. Powers of sanitary board; contracts; employees; compensation thereof; extensions and improvements; replacement of damaged public works.

1 The board shall have power to take all steps and
2 proceedings and to make and enter into all contracts or
3 agreements necessary or incidental to the performance of its
4 duties and the execution of its powers under this article:
5 *Provided*, That any contract relating to the financing of the
6 acquisition or construction of any works, or any trust
7 indenture as provided for, shall be approved by the
8 governing body of the municipality before the same shall be
9 effective.

10 The board may employ engineers, architects, inspectors,
11 superintendents, managers, collectors, attorneys, and other
12 employees as in its judgment may be necessary in the
13 execution of its powers and duties, and may fix their
14 compensation, all of whom shall do the work as the board
15 shall direct. All compensation and all expenses incurred in
16 carrying out the provisions of this article shall be paid solely
17 from funds provided under the authority of this article, and
18 the board shall not exercise or carry out any authority or
19 power herein given it so as to bind said board of said
20 municipality beyond the extent to which money shall have
21 been or may be provided under the authority of this article.

22 No contract or agreement with any contractor or
23 contractors for labor and/or material, exceeding in amount
24 the sum of \$25,000, shall be made without advertising for
25 bids, which bids shall be publicly opened and award made
26 to the best bidder, with power in the board to reject any or
27 all bids.

28 After the construction, installation, and completion of
29 the works, or the acquisition thereof, the board shall operate,
30 manage and control the same and may order and complete
31 any extensions, betterments and improvements of and to the
32 works that the board may consider expedient, if funds
33 therefor be available or are made available as provided in

34 this article, and shall establish rules and regulations for the
35 use and operation of the works, and of other sewers,
36 stormwater conduits, and drains connected therewith so far
37 as they may affect the operation of such works, and do all
38 things necessary or expedient for the successful operation
39 thereof, including, but not limited to, those activities
40 necessary to comply with all federal and state requirements,
41 including stormwater and surface runoff water quality
42 improvement activities.

43 The sanitary board may declare an emergency situation
44 in the event of collector line breaks or vital treatment plant
45 equipment failure and shall be exempted from competitive
46 bidding requirements and enter into direct purchase
47 agreements or contracts for the expenses. All public ways
48 or public works damaged or destroyed by the board in
49 carrying out its authority under this article shall be restored
50 or repaired by the board and placed in their original
51 condition, as nearly as practicable, if requested so to do by
52 proper authority, out of the funds provided by this article.

ARTICLE 13A. PUBLIC SERVICE DISTRICTS.

§16-13A-7. Acquisition and operation of district properties; contracts to respond to emergency situations.

1 The board of these districts shall have the supervision
2 and control of all public service properties acquired or
3 constructed by the district, and shall have the power, and it
4 shall be its duty, to maintain, operate, extend and improve
5 the same, including, but not limited to, those activities
6 necessary to comply with all federal and state requirements,
7 including water quality improvement activities. All
8 contracts involving the expenditure by the district of more
9 than \$25,000 for construction work or for the purchase of
10 equipment and improvements, extensions or replacements,
11 shall be entered into only after notice inviting bids shall
12 have been published as a Class I legal advertisement in
13 compliance with the provision of article three, chapter fifty-
14 nine of this code, and the publication area for such

15 publication shall be as specified in section two of this article
16 in the county or counties in which the district is located. The
17 publication shall not be less than ten days prior to the
18 making of any such contract. To the extent allowed by law,
19 in-state contractors shall be given first priority in awarding
20 public service district contracts. It shall be the duty of the
21 board to ensure that local in-state labor shall be utilized to
22 the greatest extent possible when hiring laborers for public
23 service district construction or maintenance repair jobs. It
24 shall further be the duty of the board to encourage
25 contractors to use American made products in their
26 construction to the extent possible. Any obligations incurred
27 of any kind or character shall not in any event constitute or
28 be deemed an indebtedness within the meaning of any of the
29 provisions or limitations of the Constitution, but all such
30 obligations shall be payable solely and only out of revenues
31 derived from the operation of the public service properties
32 of the district or from proceeds of bonds issued as
33 hereinafter provided. No continuing contract for the
34 purchase of materials or supplies or for furnishing the
35 district with electrical energy or power shall be entered into
36 for a longer period than fifteen years.

37 Emergency repairs shall be exempt from the bidding
38 requirements of this section. For the purpose of this section,
39 the term emergency repairs means repairs that if not made
40 immediately will seriously impair the use of building
41 components, systems, and public infrastructure or cause
42 danger to persons using the building components, systems,
43 and public infrastructure.

CHAPTER 21. LABOR.

ARTICLE 1D. WEST VIRGINIA ALCOHOL AND DRUG-FREE WORKPLACE ACT.

§21-1D-5. Employee drug-free workplace policy required to bid for a public improvement contract.

1 After July 1, 2008, any solicitation for a public
2 improvement contract shall require each contractor that
3 submits a bid for the work to submit an affidavit that the
4 contractor has a written plan for a drug-free workplace
5 policy prior to being awarded a contract. If the affidavit is
6 not submitted with the bid submission, the public authority
7 shall promptly request by telephone and electronic mail that
8 the low bidder and second low bidder provide the affidavit
9 within one business day of the request. Failure to submit the
10 affidavit within one business day of receiving the request
11 shall result in disqualification of the bid. A public
12 improvement contract may not be awarded to a contractor
13 who does not have a written plan for a drug-free workplace
14 policy and who has not submitted that plan to the
15 appropriate contracting authority in timely fashion.

16 For subcontractors, compliance with this section may
17 take place before their work on the public improvement is
18 begun.

19 A drug-free workplace policy shall include the
20 following:

21 (1) Establish drug testing and alcohol testing protocols
22 that at a minimum require a contractor to:

23 (A) Conduct preemployment drug tests of all
24 employees;

25 (B) Conduct random drug testing that annually tests at
26 least ten percent of the contractor's employees who perform
27 safety-sensitive duties;

28 (C) Conduct a drug test or alcohol test of any employee
29 who may have caused or contributed to an accident while
30 conducting job duties where reasonable cause exists to
31 suspect that the employee may be intoxicated or under the
32 influence of a controlled substance not prescribed by the
33 employee's physician when, but not limited to, the
34 employer has evidence that an employee is or was using
35 alcohol or a controlled substance drawn from specific

36 documented, objective facts and reasonable inferences
37 drawn from these facts in light of experience and training.

38 The drug or alcohol test shall be conducted as soon as
39 possible after the accident occurred and after any necessary
40 medical attention has been administered to the employee.

41 (D) Conduct a drug test or alcohol test of any employee
42 when a trained supervisor has reasonable cause to believe
43 that the employee has reported to work or is working under
44 the influence of a drug of abuse or alcohol. Written
45 documentation as to the nature of a supervisor's reasonable
46 cause shall be created.

47 In order to ascertain and justify implementation of a
48 reasonable cause test, all supervisors will be trained to
49 recognize drug- and alcohol-related signs and symptoms.

50 (2) Require that all drug tests performed pursuant to this
51 section be conducted by a laboratory certified by the United
52 States Department of Health and Human Services or its
53 successor;

54 (3) Establish standards governing the performance of
55 drug tests by such a laboratory that include, but are not
56 limited to, the following:

57 (A) The collection of urine specimens of individuals in
58 a scientifically or medically approved manner and under
59 reasonable and sanitary conditions;

60 (B) The collection and testing of urine specimens with
61 due regard for the privacy of the individual being tested and
62 in a manner reasonably calculated to prevent substitutions
63 or interference with the collection and testing of specimens;

64 (C) The documentation of urine specimens through
65 procedures that reasonably preclude the possibility of
66 erroneous identification of test results and that provide the
67 individual being tested a reasonable opportunity to furnish
68 information identifying any prescription or nonprescription

69 drugs used by the individual in connection with a medical
70 condition to the medical review officer;

71 (D) The collection, maintenance, storage and
72 transportation of urine specimens in a manner that
73 reasonably precludes the possibility of contamination or
74 adulteration of the specimens;

75 (E) The testing of a urine specimen of an individual to
76 determine if the individual ingested, was injected or
77 otherwise introduced with a drug of abuse in a manner that
78 conforms to scientifically accepted analytical methods and
79 procedures that include verification and confirmation of any
80 positive test result by gas chromatography or mass
81 spectrometry.

82 (4) Establish standards and procedures governing the
83 performance of alcohol tests;

84 (5) Require that a medical review officer review all drug
85 tests that yield a positive result;

86 (6) Establish procedures by which an individual who
87 undergoes a drug test or alcohol test may contest a positive
88 test result;

89 (7) Require that when an employee of a contractor tests
90 positive for a drug of abuse or alcohol, or if an employee is
91 caught adulterating a drug or alcohol test, as defined in section
92 four hundred twelve, article four, chapter sixty-a of this code,
93 the employee is subject to appropriate disciplinary measures
94 up to and including termination from employment, in
95 accordance with the contractor's written drug-free workplace
96 policy. If not terminated, the employee is subject to random
97 drug or alcohol tests at any time for one year after the positive
98 test;

99 (8) Require that when a supervisor has reasonable cause
100 to believe an employee is under the influence of a drug of
101 abuse or alcohol at work and requires the employee to take
102 a drug or alcohol test, the employee shall immediately be

103 suspended from performing safety-sensitive tasks by the
104 contractor until such time as a drug or alcohol test is
105 performed and results of that test are available;

106 (9) Require a contractor to provide to any employee
107 testing positive for a drug of abuse or alcohol the list of
108 community resources where employees may seek assistance
109 for themselves or their families as identified in paragraph
110 (D), subdivision (12) of this section;

111 (10) Require that a contractor assist an employee who
112 voluntarily acknowledges that the employee may have a
113 substance abuse problem by providing the list of community
114 resources where employees may seek assistance for
115 themselves or their families as identified in paragraph (D),
116 subdivision (12) of this section;

117 (11) Require that a contractor establish a written drug-
118 free workplace policy regarding substance abuse and
119 provide a copy of the written policy to each of its employees
120 and to each applicant for employment. The written policy
121 shall contain, at a minimum, all of the following:

122 (A) A summary of all the elements of the drug-free
123 workplace policy established in accordance with this article;

124 (B) A statement that it is the contractor's intention to
125 create a drug-free workplace environment;

126 (C) Identification of an employee who has been
127 designated the contractor's drug-free workplace
128 representative;

129 (D) Shall list the types of tests an employee may be
130 subject to, which may include, but are not limited to, the
131 following:

132 (i) Preemployment;

133 (ii) Post-accident;

134 (iii) Random; and

135 (iv) Reasonable cause.

136 (12) Require that a contractor provide within six weeks
137 of new employment at least two hours of drug-free
138 workplace employee education for all employees unless that
139 employee has already received such training anytime within
140 a prior two-year period. The employee shall participate in
141 drug-free workplace employee education at least biannually
142 thereafter. The employee education shall include all of the
143 following:

144 (A) Detailed information about the content of the
145 contractor's specific drug-free workplace policy and an
146 opportunity for employees to ask questions regarding the
147 policy;

148 (B) The distribution of a hard copy of the written drug-
149 free workplace policy, including collecting an employee-
150 signed acknowledgment receipt from each employee;

151 (C) Specific explanation of the basics of drugs and
152 alcohol abuse, including, but not limited to, the disease
153 model, signs and symptoms associated with substance
154 abuse, and the effects and dangers of drugs or alcohol in the
155 workplace; and

156 (D) A list of community resources where employees
157 may seek assistance for themselves or their families.

158 (13) Require that a contractor provide at least two hours
159 of drug-free workplace supervisor training for all
160 supervisory employees and annually thereafter. The
161 supervisor training shall include all of the following:

162 (A) How to recognize a possible drug or alcohol
163 problem;

164 (B) How to document behaviors that demonstrate a drug
165 or alcohol problem;

166 (C) How to confront employees with the problem from
167 observed behaviors;

168 (D) How to initiate reasonable suspicion and post-
169 accident testing;

170 (E) How to handle the procedures associated with
171 random testing;

172 (F) How to make an appropriate referral for assessment
173 and assistance;

174 (G) How to follow up with employees returning to work
175 after a positive test; and

176 (H) How to handle drug-free workplace responsibilities
177 in a manner that is consistent with the applicable sections of
178 any pertinent collective bargaining agreements.

ARTICLE 11. WEST VIRGINIA CONTRACTOR LICENSING ACT.

§21-11-11. Notice included with invitations to bid and specifications.

1 Any architect or engineer preparing any plan and
2 specification for contracting work to be performed in this
3 state shall include in the plan, specification and invitation to
4 bid a reference to this article informing any prospective
5 bidder that the person's contractor's license number shall be
6 included on any bid submission. A subcontractor shall
7 furnish his or her contractor's license number to the
8 contractor prior to the award of the contract. If an apparent
9 low bidder for a public improvement project, as defined in
10 article one-d, chapter twenty-one of this code, fails to
11 submit a license number in accordance with this section, the
12 public authority, as defined in article one-d, chapter twenty-
13 one of this code, shall promptly request by telephone and
14 electronic mail that the low bidder and the second low
15 bidder provide the license number within one business day
16 of the request. Failure of the bidder to provide the license
17 number within one business day of receiving the request
18 shall result in disqualification of the bid.

CHAPTER 104

**(Com. Sub. for H. B. 2724 - By Mr. Speaker (Mr. Armstead) and Delegate Miley)
[By Request of the Executive]**

[Passed April 7, 2017; in effect ninety days from passage.]
[Approved by the Governor on April 24, 2017.]

AN ACT to amend and reenact §5-26-1 and §5-26-2 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §5-26-3, all relating to the Herbert Henderson Office of Minority Affairs; requiring the office to report to the Select Committee on Minority Affairs; requiring the director to review and consider any recommendations of the Select Committee on Minority Affairs; continuing the Minority Affairs Fund; establishing a community-based pilot demonstration project; providing for funding of a pilot project; setting forth objectives for the pilot project; and requiring the leveraging of existing resources.

Be it enacted by the Legislature of West Virginia:

That §5-26-1 and §5-26-2 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 §5-26-3, all to read as follows:

ARTICLE 26. HERBERT HENDERSON OFFICE OF MINORITY AFFAIRS.

§5-26-1. Herbert Henderson Office of Minority Affairs; duties and responsibilities.

- 1 (a) The Herbert Henderson Office of Minority Affairs
- 2 within the Office of the Governor is continued. The office
- 3 shall:

- 4 (1) Provide a forum for discussion of issues that affect
5 the state's minorities;
- 6 (2) Identify and promote best practices in the provision
7 of programs and services to minorities;
- 8 (3) Review information and research that can inform
9 state policy as to the delivery of programs and services to
10 minorities;
- 11 (4) Make recommendations in areas of policy and
12 allocation of resources;
- 13 (5) Apply for grants, and accept gifts from private and
14 public sources for research to improve and enhance
15 minority affairs;
- 16 (6) Integrate and coordinate state grant and loan
17 programs established specifically for minority related
18 issues;
- 19 (7) Award grants, loans and loan guaranties for minority
20 affairs programs and activities in this state if such funds are
21 available from grants or gifts from public or private sources;
- 22 (8) Identify other state and local agencies and programs
23 that provide services or assistance to minorities;
- 24 (9) Establish the appropriate program linkages with
25 related federal, state and local agencies and programs
26 including, but not limited to, the Office of Minority Health
27 located within the Department of Health and Human
28 Resources and the Economic Development Authority
29 established pursuant to article fifteen, chapter 31 of this
30 code; and
- 31 (10) Provide recommendations to the Governor and the
32 Legislature regarding the most appropriate means to provide
33 programs and services to support minority groups in the
34 state.

35 (b) On or before January 1 of each year, the office shall
36 submit a report to the Governor and the Joint Committee on
37 Government and Finance. The report may include, but is not
38 limited to, findings and recommendations regarding:

39 (1) The extent to which programs and services for
40 minorities are available in the state, and to which funding
41 for providing those programs and services is available;

42 (2) The most appropriate means for the planning,
43 delivery and evaluation of existing and needed programs
44 and services for minority groups in the manner that best
45 promotes diversity and regional, cultural and ethnic
46 sensitivity;

47 (3) Recommendations for the coordination of programs
48 and services to minority groups throughout the state and
49 with those of other states and the federal government;

50 (4) Identifications of governmental and private
51 agencies, offices, departments or other entities in existence
52 or recommended for creation that would, alone or in
53 concert, most effectively improve the delivery of programs
54 and services to minority groups throughout the state;

55 (5) Recommendations for changes to law that would
56 facilitate the achievement of the objectives of the office; and

57 (6) Other matters as the office may determine
58 appropriate to its purposes.

59 (c) The Governor shall appoint an executive director of
60 the office to carry out its functions, and shall provide
61 funding and offices for those purposes. The executive
62 director shall serve at the will and pleasure of the Governor.

63 (d) The executive director may hire one administrative
64 assistant to assist in carrying out the functions of the office.

65 (e) On or before January 1 of each year, the office shall
66 report to the Select Committee on Minority Affairs Interim
67 Committee on the efforts and progress of the office.

68 (f) The executive director shall review and consider any
69 recommendations of the Select Committee on Minority
70 Affairs Interim Committee's report and recommendations.

§5-26-2. Minority Affairs Fund created; purpose.

1 There is continued in the State Treasury a Special
2 Revenue Fund to be known as the "Minority Affairs Fund,"
3 shall consist of all gifts, grants, bequests, transfers,
4 appropriations or other donations or payments received by
5 the Herbert Henderson Office of Minority Affairs from any
6 governmental entity or unit or any person, firm, foundation
7 or corporation for the purposes of this article and all interest
8 or other return earned from investment of the fund.
9 Expenditures from the fund shall be made by the Executive
10 Director of the Herbert Henderson Office of Minority
11 Affairs to provide matching funds to obtain federal funds
12 for the delivery of programs and services to minorities in
13 this state, to award grants, loans and loan guaranties for
14 minority affairs programs and activities and for
15 performance of the duties of the office prescribed in this
16 article. Expenditures from the fund shall be for the purposes
17 set forth in this article and are not authorized from
18 collections but are to be made only in accordance with
19 appropriation by the Legislature and in accordance with the
20 provisions of article three, chapter twelve of this code and
21 upon the fulfillment of the provisions of article two, chapter
22 eleven-b of this code.

§5-26-3. Establishment of a community-based pilot project.

1 (a) The office shall establish a community-based pilot
2 project. The pilot expires on July 1, 2021. The pilot shall
3 develop a model to promote public health through
4 comprehensive community development in communities
5 across West Virginia. This model shall address poverty,

6 substance abuse and other social determinants of health;
7 improve community and populations' health; improve labor
8 force participation; and support economic development
9 through comprehensive community development in rural,
10 suburban and urban communities.

11 (b) As selected by the executive director, the pilot shall
12 include a collaborative of nonprofit organizations.

13 (c) The pilot shall be funded by coordinating existing
14 funded projects. The pilot shall leverage existing resources,
15 including housing and urban development services provided
16 by the federal government and any youth, education and
17 family services offered by the state government or other
18 local organizations. If funds are available, the pilot project
19 may receive funding from the office.

20 (d) The office shall report to the Select Committee on
21 Minority Affairs Interim Committee on the efforts and
22 progress of the pilot program.

CHAPTER 105

**(Com. Sub. for S. B. 461 - By Senators Hall, Takubo
and Stollings)**

[Passed April 6, 2017; in effect ninety days from passage.]

[Approved by the Governor on April 26, 2017.]

AN ACT to amend and reenact §5A-3-1 and §5A-3-3 of the Code of West Virginia, 1931, as amended, all relating to exempting the West Virginia State Police from state purchasing requirements; requiring the Legislative Auditor to audit purchasing made by the West Virginia State Police and report the findings to the Joint Committee on Government and Finance; and requiring the West Virginia State Police report to the Joint Committee on Government and Finance on the

effects of exempting said agency from state purchasing requirements.

Be it enacted by the Legislature of West Virginia:

That §5A-3-1 and §5A-3-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 3. PURCHASING DIVISION.

§5A-3-1. Division created; purpose; director; applicability of article; continuation.

1 (a) The Purchasing Division within the Department of
2 Administration is continued. The underlying purposes and
3 policies of the Purchasing Division are:

4 (1) To establish centralized offices to provide purchasing
5 and travel services to the various state agencies;

6 (2) To simplify, clarify and modernize the law governing
7 procurement by this state;

8 (3) To permit the continued development of procurement
9 policies and practices;

10 (4) To make as consistent as possible the procurement
11 rules and practices among the various spending units;

12 (5) To provide for increased public confidence in the
13 procedures followed in public procurement;

14 (6) To ensure the fair and equitable treatment of all
15 persons who deal with the procurement system of this state;

16 (7) To provide increased economy in procurement
17 activities and to maximize to the fullest extent practicable
18 the purchasing value of public funds;

19 (8) To foster effective broad-based competition within
20 the free enterprise system;

21 (9) To provide safeguards for the maintenance of a
22 procurement system of quality and integrity; and

23 (10) To obtain in a cost-effective and responsive manner
24 the commodities and services required by spending units in
25 order for those spending units to better serve this state's
26 businesses and residents.

27 (b) The Director of the Purchasing Division shall, at the
28 time of appointment:

29 (1) Be a graduate of an accredited college or university;
30 and

31 (2) Have spent a minimum of ten of the fifteen years
32 immediately preceding his or her appointment employed in
33 an executive capacity in purchasing for any unit of
34 government or for any business, commercial or industrial
35 enterprise.

36 (c) The provisions of this article apply to all of the
37 spending units of state government, except as otherwise
38 provided by this article or by law.

39 (d) The provisions of this article do not apply to the judicial
40 branch, the West Virginia State Police, the West Virginia
41 Office of Laboratory Services, the legislative branch, to
42 purchases of stock made by the Alcohol Beverage Control
43 Commissioner and to purchases of textbooks, instructional
44 materials, digital content resources, instructional technology,
45 hardware, software, telecommunications and technical
46 services by the State Board of Education for use in and in
47 support of the public schools.

48 (e) During the 2018 calendar year, the Legislative
49 Auditor shall audit purchasing procedures of the West
50 Virginia State Police pursuant to the exemption provided in
51 subsection (d) of this section and report the results to the
52 Joint Committee on Government and Finance.

53 (f) During the 2019 calendar year, the Legislative
54 Auditor shall audit purchasing procedures of the West
55 Virginia State Police pursuant to the exemption provided in
56 subsection (d) of this section and report the results to the
57 Joint Committee on Government and Finance.

58 (g) On or before December 31, 2020, the West Virginia
59 State Police shall report to the Joint Committee on
60 Government and Finance on the effects of exempting said
61 agency from the provisions of this article, including but not
62 limited to, any realized cost savings and changes in
63 purchasing policies resulting from such exemption.

64 (h) The provisions of this article apply to every
65 expenditure of public funds by a spending unit for
66 commodities and services irrespective of the source of the
67 funds.

§5A-3-3. Powers and duties of Director of Purchasing.

1 The director, under the direction and supervision of the
2 secretary, is the executive officer of the Purchasing Division
3 and has the power and duty to:

4 (1) Direct the activities and employees of the
5 Purchasing Division;

6 (2) Ensure that the purchase of or contract for
7 commodities and services are based, whenever possible, on
8 competitive bid;

9 (3) Purchase or contract for, in the name of the state, the
10 commodities, services and printing required by the spending
11 units of the state government;

12 (4) Apply and enforce standard specifications
13 established in accordance with section five of this article as
14 hereinafter provided;

15 (5) Transfer to or between spending units or sell
16 commodities that are surplus, obsolete or unused as
17 hereinafter provided;

18 (6) Have charge of central storerooms for the supply of
19 spending units as the director considers advisable;

20 (7) Establish and maintain a laboratory for the testing of
21 commodities and make use of existing facilities in state
22 institutions for that purpose as hereinafter provided as the
23 director considers advisable;

24 (8) Suspend the right and privilege of a vendor to bid on
25 state purchases when the director has evidence that the
26 vendor has violated any of the provisions of the purchasing
27 law or the rules and regulations of the director;

28 (9) Examine the provisions and terms of every contract
29 entered into for and on behalf of the State of West Virginia
30 that impose any obligation upon the state to pay any sums
31 of money for commodities or services and approve the
32 contract as to such provisions and terms; and the duty of
33 examination and approval herein set forth does not
34 supersede the responsibility and duty of the Attorney
35 General to approve the contracts as to form: *Provided*, That
36 the provisions of this subdivision do not apply in any respect
37 whatever to construction or repair contracts entered into by
38 the Division of Highways of the Department of
39 Transportation or to construction or reclamation contracts
40 entered into by the Department of Environmental
41 Protection: *Provided, however*, That the provisions of this
42 subdivision do not apply in any respect whatsoever to
43 contracts entered into by the University of West Virginia
44 Board of Trustees or by the board of directors of the state
45 College System, except to the extent that such boards
46 request the facilities and services of the director under the
47 provisions of this subdivision: *Provided further*, That the
48 provisions of this subdivision do not apply to the West
49 Virginia State Police and the West Virginia Office of
50 Laboratory Services;

51 (10) Assure that the specifications and descriptions in all
52 solicitations are prepared so as to provide all potential
53 suppliers-vendors who can meet the requirements of the state

54 an opportunity to bid and to assure that the specifications and
55 descriptions do not favor a particular brand or vendor. If the
56 director determines that any such specifications or descriptions
57 as written favor a particular brand or vendor or if it is decided,
58 either before or after the bids are opened, that a commodity or
59 service having different specifications or quality or in different
60 quantity can be bought, the director may rewrite the
61 solicitation and the matter shall be rebid; and

62 (11) Issue a notice to cease and desist to a spending unit
63 when the director has credible evidence that a spending unit
64 has violated competitive bidding or other requirements
65 established by this article and the rules promulgated
66 hereunder. Failure to abide by the notice may result in
67 penalties set forth in section seventeen of this article.



CHAPTER 106

**(S. B. 686 - By Senators Hall, Boley, Blair, Boso,
Ferns, Gaunch, Facemire, Mann, Maroney, Mullins,
Palumbo, Plymale, Prezioso, Stollings, Sypolt,
Takubo and Unger)**

[Passed April 8, 2017; in effect ninety days from passage.]

[Approved by the Governor on April 26, 2017.]

AN ACT to amend and reenact the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §5A-3-3b, relating to facilities providing direct patient care services that are managed, directed, controlled and governed by the Secretary of the Department of Health and Human Resources; exempting such facilities from statewide purchasing requirements and from the otherwise required oversight and review by the Purchasing Division of the Department of Administration; and requiring the Legislative Auditor to audit purchasing made by facilities and report the findings to the Joint Committee on Government and Finance.

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 §5A-3-3b, to read as follows:

ARTICLE 3. PURCHASING DIVISION.

§5A-3-3b. Exemption of facilities providing direct patient care services that are managed, directed, controlled and governed by the Secretary of the Department of Health and Human Resources.

1 Notwithstanding any provisions of section one or three of
 2 this article to the contrary, the provisions of this article do not
 3 apply to facilities providing direct patient care services that are
 4 managed, directed, controlled and governed by the Secretary
 5 of the Department of Health and Human Resources: *Provided,*
 6 That on or before July 1, 2020, the Legislative Auditor shall
 7 audit the purchasing procedures of the facilities described in
 8 this section and report the results to the Joint Committee on
 9 Government and Finance on the effects of exempting said
 10 facilities from the provisions of this article, including, but not
 11 limited to, any realized cost savings and changes in purchasing
 12 policies resulting from such exemption.

CHAPTER 107

**(Com. Sub. for H. B. 2797 - By Delegates O'Neal,
 Shott, Hanshaw, Sobonya, Kessinger, N. Foster, G.
 Foster and Overington)**

[Passed April 6, 2017; in effect ninety days from passage.]
 [Approved by the Governor on April 14, 2017.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §5A-8-23, relating to codifying statutory immunity for government agencies and

officials from actions of third-parties using documents or records of governmental agencies for unlawful acts.

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 §5A-8-23, to read as follows:

ARTICLE 8. PUBLIC RECORDS MANAGEMENT AND PRESERVATION ACT.

§5A-8-23. Limitation of liability.

1 This article creates no liability upon any person acting
 2 in his or her capacity as a state officer, employee, or retiree
 3 or former employee of the State of West Virginia; or upon
 4 the legal dependents, heirs and assignees of any such
 5 person; nor, upon any agency of the executive, legislative,
 6 or judicial branch of government of the State of West
 7 Virginia, for any transaction which is compromised by any
 8 third party's illegal act or inappropriate use associated with
 9 information regulated by this article.

CHAPTER 108

(H. B. 3037 - By Delegate Anderson)
[By Request of the Department of Commerce]

[Passed April 6, 2017; in effect ninety days from passage.]
 [Approved by the Governor on April 24, 2017.]

AN ACT to amend and reenact §5B-2F-2 of the Code of West Virginia, 1931, as amended; and to amend and reenact §5D-1-4 of said code, all relating to the Division of Energy generally; providing that the division be continued, but shall be designated and known as the Office of Energy, and shall be organized within the Development Office of the Department

of Commerce; modifying requirements and duties; modifying composition of the West Virginia Public Energy Authority Board; and designating the Secretary of Commerce or his or her designee as the chair of the West Virginia Public Energy Authority Board.

Be it enacted by the Legislature of West Virginia:

That §5B-2F-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §5D-1-4 of said code be amended and reenacted, all to read as follows:

CHAPTER 5B. ECONOMIC DEVELOPMENT ACT OF 1985.

ARTICLE 2F. OFFICE OF ENERGY.

§5B-2F-2. Purpose; Office of Energy; office to develop energy policy and development plan; contents of energy policy and development plan; and office to promote energy initiatives.

1 (a) Effective July 1, 2017, the Division of Energy is
2 hereby continued, but shall be designated and known as the
3 Office of Energy, and shall be organized within the
4 Development Office of the Department of Commerce. All
5 references throughout this code to the Division of Energy
6 shall be construed to refer to the Office of Energy. The
7 office may receive federal funds.

8 (b) The office is intended to provide leadership for
9 developing energy policies emphasizing the increased
10 efficiency of energy use, the increased development and
11 production of new and existing domestic energy sources, the
12 increased awareness of energy use on the environment and
13 the economy, dependable, efficient and economical
14 statewide energy systems capable of supporting the needs
15 of the state, increased energy self-sufficiency where the
16 ratio of indigenous to imported energy use is increased,
17 reduce the ratio energy consumption to economic activity
18 and maintain low-cost energy. The energy policies and

19 development plans shall also provide direction for the
20 private sector.

21 (c) The office shall have authority over the energy
22 efficiency program existing under the West Virginia
23 Development Office.

24 (d) The office shall develop an energy policy and shall
25 report the same back to the Governor and the Joint
26 Committee on Government and Finance before December
27 1, 2007. The energy policy shall be a five-year plan setting
28 forth the state's energy policies and shall provide a direction
29 for the private sector. Prior to the expiration of the energy
30 policy, the office shall begin review of the policy and submit
31 a revised energy policy to the Governor and the Joint
32 Committee on Government and Finance six months before
33 the expiration of the policy.

34 (e) The office shall prepare and submit an annual energy
35 development plan to the Governor and the Joint Committee on
36 Government and Finance on or before December 1 of each
37 year. The development plan shall relate to the office's
38 implementation of the energy policy and the activities of the
39 office during the previous year. The development plan shall
40 include any recommended legislation. The Public Energy
41 Authority, the Office of Coalfield Community Development,
42 the energy efficiency program, the Department of
43 Environmental Protection and the Public Service Commission,
44 in addition to their other duties prescribed by this code, shall
45 assist the office in the development of an energy policy and
46 related development plans. The energy development plan shall
47 set forth the plans for implementing the state's energy policy
48 and shall provide a direction for the private sector. The energy
49 development plan shall recognize the powers of the Public
50 Energy Authority as to development and financing of projects
51 under its jurisdiction and shall make such recommendations as
52 are reasonable and practicable for the exercise of such powers.

53 (f) The office shall hold public hearings and meetings
54 with notice to receive public input regarding proposed

55 energy policies and development plans. The energy policy
56 and development plans required by subsections (d) and (e)
57 of this section shall address increased efficiency of energy
58 use, traditional and alternative energy, water as a resource
59 and a component of energy production, energy distribution
60 systems, the siting of energy facilities, the increased
61 development and production of new and existing domestic
62 energy sources, increased awareness of energy use on the
63 environment and the economy, energy infrastructure, the
64 development and implementation of renewable, clean,
65 technically innovative and advanced energy projects in this
66 state. Projects may include, without limitation, solar and
67 wind energy, low-impact hydro power, geothermal,
68 biomass, landfill gas, fuel cells, renewable hydrogen fuel
69 technologies, waste coal, coal mine methane, coal
70 gasification to ultraclean fuels, solid waste to fuel grade
71 ethanol and coal liquefaction technologies.

72 (g) The office may propose rules for legislative approval
73 in accordance with the provisions of article three, chapter
74 twenty-nine-a of this code designed to implement an energy
75 policy and development plan in accordance with the
76 provisions of this chapter.

77 (h) The energy policy and development plans required
78 by subsections (d) and (e) of this section shall identify and
79 report on the energy infrastructure in this state and include
80 without limitation energy infrastructure related to protecting
81 the state's essential data, information systems and critical
82 government services in times of emergency, inoperativeness
83 or disaster. In consultation with the Director of the Division
84 of Homeland Security and Emergency Management, the
85 office shall encourage the development of energy
86 infrastructure and strategic resources that will ensure the
87 continuity of governmental operations in situations of
88 emergency, inoperativeness or disaster.

89 (i) In preparing or revising the energy policy and
90 development plan, the office may rely upon internal staff
91 reports or the advice of outside advisors or consultants and

92 may procure such services with the consent of the Secretary
93 of Commerce. The office may also involve national, state
94 and local government leadership and energy experts.

95 (j) The office shall prepare an energy use database,
96 including without limitation, end-use applications and
97 infrastructure needs for different classes of energy users
98 including residential, commercial and industrial users, data
99 regarding the interdependencies and sources of electricity,
100 oil, coal, water and gas infrastructure, data regarding energy
101 use of schools and state-owned facilities and collect data on
102 the impact of the energy policy and development plan on the
103 decisions and strategies of energy users of the state.

104 (k) The office shall promote collaboration between the
105 state's universities and colleges, private industry and
106 nonprofit organizations to encourage energy research and
107 leverage available federal energy research and development
108 resources.

109 (l) The office shall promote initiatives to enhance the
110 nation's energy security through research and development
111 directed at transforming the state's energy resources into the
112 resources that fuel the nation.

113 (m) The office shall work with the President of the
114 United States and his or her administration to develop a plan
115 that would allow West Virginia to become the leader in
116 transitioning the United States to a new energy future.

117 (n) The office is to determine the best way for West
118 Virginia to utilize its resources and any federal funding to
119 develop the technologies that are necessary for such a
120 transition.

121 (o) The office is to clearly articulate West Virginia's
122 position on an energy solution for the United States that
123 encompasses clean coal, natural gas, transtech energy
124 technologies and renewable energy technologies.

125 (p) The office shall develop and distribute an
126 informational program and policies that emphasize the
127 importance of West Virginia energy resources and their
128 positive impact on the eastern seaboard and the nation.

129 (q) The office shall monitor legal challenges to the
130 energy industries in the state and submit a report quarterly
131 to the Joint Committee on Government and Finance. The
132 report shall contain information relating to any litigation
133 that challenges any statute that could affect the production,
134 distribution and utilization of natural resources of the state.

CHAPTER 5D. PUBLIC ENERGY AUTHORITY ACT.

ARTICLE 1. PUBLIC ENERGY AUTHORITY OF THE STATE OF WEST VIRGINIA.

§5D-1-4. West Virginia Public Energy Authority continued; West Virginia Public Energy Board continued; organization of authority and board; appointment of board members; term, compensation and expenses; director of authority; appointment.

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

7 (b) The authority shall be controlled, managed and
8 operated by a seven-member board known as the West
9 Virginia Public Energy Authority Board, which is
10 continued. The seven members include the Secretary of the
11 Department of Commerce or designee; the Secretary of the
12 Department of Environmental Protection or designee; the
13 Director of the Economic Development Authority or
14 designee; and four members representing the general public.
15 The public members are appointed by the Governor, by and
16 with the advice and consent of the Senate, for terms of one,
17 two, three and four years, respectively.

18 (c) On June 30, 2007, the terms of all appointed
19 members shall expire. Not later than July 1, 2007, the
20 Governor shall appoint the public members required in
21 subsection (b) of this section to assume the duties of the
22 office immediately, pending the advice and consent of the
23 Senate.

24 (d) The successor of each appointed member is
25 appointed for a four-year term. A vacancy is filled by
26 appointment by the Governor in the same manner as the
27 original appointment. A member appointed to fill a vacancy
28 serves for the remainder of the unexpired term. Each board
29 member serves until a successor is appointed.

30 (e) No more than three of the public members may at
31 any one time belong to the same political party. No more
32 than two public members may be employed by or associated
33 with any industry the authority is empowered to affect. One
34 member shall be a person with significant experience in the
35 advocacy of environmental protection. Board members may
36 be reappointed to serve additional terms.

37 (f) All members of the board shall be citizens of the
38 state. Before engaging in their duties, each member of the
39 board shall comply with the requirements of article one,
40 chapter six of this code and give bond in the sum of \$25,000
41 in the manner provided in article two of said chapter. The
42 Governor may remove any board member as provided in
43 section four, article six of said chapter.

44 (g) The Secretary of the Department of Commerce or
45 his or her designee shall serve as chair. The board annually
46 elects one of its members as vice chair and appoints a
47 secretary-treasurer who need not be a member of the board.

48 (h) Four members of the board constitute a quorum and
49 the affirmative vote of the majority of members present at
50 any meeting is necessary for any action taken by vote of the
51 board. A vacancy in the membership of the board does not
52 impair the rights of a quorum by such vote to exercise all

53 the rights and perform all the duties of the board and the
54 authority.

55 (i) The person appointed as secretary-treasurer,
56 including a board member if so appointed, shall give bond
57 in the sum of \$50,000 in the manner provided in article two,
58 chapter six of this code.

59 (j) Each public member shall be reimbursed for
60 reasonable expenses incurred in the discharge of official
61 duties. All expenses incurred by the board shall be paid in a
62 manner consistent with guidelines of the Travel
63 Management Office of the Department of Administration
64 and are payable solely from funds of the authority or from
65 funds appropriated for such purpose by the Legislature.
66 Liability or obligation is not incurred by the authority
67 beyond the extent to which moneys are available from funds
68 of the authority or from such appropriations.

69 (k) In addition to such other duties and responsibilities
70 as may be prescribed in this code, the Office of Energy is
71 responsible for managing and administering the daily
72 functions of the authority and for performing all other
73 functions necessary to the effective operation of the
74 authority.



CHAPTER 109

**(H. B. 2427 - By Delegates Howell, Arvon, Atkinson,
Blair, Hamrick, Hartman, Lynch and Ferro)**

[Passed April 5, 2017; in effect ninety days from passage.]
[Approved by the Governor on April 18, 2017.]

AN ACT to amend the Code of West Virginia, 1931, as amended,
by adding thereto a new section, designated §5F-1-5, relating
to requiring agencies listed in the online state phone directory

to update certain employee information by July 1, 2017 or provide that information to the Office of Technology; requiring agencies to update directory information within 30 days of a personnel action or event, or provide that information to the Office of Technology; and requiring the Office of Technology to update directory information within 30 days of receipt of information from an agency.

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 §5F-1-5, to read as follows:

ARTICLE 1. GENERAL PROVISIONS.

§5F-1-5. Online state phone directory.

1 (a) Beginning July 1, 2017, each agency listed in the
2 online state phone directory shall update the employee
3 information in the directory, as required in this subsection,
4 or provide to the Office of Technology the following
5 information for each agency employee:

6 (1) Employee name;

7 (2) Office location and mailing address, including name
8 of city and zip code;

9 (3) Office telephone number, including extension; and

10 (4) Electronic mail address.

11 (b) Each agency listed in the online state phone
12 directory shall update the online state phone directory
13 information within thirty days after personnel action or
14 event that would require the agency to add, modify, or delete
15 information from the directory, or the agency shall provide
16 that information to the Office of Technology.

17 (c) The Office of Technology shall, within thirty days
18 of receipt of updated employee information from an agency,

19 make the requested changes to the online state phone
20 directory.

CHAPTER 110

**(H. B. 2962 - By Delegates Nelson and Boggs)
[By Request of the Tax and Revenue Department]**

[Passed April 8, 2017; in effect ninety days from passage.]
[Approved by the Governor on April 26, 2017.]

AN ACT to amend and reenact §11-1-1 of the Code of West Virginia, 1931, as amended, relating to enlarging the authority of the Tax Commissioner to perform background investigations of employees and contractors; and making technical corrections.

Be it enacted by the Legislature of West Virginia:

That §11-1-1 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 1. SUPERVISION

§11-1-1. Office of Tax Commissioner continued and designated the state Tax Division; appointment, term, oath and bond of commissioner; powers and duties generally; sections of division; assistant Tax Commissioner; authorization of criminal background checks conducted by Tax Commissioner for prospective employees; assistant attorneys general to assist commissioner.

1 (a) The Office of the Tax Commissioner is continued in
2 all respects as previously constituted in the state
3 government, but is hereby designated as the state Tax
4 Division of the Department of Revenue.

5 (b) The Tax Commissioner is the chief executive officer
6 of the state Tax Division and shall be appointed by the
7 Governor, by and with the advice and consent of the Senate,

8 to serve at the will and pleasure of the Governor for the term
9 for which the Governor was elected and until a successor
10 has been appointed and has qualified.

11 (c) The Tax Commissioner, before entering upon the
12 duties of office, shall take the oath or affirmation prescribed
13 by section 5, article IV of the Constitution. The Tax
14 Commissioner shall give bond with good security, to be
15 approved by the Governor, in the penalty of \$15,000. The
16 Tax Commissioner shall be repaid his or her actual
17 disbursements for traveling expenses. The Tax
18 Commissioner shall be provided with an office in a state
19 owned or leased building and with furniture, office
20 equipment and any necessary clerical assistance.

21 (d) The Tax Commissioner has control and supervision
22 of the state Tax Division and is responsible for the work of
23 each of its sections or other subunits. Each section or bureau
24 shall be headed by a director appointed by the Tax
25 Commissioner and who is responsible to the Tax
26 Commissioner for the work of his or her section or bureau.
27 The Tax Commissioner may create any sections or bureaus
28 and employ any necessary staff or employees to administer
29 the state tax laws for which the Tax Commissioner or Tax
30 Division is responsible, within the amount of expenditures
31 appropriated for operation of the Tax Division by the
32 Legislature. The Tax Commissioner has authority to appoint
33 an assistant Tax Commissioner who shall be his or her
34 principal assistant. The powers and duties vested in the Tax
35 Commissioner by this chapter and any other provisions of
36 law may be delegated by the Tax Commissioner to the
37 assistant or other employees, but the Tax Commissioner is
38 responsible for all official acts of his or her delegates.

39 (e) *Background checks.*

40 (1) The commissioner is authorized to conduct a
41 criminal records check through the West Virginia State
42 Police and a national criminal history check through the
43 Federal Bureau of Investigation, and such other police or

44 investigative organization or agency as the Tax
45 Commissioner may designate.

46 (2) Investigations may be conducted for:

47 (A) Applicants or prospective applicants for employment
48 with the Tax Division,

49 (B) Current and preexisting employees of the Tax
50 Division,

51 (C) Applicants or prospective applicants for contract
52 employment with the Tax Division,

53 (D) Current and preexisting contractors that work with
54 or for the Tax Division, and

55 (E) Any other person or entity that may handle, review
56 or possess federal tax information or state tax information.

57 (3) These investigations may be conducted for the
58 purpose of determining whether an applicant for
59 employment with the Tax Division, or an individual,
60 company or entity, that is being evaluated as a potential
61 contractor with the Tax Division, is suitable for such
62 employment, or for the purpose of determining suitability of
63 an individual to be granted access to federal tax information,
64 that is subject to the disclosure restrictions of 26 U.S.C. §
65 6103, or for any other lawful purpose.

66 (4) Background investigations of any individual,
67 corporation, limited liability company, partnership or other
68 entity or organization, or of any officer, owner,
69 representative, agent, employee or principal of any such
70 corporation, limited liability company, partnership or other
71 entity or organization pursuant to this section may include,
72 but not be limited to:

73 (A) Federal Bureau of Investigation (FBI) fingerprint
74 results;

75 (B) A check of an individual's criminal history in all
76 states of the United States;

77 (C) A check of the criminal history in all states of the
78 United States of a corporation, limited liability company,
79 partnership or other entity or organization, or of any officer,
80 owner, representative, agent, employee or principal of any
81 such corporation, limited liability company, partnership or
82 other entity or organization; and

83 (D) Investigation of records of local law-enforcement
84 agencies where the individual has lived, worked, or attended
85 school within the preceding five years, or longer, as the Tax
86 Commissioner may determine, to identify:

87 (i) Any arrests of the individual or of an officer, owner,
88 representative, agent or principal of a corporation, limited
89 liability company, partnership or other entity or
90 organization.

91 (ii) Any criminal record of a corporation, limited
92 liability company, partnership or other entity or
93 organization, or of any officer, owner, representative, agent,
94 employee or principal of any such corporation, limited
95 liability company, partnership or other entity or
96 organization.

97 (iii) Misbehavior or trends of misbehavior that may not
98 have been reported to the FBI database, but which provide
99 information regarding character and suitability of an
100 individual to hold a responsible employment position or to
101 receive and handle federal tax information or state tax
102 information.

103 (iv) The citizenship and residency of an individual.

104 (v) Validation of an individual's eligibility to legally
105 work in the United States.

106 (5) The result of any criminal records or criminal history
107 check shall be sent to the commissioner, and any other state or

108 federal agency having a lawful interest in the results of such an
109 investigation, as designated by the Tax Commissioner.

110 (f) The Tax Commissioner, if he or she considers the
111 action necessary, may request the Attorney General to
112 appoint assistant attorneys general who shall perform duties
113 as required by the Tax Commissioner. The Attorney
114 General, in pursuance of the request, may select and appoint
115 assistant attorneys general, with the consent of the Tax
116 Commissioner, to serve during the will and pleasure of the
117 Attorney General, and the assistants shall be paid out of any
118 funds made available for that purpose by the Legislature to
119 the state Tax Division.

CHAPTER 111

**(S. B. 667 - By Senators Gaunch, Prezioso and
Plymale)**

[Passed April 6, 2017; in effect from passage.]
[Approved by the Governor on April 25, 2017.]

AN ACT to amend and reenact §11-10-5s of the Code of West Virginia, 1931, as amended, relating to the authority of the Attorney General to disclose certain information provided by the Tax Commissioner unless it is subject to a protective order or agreement restricting the use of the disclosed information to the proceeding, arbitration or litigation.

Be it enacted by the Legislature of West Virginia:

That §11-10-5s of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 10. WEST VIRGINIA TAX PROCEDURE AND
ADMINISTRATION ACT.**

§11-10-5s. Disclosure of certain taxpayer information.

1 (a) *Purpose.* — The Legislature hereby recognizes the
2 importance of confidentiality of taxpayer information as a
3 protection of taxpayers' privacy rights and to enhance
4 voluntary compliance with the tax law. The Legislature also
5 recognizes the citizens' right to accountable and efficient
6 state government. To accomplish these ends, the Legislature
7 hereby creates certain exceptions to the general principle of
8 confidentiality of taxpayer information.

9 (b) *Exceptions to confidentiality.* —

10 (1) Notwithstanding any provision in this code to the
11 contrary, the Tax Commissioner shall publish in the State
12 Register the name and address of every taxpayer and the
13 amount, by category, of any credit asserted on a tax return
14 under articles thirteen-c, thirteen-d, thirteen-e, thirteen-f,
15 thirteen-g, thirteen-q, thirteen-r and thirteen-s of this chapter
16 and article one, chapter five-e of this code. The categories
17 by dollar amount of credit received are as follows:

18 (A) More than \$1 but not more than \$50,000;

19 (B) More than \$50,000 but not more than \$100,000;

20 (C) More than \$100,000 but not more than \$250,000;

21 (D) More than \$250,000 but not more than \$500,000;

22 (E) More than \$500,000 but not more than \$1 million;

23 and

24 (F) More than \$1 million.

25 (2) Notwithstanding any provision in this code to the
26 contrary, the Tax Commissioner shall publish in the State
27 Register the following information regarding a compromise
28 of a pending civil tax case that occurs on or after the
29 effective date of this section in which the Tax
30 Commissioner is required to seek the written
31 recommendation of the Attorney General and the Attorney

32 General has not recommended acceptance of the
33 compromise or when the Tax Commissioner compromises
34 a civil tax case for an amount that is more than \$250,000
35 less than the assessment of tax owed made by the Tax
36 Commissioner:

37 (A) The names and addresses of taxpayers that are
38 parties to the compromise;

39 (B) A summary of the compromise;

40 (C) Any written advice or recommendation rendered by
41 the Attorney General regarding the compromise; and

42 (D) Any written advice or recommendation rendered by
43 the Tax Commissioner's staff.

44 Under no circumstances may the tax return of the
45 taxpayer or any other information which would otherwise
46 be confidential under other provisions of law be disclosed
47 pursuant to the provisions of this subsection.

48 (3) Notwithstanding any provision in this code to the
49 contrary, the Tax Commissioner may disclose any relevant
50 return information to the prosecuting attorney for the county
51 in which venue lies for a criminal tax offense when there is
52 reasonable cause, based upon and substantiated by the
53 return information, to believe that a criminal tax law has
54 been or is being violated.

55 (4) Notwithstanding any provision in this code to the
56 contrary, the Tax Commissioner may enter into written
57 exchange of information agreements with the
58 commissioners of Labor, Employment Security, Alcohol
59 Beverage Control and Workers' Compensation to disclose
60 and receive timely return information. The Tax
61 Commissioner may promulgate rules pursuant to chapter
62 twenty-nine-a of this code regarding additional agencies
63 with which written exchange of information agreements
64 may be sought but may not promulgate emergency rules
65 regarding these additional agencies. The agreements shall

66 be published in the State Register and are only for the
67 purpose of facilitating premium collection, tax collection
68 and facilitating licensure requirements directly enforced,
69 administered or collected by the respective agencies. The
70 provisions of this subsection do not preclude or limit
71 disclosure of tax information authorized by other provisions
72 of this code. Confidential return information so disclosed
73 remains confidential in the other agency to the extent
74 provided by section five-d of this article and by other
75 applicable federal or state laws.

76 (5) Notwithstanding any provision of this code to the
77 contrary, the Tax Commissioner may enter into a written
78 agreement with the State Treasurer to disclose to the State
79 Treasurer the following business registration information:

80 (A) The names, addresses and federal employer
81 identification numbers of businesses which have registered
82 to do business in West Virginia; and

83 (B) The type of business activity and organization of
84 those businesses.

85 Disclosure of this information shall begin as soon as
86 practicable after the effective date of this subsection and
87 may be used only for the purpose of recovery and
88 disposition of unclaimed property in accordance with the
89 provisions of article eight, chapter thirty-six of this code.
90 The provisions of this subsection do not preclude or limit
91 disclosure of tax information authorized by other provisions
92 of this code. Confidential return information disclosed
93 hereunder or thereunder remains confidential as provided by
94 section five-d of this article and by other applicable federal
95 or state laws.

96 (6) Notwithstanding any provision of this code to the
97 contrary, the Tax Commissioner may disclose to the
98 Attorney General any tax return, report, declaration or tax
99 return information, including the identity of a taxpayer, that
100 relates to any taxpayer's sales of tobacco products subject

101 to state excise tax or to such sales of tobacco products that
102 were manufactured or imported by a nonparticipating
103 manufacturer as defined in section two, article nine-d of
104 chapter sixteen of this code, for the purpose of enforcement
105 of articles nine-b and nine-d, chapter sixteen of this code, or
106 for the purpose of representing the State of West Virginia in
107 any arbitration or litigation arising under the Tobacco
108 Master Settlement Agreement or articles nine-b and nine-d,
109 chapter sixteen of this code. Nothing herein shall authorize
110 the disclosure of any taxpayer's income tax returns or
111 business franchise tax returns, or authorize the use of the
112 disclosed information for any purpose other than as
113 specified herein.

114 (7) Notwithstanding any provision of this code to the
115 contrary, the Attorney General, upon the consent of the Tax
116 Commissioner, may disclose information provided by the
117 Tax Commissioner under the authority of subdivision six of
118 this subsection as follows:

119 (A) To a party or parties participating in arbitration or
120 litigation arising under the terms of the Tobacco Master
121 Settlement Agreement; or

122 (B) To a judge, arbitrator, administrative law judge,
123 legal counsel or other officer, official or participant in
124 proceedings for or relating to administration,
125 implementation, enforcement, defense or settlement and
126 arbitration of the provisions of articles nine-b and nine-d,
127 chapter sixteen of this code.

128 (C) Notwithstanding any provision of this code to the
129 contrary, the Attorney General may introduce into evidence
130 or disclose the information in the arbitration or litigation
131 proceedings or an action for administration,
132 implementation, enforcement, defense or settlement and
133 arbitration of the provisions of articles nine-b and nine-d,
134 chapter sixteen of this code.

135 (D) This subdivision does not apply to a document, tax
136 return or other information subject to disclosure restrictions
137 imposed by federal statute or regulation.

138 (E) No disclosure may be made pursuant to this
139 subdivision unless it is subject to a protective order or
140 agreement restricting the use of the disclosed information to
141 the proceeding, arbitration or litigation;

142 (8) Notwithstanding any provision of this code to the
143 contrary, the Tax Commissioner may enter into a written
144 exchange agreement with the Auditor to disclose certain
145 taxpayer information to facilitate participation in the
146 following:

147 (A) The federal offset program authorized by section
148 thirty-seven, article one, chapter fourteen of this code; and

149 (B) The state offset program, as authorized by
150 subsection (h), section thirty-seven, article one, chapter
151 fourteen of this code, for the purpose of protecting return
152 information as defined in section five-d, article ten of this
153 chapter and collecting debts, fees and penalties due the state,
154 its departments, agencies or institutions.

155 (C) The taxpayer information exchanged or disclosed
156 pursuant to this subdivision is to be used only for the
157 purpose of facilitating the collection of unpaid and
158 delinquent tax liabilities through offset against state
159 payments due and owing to taxpayers, vendors and
160 contractors providing goods or services to the state, its
161 departments, agencies or institutions.

162 (D) The Tax Commissioner may disclose the following
163 taxpayer information:

164 (i) Name;

165 (ii) Address;

166 (iii) Social Security number or tax identification
167 number;

168 (iv) Amount of the tax liability; and

169 (v) Any other information required by the written
170 agreement.

171 (E) Disclosure of this information begins as soon as
172 practicable after the effective date of this subdivision.

173 (F) The provisions of this section do not preclude or
174 limit disclosure of tax information authorized by other
175 provisions of this code. Any confidential return information
176 disclosed hereunder or thereunder remains confidential to
177 the extent provided by section five-d of this article and by
178 other applicable federal or state laws.

179 (c) *Tax expenditure reports.* — Beginning on January
180 15, 1992, and every January 15 thereafter, the Governor
181 shall submit to the President of the Senate and the Speaker
182 of the House of Delegates a tax expenditure report. This
183 report shall expressly identify all tax expenditures. Within
184 three-year cycles, the reports shall be considered together to
185 analyze all tax expenditures by describing the annual
186 revenue loss and benefits of the tax expenditure based upon
187 information available to the Tax Commissioner. For
188 purposes of this section, the term “tax expenditure” means
189 a provision in the tax laws administered under this article
190 including, but not limited to, exclusions, deductions, tax
191 preferences, credits and deferrals designed to encourage
192 certain kinds of activities or to aid taxpayers in special
193 circumstances. The Tax Commissioner shall promulgate
194 rules setting forth the procedure by which he or she will
195 compile the reports and setting forth a priority for the order
196 in which the reports will be compiled according to type of
197 tax expenditure.

198 (d) *Federal and state return information confidential.*
199 — Notwithstanding any other provisions of this section or

200 of this code, no return information made available to the Tax
201 Commissioner by the Internal Revenue Service or
202 department or agency of any other state may be disclosed to
203 another person in a manner inconsistent with the provisions
204 of Section 6103 of the Internal Revenue Code of 1986, as
205 amended, or of the other states' confidentiality laws.

CHAPTER 112

**(Com. Sub. for H. B. 2941 - By Delegates Gearheart,
Storch, Hamrick, Criss, Hanshaw, Westfall, Paynter,
Cooper, Moore, Ambler and White)**

[Passed April 6, 2017; in effect ninety days from passage.]
[Approved by the Governor on April 26, 2017.]

AN ACT to amend and reenact §17-2A-7 and §17-2A-8 of the Code of West Virginia, 1931, as amended, all relating to the Division of Highways utilization of the Attorney General for legal services; requiring the Commissioner of the Division of Highways to utilize the Attorney General for all legal assistance and services; and providing for exceptions.

Be it enacted by the Legislature of West Virginia:

That §17-2A-7 and §17-2A-8 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 2A. WEST VIRGINIA COMMISSIONER OF HIGHWAYS.

§17-2A-7. Legal assistance.

- 1 (a) Except as provided in subsection (b) of this section,
- 2 the commissioner shall utilize the Attorney General for all
- 3 legal assistance and services as provided by law.

4 (b) The commissioner may:

5 (1) Employ a competent legal staff adequate for the
6 ordinary legal services required by him or her and shall
7 provide therefor such quarters, equipment, facilities,
8 services and stenographic and other personnel as may be
9 necessary: *Provided*, That for purposes of this subdivision,
10 "ordinary legal services" does not include the retention or
11 hiring of outside legal counsel; and

12 (2) Employ such additional legal counsel as he or she
13 deems necessary upon a reasonable fee basis to perform
14 legal services in acquiring, by right of eminent domain or
15 otherwise, property, or an estate, right or interest therein.

§17-2A-8. Powers, duties and responsibilities of commissioner.

1 In addition to all other duties, powers and
2 responsibilities given and assigned to the commissioner in
3 this chapter, the commissioner may:

4 (1) Exercise general supervision over the state road
5 program and the construction, reconstruction, repair and
6 maintenance of state roads and highways;

7 (2) Determine the various methods of road construction
8 best adapted to the various sections and areas of the state
9 and establish standards for the construction and
10 maintenance of roads and highways in the various sections
11 and areas of the state;

12 (3) Conduct investigations and experiments, hold
13 hearings and public meetings and attend and participate in
14 meetings and conferences within and without the state for
15 purposes of acquiring information, making findings and
16 determining courses of action and procedure relative to
17 advancement and improvement of the state road and
18 highway system;

19 (4) Enter private lands to make inspections and surveys
20 for road and highway purposes;

21 (5) Acquire, in name of the department, by lease, grant,
22 right of eminent domain or other lawful means all lands and
23 interests and rights in lands necessary and required for
24 roads, rights-of-way, cuts, fills, drains, storage for
25 equipment and materials and road construction and
26 maintenance in general;

27 (6) Procure photostatic copies of any or all public
28 records on file at the State Capitol of Virginia which may
29 be considered necessary or proper in ascertaining the
30 location and legal status of public road rights-of-way
31 located or established in what is now the State of West
32 Virginia, which when certified by the commissioner, may
33 be admitted in evidence, in lieu of the original, in any of the
34 courts of this state;

35 (7) Plan for and hold annually a school of good roads,
36 of not less than three or more than six days' duration, for
37 instruction of his or her employees, which is held in
38 conjunction with West Virginia University and may be held
39 at the university or at any other suitable place in the state;

40 (8) Negotiate and enter in reciprocal contracts and
41 agreements with proper authorities of other states and of the
42 United States relating to and regulating the use of roads and
43 highways with reference to weights and types of vehicles,
44 registration of vehicles and licensing of operators, military
45 and emergency movements of personnel and supplies and
46 all other matters of interstate or national interest;

47 (9) Classify and reclassify, locate and relocate,
48 expressway, trunkline, feeder and state local service roads
49 and designate by number the routes within the state road
50 system;

51 (10) Create, extend or establish, upon petition of any
52 interested party or parties or on the commissioner's own
53 initiative, any new road or highway found necessary and
54 proper;

55 (11) Exercise jurisdiction, control, supervision and
56 authority over local roads, outside the state road system, to
57 the extent determined by him or her to be expedient and
58 practicable;

59 (12) Discontinue, vacate and close any road or highway,
60 or any part of any road or highway, the continuance and
61 maintenance of which are found unnecessary and improper,
62 upon petition and hearing or upon investigation initiated by
63 the commissioner;

64 (13) Close any state road while under construction or
65 repair and provide a temporary road during the time of the
66 construction or repair;

67 (14) Adjust damages occasioned by construction,
68 reconstruction or repair of any state road or the
69 establishment of any temporary road;

70 (15) Establish and maintain a uniform system of road
71 signs and markers;

72 (16) Fix standard widths for road rights-of-way, bridges
73 and approaches to bridges and fix and determine grades and
74 elevations therefor;

75 (17) Test and standardize materials used in road
76 construction and maintenance, either by governmental
77 testing and standardization activities or through contract by
78 private agencies;

79 (18) Allocate the cost of retaining walls and drainage
80 projects, for the protection of a state road or its right-of-way,
81 to the cost of construction, reconstruction, improvement or
82 maintenance;

83 (19) Acquire, establish, construct, maintain and operate,
84 in the name of the department, roadside recreational areas
85 along and adjacent to state roads and highways;

86 (20) Exercise general supervision over the construction
87 and maintenance of airports and landing fields under the
88 jurisdiction of the West Virginia State Aeronautics
89 Commission, of which the commissioner is a member, and
90 make a study and general plan of a statewide system of
91 airports and landing fields;

92 (21) Provide traffic engineering services to
93 municipalities of the state upon request of the governing
94 body of any municipality and upon terms that are agreeably
95 arranged;

96 (22) Institute complaints before the Public Service
97 Commission or any other appropriate governmental agency
98 relating to freight rates, car service and movement of road
99 materials and equipment;

100 (23) Invoke any appropriate legal or equitable remedies,
101 subject to section seven of this article, to enforce his or her
102 orders, to compel compliance with requirements of law and
103 to protect and preserve the state road and highway system
104 or any part of the system;

105 (24) Make and promulgate rules for the government and
106 conduct of personnel, for the orderly and efficient
107 administration and supervision of the state road program
108 and for the effective and expeditious performance and
109 discharge of the duties and responsibilities placed upon him
110 or her by law;

111 (25) Delegate powers and duties to his or her appointees
112 and employees who shall act by and under his or her
113 direction and be responsible to him or her for their acts;

114 (26) Designate and define any construction and
115 maintenance districts within the state road system that is
116 found expedient and practicable;

117 (27) Contract for the construction, improvement and
118 maintenance of the roads;

119 (28) Comply with provisions of present and future federal
120 aid statutes and regulations, including execution of contracts or
121 agreements with and cooperation in programs of the United
122 States government and any proper department, bureau or agency
123 of the United States government relating to plans, surveys,
124 construction, reconstruction, improvement and maintenance of
125 state roads and highways;

126 (29) Prepare budget estimates and requests;

127 (30) Establish a system of accounting covering and
128 including all fiscal and financial matters of the department;

129 (31) Establish and advance a right-of-way Acquisition
130 Revolving Fund, a Materials Revolving Fund and an
131 Equipment Revolving Fund;

132 (32) Enter into contracts and agreements with and cooperate
133 in programs of counties, municipalities and other governmental
134 agencies and subdivisions of the state relating to plans, surveys,
135 construction, reconstruction, improvement, maintenance and
136 supervision of highways, roads, streets and other travel ways
137 when and to the extent determined by the department to be
138 expedient and practical;

139 (33) Report, as provided by law, to the Governor and the
140 Legislature;

141 (34) Purchase materials, supplies and equipment
142 required for the state road program and system;

143 (35) Dispose of all obsolete and unusable and surplus
144 supplies and materials which cannot be used advantageously
145 and beneficially by the department in the state road program
146 by transfer of the supplies and materials to other governmental
147 agencies and institutions by exchange, trade or sale of the
148 supplies and materials;

149 (36) Investigate road conditions, official conduct of
150 department personnel and fiscal and financial affairs of the
151 department and hold hearings and make findings thereon or

152 on any other matters within the jurisdiction of the
153 department;

154 (37) Establish road policies and administrative
155 practices;

156 (38) Fix and revise from time to time tolls for transit
157 over highway projects constructed by the Division of
158 Highways after May 1, 1999, that have been authorized by
159 the provisions of section five-b, article seventeen-a of this
160 chapter;

161 (39) Take actions necessary to alleviate any conditions
162 as the Governor may declare to constitute an emergency,
163 whether or not the emergency condition affects areas
164 normally under the jurisdiction of the Division of
165 Highways; and

166 (40) Provide family restrooms at all rest areas along
167 interstate highways in this state, all to be constructed in
168 accordance with federal law.

CHAPTER 113

**(Com. Sub. for H. B. 2948 - By Delegates Hanshaw,
Sypolt, Zatezalo, Ward, Paynter, Harshbarger, G.
Foster, Deem, Anderson, N. Foster and Fast)**

[Passed April 7, 2017; in effect ninety days from passage.]
[Approved by the Governor on April 26, 2017.]

AN ACT to amend and reenact §17C-17A-7 of the Code of West Virginia, 1931, as amended; to amend and reenact §19-1A-3a of said code; to amend and reenact §19-2A-4 of said code; to amend and reenact §19-9A-3 of said code; to amend and reenact §19-12D-7 of said code; to amend and reenact §19-15-2 of said code; to amend and reenact §19-34-6 of said code;

to amend and reenact §19-35-3 of said code; to amend and reenact §20-3-5 of said code; to amend and reenact §20-7A-5 of said code; to amend and reenact §21-10-7 of said code; to amend and reenact §21-12-7 of said code; to amend and reenact §21-15-10 of said code; to amend and reenact §24A-3-3 of said code; to amend and reenact §29-3-12 of said code; to amend and reenact §29-29-4 of said code; to amend and reenact §47-1A-10 of said code, all relating generally to the issuance of permits; establishing timelines for taking final action on certain permits; modifying procedures for the issuance of permits by the Public Service Commission for activities related to the commercial transportation of coal; modifying procedures for the issuance of permits by the Division of Forestry for activities related to growing or dealing ginseng; modifying procedures for the issuance of permits by the Commissioner of Agriculture to operate a public market; modifying procedures for the issuance of permits by the Commissioner of Agriculture to feed garbage to swine; modifying procedures for the issuance of permits by the Commissioner of Agriculture for activities related to noxious weeds; modifying procedures for the issuance of permits by the Commissioner of Agriculture for activities related to the manufacture or distribution of fertilizer; modifying procedures for the issuance of permits by the Dangerous Wild Animals Board; modifying procedures for the issuance of uniform farmers market vendor permits by local health departments; modifying procedures for the issuance of burning permits by the Director of the Division of Forestry; modifying procedures for the issuance of permits by the Director of the Division of Natural Resources for the excavation or removal of archaeological, paleontological, prehistoric and historic features; modifying procedures for the issuance of permits by the Division of Labor to operate an amusement ride or attraction, a commercial bungee jumping site, or a zipline or canopy tour; modifying procedures for the issuance of permits by the Public Service Commission to operate as a contract carrier by motor vehicle; modifying procedures for the issuance of permits by the State Fire Marshal; modifying procedures for the issuance of permits by

a nonprofit youth organization; and modifying permit fees and procedures for the issuance of permits by the Commissioner of the Division of Labor for activities related to the regulation and control of bedding and upholstery businesses.

Be it enacted by the Legislature of West Virginia:

That §17C-17A-7 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §19-1A-3a of said code be amended and reenacted; that §19-2A-4 of said code be amended and reenacted; that §19-9A-3 of said code be amended and reenacted; that §19-12D-7 of said code be amended and reenacted; that §19-15-2 of said code be amended and reenacted; that §19-34-6 of said code be amended and reenacted; that §19-35-3 of said code be amended and reenacted; that §20-3-5 of said code be amended and reenacted; that §20-7A-5 of said code be amended and reenacted; that §21-10-7 of said code be amended and reenacted; that §21-12-7 of said code be amended and reenacted; that §21-15-10 of said code be amended and reenacted; that §24A-3-3 of said code be amended and reenacted; that §29-3-12 of said code be amended and reenacted; that §29-29-4 of said code be amended and reenacted; and that §47-1A-10 of said code be amended and reenacted, all to read as follows:

CHAPTER 17C. TRAFFIC REGULATIONS AND LAWS OF THE ROAD.

ARTICLE 17A. REGULATION OF THE COMMERCIAL TRANSPORTATION OF COAL.

§17C-17A-7. Permit application procedure.

1 The commission shall propose in accordance with
2 provisions of article three, chapter twenty-nine-a of this
3 code by emergency and legislative rules, filed no later than
4 October 1, 2003, a permit application procedure for the
5 issuance of permits pursuant to the authority contained
6 within this article: *Provided*, That the commission shall take
7 final action upon all completed permit applications within
8 thirty days of receipt if the application is uncontested, or
9 within ninety days if the application is contested.

CHAPTER 19. AGRICULTURE.**ARTICLE 1A. DIVISION OF FORESTRY.****§19-1A-3a. Providing criminal penalties for the illegal possession of uncertified ginseng.**

1 (a) (1) The Legislature finds that ginseng trade must be
2 controlled in order to protect the survival of wild ginseng as
3 evidenced by its listing in Appendix II of the Convention on
4 International Trade in Endangered Species of Wild Fauna
5 and Flora. It is the policy of this state to regulate the
6 commerce in ginseng in a manner that protects the survival
7 of wild ginseng.

8 (2) For purposes of this section:

9 (A) “Certified” means the ginseng carries a certificate
10 of origin issued by the director which allows the export from
11 West Virginia of ginseng legally harvested in this state;

12 (B) “Commercial use” means to sell or to use ginseng
13 for financial gain;

14 (C) “Cultivated ginseng” means ginseng that is
15 purposefully planted in beds under artificial shade using
16 standard horticultural practices such as mechanical tillage,
17 fertilization, weed control, irrigation and pesticides;

18 (D) “Dealer” means a person who purchases ginseng for
19 purposes of commercial use;

20 (E) “Digger” means a person who digs, collects or
21 gathers wild ginseng by searching woodlands to find the
22 plants;

23 (F) “Director” means the Director of the Division of
24 Forestry;

25 (G) “Division” means the Division of Forestry;

26 (H) "Export" means the movement of ginseng from
27 state to state as well as sending it abroad;

28 (I) "Ginseng" means whole, sliced or parts of roots of
29 cultivated ginseng, woods grown ginseng, wild simulated
30 ginseng and wild ginseng, excluding manufactured parts,
31 products, and derivatives, such as powders, pills, extracts,
32 tonics, teas and confectionary;

33 (J) "Green ginseng" means a fresh wild ginseng root that
34 has not been intentionally subjected to a drying process and
35 from which most natural moisture has not been removed by
36 drying.

37 (K) "Grower" means a person who purposefully plants
38 and grows cultivated ginseng, woods-grown ginseng or wild
39 simulated ginseng for purposes of commercial use:
40 *Provided*, That a grower does not include a digger who
41 plants wild ginseng seed from the wild ginseng plants he or
42 she digs, collects or gathers;

43 (L) "Harvest" means to dig, collect or gather ginseng;

44 (M) "Person" means an individual, corporation,
45 partnership, firm or association;

46 (N) "Rootlets" means woods-grown or wild simulated
47 one to two-year old ginseng roots commonly sold as
48 transplants to growers;

49 (O) "Wild ginseng" means *Panax quinquefolius* L. that
50 is not grown or nurtured by a person regardless of the
51 putative origin of the plants: *Provided*, That wild ginseng
52 may originate from seeds planted by a digger at the same
53 site from which the digger harvests the wild ginseng;

54 (P) "Wild simulated ginseng" means ginseng that is
55 purposefully planted in the woods without a bed being
56 prepared and without the use of any chemical weed, disease
57 or pest control agents;

58 (Q) “Woods-grown ginseng” means ginseng that is
59 purposefully planted in beds prepared in the woods in a
60 manner that uses trees to provide necessary shade and which
61 may be grown with the use of chemical or mechanical weed,
62 disease or pest control agents.

63 (3) (A) The Division of Forestry shall regulate the
64 growing, digging, collecting, gathering, possessing and
65 selling of ginseng.

66 (B) The division may propose rules for legislative
67 approval in accordance with article three, chapter twenty-
68 nine-a of this code to implement the provisions of this
69 section including the amount of any permit fee.

70 (C) For purposes of regulating the growing, harvesting
71 and commercial use of ginseng, a division employee may
72 enter upon any public or private property, other than a
73 dwelling house, at reasonable times, in order to inspect the
74 ginseng operation or records. A person may not obstruct or
75 hinder the employee in the discharge of his or her
76 enforcement duties.

77 (D) All moneys received from permit fees and civil
78 penalties assessed pursuant to this section shall be credited
79 to the special account within the Division of Forestry to be
80 used for the purposes set forth in section three of this article.

81 (E) The site plats required to be submitted to the
82 division and other information identifying the specific
83 location of ginseng plants are not open to public inspection
84 pursuant to article one, chapter twenty-nine-b of this code
85 since they disclose information having a significant
86 commercial value.

87 (b) (1) The digging season for wild ginseng begins on
88 September 1, and ends on November 30, of each year. It is
89 unlawful for a person to dig, collect or gather wild ginseng
90 between December 1, and August 31 of the following year.

91 (2) A person digging, collecting or gathering wild
92 ginseng upon the enclosed or posted lands of another person
93 shall first obtain written permission from the landowner,
94 tenant or agent, and shall carry the written permission on his
95 or her person while digging, collecting or gathering wild
96 ginseng upon the enclosed or posted lands. It is unlawful to
97 dig, collect or gather wild ginseng from the property of
98 another without the written permission of the landowner.

99 (3) A person digging, collecting or gathering wild
100 ginseng shall plant the seeds from the wild ginseng plants at
101 the time and at the site from which the wild ginseng is
102 harvested. It is unlawful to remove wild ginseng seeds from
103 the site of collection.

104 (4) It is unlawful to dig, collect or gather wild ginseng
105 less than five years old.

106 (5) A person may not rescue wild ginseng plants
107 endangered by ground-disturbing activities unless he or she
108 has first obtained a moving permit from the division. The
109 person shall provide the reason for moving the plants, the
110 current location of the plants, the proposed new planting site
111 and other information required by the division.

112 (6) It is unlawful to plant ginseng or ginseng seed and
113 to dig, collect or gather ginseng on West Virginia public
114 lands, except by land grant university researchers
115 performing research or demonstration projects regarding the
116 growing, cultivating or harvesting of ginseng: *Provided,*
117 That it is unlawful for anyone to plant ginseng or ginseng
118 seed and to dig, collect or gather ginseng on state wildlife
119 management areas or on state parks.

120 (c) (1) A person may not act as a grower unless he or
121 she has obtained a grower's permit from the division.

122 (2) Prior to planting cultivated, woods-grown or wild
123 simulated ginseng, a grower shall:

124 (A) Submit to the director a plat of the exact planting
125 location prepared by a licensed surveyor or a registered
126 forester as defined in article nineteen, chapter thirty of this
127 code, along with information verifying the name of the
128 landowner: *Provided*, That if the grower is not the
129 landowner, the grower shall also submit written permission
130 from the landowner to grow and harvest cultivated, woods-
131 grown or wild simulated ginseng on that property.

132 (B) Obtain a written determination from the director
133 certifying that the planting area is free from wild ginseng;
134 and

135 (C) Submit other information required by the division.

136 (3) A grower shall keep accurate and complete records
137 on each ginseng planting on forms provided by the division.
138 The records shall be available for inspection by a division
139 employee and shall be submitted to the division at intervals
140 established by rule by the division. A grower shall maintain
141 records for a period of not less than ten years. The
142 information required to be kept shall include:

143 (A) The origin of ginseng seed, rootlets or plants;

144 (B) The location of purposefully planted cultivated,
145 wild simulated and woods-grown ginseng and a site plat of
146 the planting;

147 (C) The original of the director's determination that the
148 site was free from wild ginseng at the time of planting;

149 (D) The date each site was planted;

150 (E) The number of pounds of seeds planted, or the
151 number and age of rootlets, or both; and

152 (F) Other information required by the division.

153 (4) A grower may harvest cultivated ginseng on or after
154 the effective date of this section throughout the year.

155 (5) A grower may harvest wild simulated and woods-
156 grown ginseng from September 1, through November 30, of
157 each year.

158 (6) It is unlawful for a person to dig, collect or gather
159 wild simulated and woods-grown ginseng between
160 December 1 and August 31.

161 (7) It is unlawful to dig, collect and gather wild
162 simulated and woods-grown ginseng less than five years
163 old.

164 (8) A grower shall comply with the certification
165 procedures set forth in subdivision (f) of this section.

166 (9) For planting locations in existence prior to July 1,
167 2005, provide proof of having purchased ginseng seed,
168 rootlets or plants for planting for a minimum of one or more
169 of the five years immediately prior to July 1, 2005, and sign
170 a certification that to the best of his or her knowledge, no
171 wild ginseng existed on the site at the time the ginseng was
172 planted: *Provided*, That no grower may certify a planting
173 location in existence prior to July 1, 2005, under this
174 provision after December 31, 2009.

175 (d) (1) A person may not act as a dealer unless he or she
176 has obtained a dealer's permit from the division.

177 (2) A dealer shall keep accurate and complete records
178 on his or her ginseng transactions on forms provided by the
179 division. A dealer is required to maintain a record of all
180 persons, including a digger, grower and dealer, involved in
181 each purchase or sale transaction and shall include the name,
182 address, permit number and a copy of each ginseng
183 certification issued by the division. All records shall be
184 available for inspection by a division employee. A dealer
185 shall maintain records for a period of not less than ten years.
186 In addition, a dealer is required to report the following
187 information to the division monthly:

188 (A) The date of the transaction;

189 (B) The type of ginseng, whether wild, cultivated,
190 woods-grown or wild simulated ginseng;

191 (C) Whether the ginseng is dried or green at the time of
192 the transaction;

193 (D) The weight of the ginseng;

194 (E) The county from which the ginseng was harvested;

195 (F) The identification number from the state ginseng
196 certification; and

197 (G) Other information required by the division.

198 (3) A dealer shall include a West Virginia export
199 certificate, numbered by the division, with each shipment of
200 ginseng transported out-of-state.

201 (4) A dealer may not import out-of-state ginseng into
202 this state unless the ginseng is accompanied by a valid
203 export certificate issued by the state of origin. A dealer must
204 return uncertified ginseng to the state of origin within fifteen
205 calendar days.

206 (5) It is unlawful to include false information on any
207 certificate or record required to be completed or maintained
208 by this section. All ginseng harvested in West Virginia must
209 be certified by the director before being transported or
210 shipped out-of-state.

211 (e) (1) A person may not act as a grower or act as a
212 dealer unless he or she has been issued the appropriate
213 permit by the division. A person must obtain a separate
214 permit for each activity. Permit applications shall be made
215 on forms provided by the division. The application for a
216 permit shall be accompanied by the applicable permit fee.
217 The division shall take final action upon all completed
218 permit applications within thirty days of receipt if the
219 application is uncontested, or within ninety days if the
220 application is contested. The division shall assign a permit

221 number to each person granted a permit and it shall keep
222 records of the permits issued.

223 (2) Permits expire on December 31 of each year for
224 growers and August 31 of each year for dealers. All permits
225 must be renewed annually. Renewal forms will be mailed to
226 current permit holders. The failure to receive a renewal form
227 does not relieve the permit holder of the obligation to renew.
228 The division may require a late fee when renewal is received
229 more than sixty days after the expiration of the current
230 permit.

231 (3) The permit holder shall notify the division of any
232 changes in the information on the permit.

233 (f) All ginseng harvested in this state shall be certified
234 as to type, whether wild, cultivated, woods grown or wild
235 simulated, and to its origin, weight and lawful harvest.
236 Other information may be required for ginseng to be
237 certified by the division to comply with the Convention on
238 International Trade in Endangered Species of Wild Fauna
239 and Flora to allow for its export: *Provided*, That live one
240 and two-year old cultivated, woods-grown or wild
241 simulated rootlets sold by growers for propagation purposes
242 within the United States are not regarded as harvested and
243 are exempt from the certification requirement. All ginseng,
244 except cultivated ginseng, must be certified or weight
245 receipted by April 1 of the year following harvest: *Provided*,
246 *however*, That no ginseng may be certified between January
247 1 through March 31 unless the person requesting
248 certification displays a valid permit. It is unlawful for a
249 person to have in his or her possession uncertified wild
250 ginseng from April 1 through August 31.

251 (g) The director shall propose rules for legislative
252 approval in accordance with article three, chapter twenty-
253 nine-a of this code designed to implement the ginseng
254 certification process.

255 (h) The division may, by order entered in accordance
256 with the provisions of article five, chapter twenty-nine-a of
257 this code, deny, suspend or revoke the permit of a grower or
258 dealer and may invalidate an export certificate completed by
259 a dealer when the division finds that a grower or dealer has
260 violated any provision of this section or a legislatively
261 approved rule.

262 (i) The division may assess a civil penalty against a
263 person who violates any provision of this section or a
264 provision of a legislatively approved rule. The division may
265 assess a monetary penalty of not less than \$100 nor more
266 than \$500.

267 (j) Any person violating a provision of this section is
268 guilty of a misdemeanor and, upon conviction thereof, shall
269 be fined not less than \$100 nor more than \$500 for the first
270 offense, and for each subsequent offense, shall be fined not
271 less than \$500 nor more than \$1,000, or confined in jail not
272 more than six months, or both. The court, in imposing the
273 sentence of a person convicted of an offense under this
274 section, shall order the person to forfeit all ginseng involved
275 in the offense.

276 (k) It is the duty of the prosecuting attorney of the
277 county in which the violation occurred to represent the
278 division, to institute proceedings and to prosecute the person
279 charged with the violation.

ARTICLE 2A. PUBLIC MARKETS.

§19-2A-4. Permits to operate; application and hearing.

1 It shall be unlawful for any public market to be operated
2 in this state without first having obtained from the
3 commissioner of agriculture of West Virginia a permit
4 therefor. Upon the filing of an application for such permit,
5 the commissioner shall fix a time and place for hearing
6 thereon and, after hearing, if it appear that the public interest
7 require the same and that there is sufficient need for such
8 market in the locality in which it is proposed to be

9 established, shall grant such permit, or deny the same if the
10 contrary appear: *Provided*, That the commissioner shall take
11 final action upon all completed permit applications within
12 thirty days of receipt if the application is uncontested, or
13 within ninety days if the application is contested.

ARTICLE 9A. FEEDING OF UNTREATED GARBAGE TO SWINE.

§19-9A-3. Application for permit.

1 Any person desiring to obtain a permit to feed garbage
2 to swine or to renew the same shall make written application
3 therefor to the commissioner on forms provided by the
4 commissioner. The commissioner shall take final action
5 upon all completed permit applications within thirty days of
6 receipt if the application is uncontested, or within ninety
7 days if the application is contested.

ARTICLE 12D. WEST VIRGINIA NOXIOUS WEED ACT.

§19-12D-7. Prohibited acts; permits; authority to stop sale or delivery.

1 (a) No person shall violate any provision of this law or
2 any rule promulgated thereunder.

3 (b) No person shall move, transport, deliver, ship or
4 offer for shipment into or within this state any noxious weed
5 without first obtaining a permit from the commissioner and
6 such permit shall be issued only after it has been determined
7 that the noxious weed is generally present throughout the
8 state or is for scientific purposes subject to prescribed
9 safeguards: *Provided*, That the division shall take final
10 action upon all completed permit applications within thirty
11 days of receipt if the application is uncontested, or within
12 ninety days if the application is contested.

13 (c) The commissioner, in order to prevent the
14 introduction or dissemination of noxious weeds, is hereby
15 authorized to stop delivery, stop sale, seize, destroy, treat,

16 or order returned to the point of origin, at the owner's
17 expense, any noxious weed, article or substance,
18 whatsoever, if it is being transported or moved within this
19 state, or if it exists on any premises within the state, or if it
20 is being brought into this state from any place outside
21 thereof, if such is found by him or her to be infested with
22 any noxious weed subject to this article.

ARTICLE 15. WEST VIRGINIA FERTILIZER LAW.

§19-15-2. Registration.

1 (a) Any person or persons whose name appears upon the
2 label of any regulated product as manufacturer or distributor
3 shall obtain a permit to distribute in the state prior to
4 distributing the regulated product. The application for
5 registration shall be submitted to the commissioner on
6 forms furnished or approved by the commissioner, and shall
7 be accompanied by a fee established by legislative rule:
8 *Provided*, That the commissioner shall take final action
9 upon all completed permit applications within thirty days of
10 receipt if the application is uncontested, or within ninety
11 days if the application is contested.

12 (b) Each brand or grade of regulated product shall be
13 registered before being distributed in this state. The
14 application for registration shall be submitted to the
15 commissioner on forms furnished or approved by the
16 commissioner, and shall be accompanied by a fee
17 established by legislative rule. Upon approval by the
18 commissioner a copy of the registration shall be furnished
19 to the applicant. All registrations expire on June 30 of the
20 following year.

21 The application for fertilizer, soil amendment or
22 horticultural growing medium shall include the following
23 information:

24 (1) The net weight;

25 (2) The brand and, in the case of fertilizer when primary
26 nutrients are claimed, the grade;

27 (3) The guaranteed analysis, or other information
28 related to ingredients, guaranteed analysis of ingredients,
29 percentages of ingredients, source of ingredients, physical
30 components, physical properties or nutrient analysis as the
31 commissioner may require;

32 (4) The purpose of the product;

33 (5) Directions for application; and

34 (6) The name and address of the registrant.

35 (c) A distributor is not required to register any regulated
36 product which is already registered under this article by
37 another person, providing the label does not differ in any
38 respect.

39 (d) A distributor is not required to register each grade of
40 regulated product formulated according to specifications
41 which are furnished by a consumer prior to mixing, but is
42 required to register his or her firm in a manner and at a fee
43 established by legislative rule, and to label the regulated
44 product as provided in subsection (c), section three of this
45 article.

46 (e) Any person applying for registration of a fertilizer or
47 specialty fertilizer, soil amendment or horticultural growing
48 medium shall include with the application a label and any
49 advertising literature.

50 (f) The commissioner may require proof of any claims
51 made for any regulated product. If no claims are made, he
52 or she may require proof of the usefulness and value of the
53 regulated product. For evidence of proof the commissioner
54 may rely on experimental data, evaluations or advice
55 supplied from such sources as the director of the agricultural
56 experiment station. The experimental design shall be related
57 to state conditions for which the product is intended. The

58 commissioner may accept or reject other sources of proof as
59 additional evidence in evaluating regulated products.

60 (g) If the commissioner identifies any unregistered
61 regulated product in commerce or any regulated product
62 from any nonregistered manufacturer or distributor during
63 the registration year, the commissioner shall give the
64 grantor a grace period of fifteen working days from issuance
65 of notification within which to register the regulated product
66 or distributor. Any person required to register regulated
67 products or as a distributor, who fails to register within the
68 grace period shall pay to the commissioner a penalty fee as
69 established by legislative rule in addition to the registration
70 fee. The commissioner may issue an embargo order on any
71 regulated product until the registration is issued.

72 (h) Exemptions for horticultural growing medium:

73 (1) Distribution of horticultural growing media planted
74 with live plant material is exempt from the labeling and
75 registration requirements of this article.

76 (2) Distribution of custom media is exempt from the
77 registration requirements of this article, if it is prepared for
78 a single end user.

79 (3) Distribution of horticultural growing media
80 containing plant nutrients of three percent or less are exempt
81 from the requirements of this article.

ARTICLE 34. DANGEROUS WILD ANIMALS ACT.

§19-34-6. Permit applications, requirements, issuance and revocation.

1 (a) *Application.* — A person applying for a permit to
2 possess a dangerous wild animal shall submit an application
3 that includes the following:

4 (1) A fee established by the board for each dangerous
5 wild animal;

6 (2) The name, address and telephone number of the
7 applicant, and the address where the dangerous wild animal
8 is located;

9 (3) A description of each dangerous wild animal,
10 including the scientific name, common name, permanent
11 and unique identifier, and any information that would aid in
12 the identification of the animal; and

13 (4) A description of the exact location on the property
14 and a description of the enclosure or cage where each
15 dangerous wild animal is kept.

16 (b) *Permit requirements and restrictions.* — The
17 application shall state, and the person shall acknowledge his
18 or her understanding, that:

19 (1) He or she may not breed, receive or replace a
20 dangerous wild animal;

21 (2) He or she shall notify the sheriff or humane officer
22 in his or her county immediately if the dangerous wild
23 animal escapes;

24 (3) He or she may not allow the dangerous wild animal
25 to come into physical contact with a person other than the
26 permittee, the animal's designated handler, an employee of
27 a law-enforcement agency enforcing this article or a
28 veterinarian administering medical treatment or care;

29 (4) He or she has not been convicted for an offense
30 involving the abuse or neglect of any animal;

31 (5) He or she has not had a permit or license concerning
32 the care, possession, exhibition, breeding or sale of a
33 dangerous wild animal revoked or suspended by a
34 governmental agency;

35 (6) He or she shall permanently mark each dangerous
36 wild animal with a unique identifier;

37 (7) He or she shall maintain records for each dangerous
38 wild animal, including veterinary records, acquisition
39 papers, the purchase date and other records that prove
40 ownership of the dangerous wild animal;

41 (8) He or she presents proof of liability insurance in an
42 amount of not less than \$300,000 with a deductible of not
43 more than \$250 for each occurrence of property damage,
44 bodily injury or death caused by a dangerous wild animal
45 possessed by the person;

46 (9) He or she shall notify the board not less than three
47 days before a dangerous wild animal is transferred to
48 another person out of state;

49 (10) He or she may not transfer dangerous wild animals
50 in the state without the written consent of the board;

51 (11) He or she shall notify the board of any plans to
52 move or change his or her address, and may not move the
53 animal without the written consent of the board. However,
54 in the event of a medical emergency, a dangerous wild
55 animal may be transported to a licensed veterinarian's
56 facility for treatment and care if the animal is at all times
57 confined sufficiently to prevent escape; and

58 (12) He or she shall comply with all rules promulgated
59 by the board pursuant to the provisions of this article.

60 (c) The board may issue a permit to possess a dangerous
61 wild animal if it determines that the applicant has met the
62 requirements of this article.

63 (d) The board shall take final action upon all completed
64 permit applications within thirty days of receipt if the
65 application is uncontested, or within ninety days if the
66 application is contested.

67 (e) A permit to possess a dangerous wild animal is valid
68 for one calendar year and must be renewed annually.

ARTICLE 35. FARMERS MARKETS.**§19-35-3. Farmers market vendor permit; scope.**

1 (a) Vendors at a farmers market selling farm and food
2 products that require a food establishment permit shall
3 apply for a uniform farmers market vendor permit and pay
4 the annual permit fee to the local health department in the
5 jurisdiction in which the farmers market is located. The
6 permit is valid in all counties in this state, and vendors are
7 not required to apply to more than one local health
8 department for a uniform farmers market vendor permit.
9 The uniform farmers market vendor permit shall be required
10 in lieu of the food establishment permit, notwithstanding
11 any other provisions of code or rule that require a food
12 establishment permit or any other permit from a local health
13 department: *Provided*, That the department shall take final
14 action upon all completed permit applications within thirty
15 days of receipt if the application is uncontested, or within
16 ninety days if the application is contested.

17 (b) The application must include any other farmers
18 market locations under the jurisdiction of another local
19 health department that the vendor will sell farm and food
20 products subject to the permit. The local health department
21 which approves the application for the uniform farmers
22 market vendor permit shall provide notice of the approval
23 to any other local health departments that the vendor will be
24 subject to, as indicated on the application.

25 (c) (1) The annual permit fee for the uniform farmers
26 market vendor permit is as follows:

27 (A) For vendors selling farm and food products under
28 the jurisdiction of only one local health department, the
29 annual fee is \$15.

30 (B) For vendors selling farm and food products under
31 the jurisdiction of more than one local health department,
32 the annual fee is \$25.

33 (2) The annual permit fee shall be collected and
34 deposited in accordance with subsection (6), section eleven,
35 article two, chapter sixteen of this code.

36 (d) The following vendors are exempt from the
37 requirements of the uniform farmers market vendor permit:

38 (1) Vendors delivering their products to a consignment
39 farmers market; or

40 (2) Vendors selling fresh, uncut produce or other any
41 other farm and food product not subject to a permit by a
42 local health department through rule or regulation.

43 (e) A consignment farmers market shall obtain a food
44 establishment permit issued by the local health department.

45 (f) Every uniform farmers market vendor permit shall
46 be displayed in a conspicuous manner.

47 (g) Notwithstanding the provisions of article two,
48 chapter sixteen of this code, a local health department has
49 the right to inspect and suspend the uniform farmers market
50 vendor permit for violation of rules or the local health
51 department regulations of a vendor at any farmers market in
52 its jurisdiction, or at the vendor's home or business address,
53 if it is in the inspecting local health department's
54 jurisdiction, regardless of what local health department
55 issued the uniform farmers market vendor permit.

56 (h) Nothing in this article eliminates or limits other state
57 and federal rules and regulations that apply to certain farm
58 and food products sold at a farmers market or a consignment
59 farmers market.

CHAPTER 20. NATURAL RESOURCES.

ARTICLE 3. FORESTS AND WILDLIFE AREAS.

**§20-3-5. Forest fire seasons; prohibited and permissible fires;
burning permits and fees; fire control measures; criminal
and civil penalties.**

1 (a) *Forest fire seasons.* — March 1 through May 31, and
2 October 1 through December 31 are designated as forest fire
3 seasons. During any fire season, a person may set on fire or
4 cause to be set on fire any forest land, or any grass, grain,
5 stubble, slash, debris, or other inflammable materials only
6 between five o'clock p.m. and seven o'clock a.m., at which
7 time the fire must be extinguished.

8 (b) *Permissible fires during forest fire seasons.* — The
9 following attended fires are permitted without a burning
10 permit unless there is a burning ban in effect:

11 (1) Small fires set for the purpose of food preparation,
12 or providing light or warmth around which all grass, brush,
13 stubble, or other debris has been removed for a distance of
14 ten feet from the fire; and

15 (2) Burning conducted at any time when the ground
16 surrounding the burning site is covered by one inch or more
17 of snow.

18 (c) *Burning permits.* — The director or his or her
19 designee may issue burning permits authorizing fires during
20 forest fire seasons that are otherwise prohibited by this
21 section. The permits shall state the requisite conditions and
22 time frame to prevent danger from the fire to life or
23 property: *Provided*, That the director or his or her designee
24 shall take final action upon all completed permit
25 applications within thirty days of receipt if the application
26 is uncontested, or within ninety days if the application is
27 contested.

28 (1) *Permit fees.* — Entities required to pay a permit fee
29 are those engaged in commercial, manufacturing, public
30 utility, mining and like activities. Agricultural activities are
31 exempt from paying the permit fee. The permit fee is \$125
32 per site and shall be deposited into the Division of Forestry
33 Fund (3081) to be used to administer the provisions of this
34 section. The permit fee covers the fire season during which
35 it is issued.

36 (2) Noncompliance with any condition of the permit is
37 a violation of this section. Any permit which was obtained
38 through willful misrepresentation is invalid and violates this
39 section.

40 (3) Permit holders shall take all necessary and adequate
41 precautions to confine and control fires authorized by the
42 permit. Failure to take action is a violation of this section
43 and is justification for the director to revoke the permit.

44 (d) *Fire control.* —

45 (1) With approval of the Governor, the director may
46 prohibit the starting of and require the extinguishment of
47 fire in any designated area, including fires permitted by this
48 section.

49 (2) With approval of the Governor, the director may
50 designate any forest area as a danger area, prohibit entry,
51 and declare conditional uses and prohibited areas of the
52 forest by proclamation at any time of the year. The
53 proclamation shall be furnished to newspapers, radio
54 stations and television stations that serve the designated area
55 and shall become effective after twenty-four hours. The
56 proclamation remains in effect until the director, with the
57 approval of the Governor, terminates it. The order shall
58 designate the time of termination, and notice of the order
59 shall be furnished to each newspaper, radio station and
60 television station that received a copy of the proclamation.

61 (3) Burning is not permitted by this section until all
62 inflammable material has been removed from around the
63 material to be burned and a safety strip of at least ten feet is
64 established to ensure that the fire will not escape.

65 (e) *Criminal and civil penalties.* — A person or entity
66 that violates this section is guilty of a misdemeanor and,
67 upon conviction, shall be fined not less than \$100 and not
68 more than \$1,000 for each violation. In addition to fines and
69 costs, a person or entity convicted of a violation of this

70 section shall pay a \$200 civil penalty to the division within
71 sixty days. The civil penalty shall be collected by the court
72 in which the person is convicted and forwarded to the
73 division and deposited in the Division of Forestry Fund
74 (3081) to be used to administer the provisions of this
75 section.

ARTICLE 7A. CAVE PROTECTION.

§20-7A-5. Archaeology; permits for excavation; how obtained; prohibitions; penalties.

1 (a) No person may excavate, remove, destroy, injure or
2 deface any historic or prehistoric ruins, burial grounds,
3 archaeological or paleontological site including saltpeter
4 workings, relics or inscriptions, fossilized footprints, bones
5 or any other such features which may be found in any cave.

6 (b) Notwithstanding the provisions of subsection (a) of
7 this section, a permit to excavate or remove archaeological,
8 paleontological, prehistoric and historic features may be
9 obtained from the director of natural resources. Such permit
10 shall be issued for a period of two years and may be renewed
11 at expiration. It is not transferable but this does not preclude
12 persons from working under the direct supervision of the
13 person holding the permit: *Provided*, That the director shall
14 take final action upon all completed permit applications
15 within thirty days of receipt if the application is
16 uncontested, or within ninety days if the application is
17 contested.

18 A person applying for such a permit must:

19 (1) Provide a detailed statement to the director of natural
20 resources giving the reasons and objectives for excavation
21 or removal and the benefits expected to be obtained from
22 the contemplated work.

23 (2) Provide data and results of any completed
24 excavation, study or collection at the first of each calendar
25 year.

26 (3) Obtain the prior written permission of the director of
27 natural resources if the site of the proposed excavation is on
28 state-owned lands and prior written permission of the owner
29 if the site of such proposed excavation is on privately owned
30 land.

31 (4) Carry the permit while exercising the privileges
32 granted.

33 A person who violates any provision of subsection (a)
34 of this section shall be guilty of a misdemeanor, and, upon
35 conviction thereof, shall be fined not less than \$100 nor
36 more than \$500, and may be imprisoned in the county jail
37 for not less than ten days nor more than six months. A
38 person who violates any of the provisions of subsection (b)
39 of this section shall be guilty of a misdemeanor, and, upon
40 conviction thereof, shall be fined not less than \$100 nor
41 more than \$500, and the permit herein authorized shall be
42 revoked.

CHAPTER 21. LABOR.

ARTICLE 10. AMUSEMENT RIDES AND AMUSEMENT ATTRactions SAFETY ACT.

§21-10-7. Issuance of permit; certificate of inspection; availability to public.

1 If, after inspection, an amusement ride or amusement
2 attraction is found to comply with the rules of the division,
3 the division shall issue a permit to operate. The permit shall
4 be in the form of a certificate of inspection and shall be kept
5 in the records of any operator or owner for a three-year
6 period and shall be readily accessible to the public for
7 inspection at any reasonable time at the carnival, fair or
8 event where the amusement ride or attraction is located. A
9 copy of the certificate, showing the last date of inspection,
10 shall be affixed to the amusement ride or amusement
11 attraction upon issuance: *Provided*, That the division shall
12 take final action upon all completed permit applications
13 within thirty days of receipt if the application is

14 uncontested, or within ninety days if the application is
15 contested.

ARTICLE 12. COMMERCIAL BUNGEE JUMPING SAFETY ACT.

§21-12-7. Issuance of permit; certificate of inspection; availability to public.

1 If, after inspection, a commercial bungee jumping site,
2 together with the jump platform and equipment, is found to
3 comply with the rules of the division, the division shall issue
4 a permit to operate. The permit shall be in the form of a
5 certificate of inspection and shall be kept in the records of
6 any operator or owner for a three-year period and shall be
7 readily accessible to the public for inspection at any
8 reasonable time at the commercial bungee jumping site or
9 where a commercial bungee jump is located. A copy of
10 certificate, showing the last date of inspection, shall be
11 affixed to the bungee jumping platform upon issuance, or at
12 any other location designated by the commissioner of the
13 Division of Labor: *Provided*, That the division shall take
14 final action upon all completed permit applications within
15 thirty days of receipt if the application is uncontested, or
16 within ninety days if the application is contested.

ARTICLE 15. ZIPLINE AND CANOPY TOUR RESPONSIBILITY ACT.

§21-15-10. Issuance of permit; certificate of inspection; availability to public.

1 If, after inspection, a zipline or canopy tour, is found to
2 comply with the rules of the division, the division shall issue
3 a permit to operate. The permit shall be in the form of a
4 certificate of inspection and shall be kept in the records of
5 any operator for a three-year period and shall be readily
6 accessible to the public for inspection at any reasonable time
7 at the zipline location. A copy of the certificate, showing the
8 last date of inspection, shall be affixed to the zipline upon
9 issuance, or at any other location designated by the

10 commissioner of the division: *Provided*, That the division
11 shall take final action upon all completed permit
12 applications within thirty days of receipt if the application
13 is uncontested, or within ninety days if the application is
14 contested.

CHAPTER 24A. COMMERCIAL MOTOR CARRIERS.

ARTICLE 3. CONTRACT CARRIERS BY MOTOR VEHICLES.

§24A-3-3. Permit.

1 (a) *Required; application; hearing; granting.* — It shall
2 be unlawful for any contract carrier by motor vehicle to
3 operate within this state without first having obtained from
4 the commission a permit. Upon the filing of an application
5 for such permit, the commission shall fix a time and place
6 for hearing thereon: *Provided*, That the commission may,
7 after giving notice as hereinafter provided and if no protest
8 is received, waive formal hearing on such application. Said
9 notice shall be by publication which shall state that formal
10 hearing may be waived in the absence of protest to such
11 application. Such notice shall be published as a Class I legal
12 advertisement in compliance with the provisions of article
13 three, chapter fifty-nine of this code, and the publication
14 area for such publication shall be the area of operation. Such
15 notice shall be published at least ten days prior to the date
16 of hearing, but not more than thirty days after the filing of
17 the completed application. After hearing or waiver of
18 hearing as aforesaid, as the case may be, the commission
19 shall grant or deny the permit prayed for or grant it for the
20 partial exercise only of the privilege sought, and may attach
21 to the exercise of the privilege granted by such permit such
22 terms and conditions as in its judgment are proper and will
23 carry out the purposes of this chapter. No permit shall be
24 granted unless the applicant has established to the
25 satisfaction of the commission that the privilege sought will
26 not endanger the safety of the public or unduly interfere with
27 the use of the highways or impair unduly the condition or
28 unduly increase the maintenance cost of such highways,

29 directly or indirectly, or impair the efficient public service
30 of any authorized common carrier or common carriers
31 adequately serving the same territory.

32 (b) *Rules and regulations; evidence at hearing.* — The
33 commission shall prescribe such rules and regulations as it
34 may deem proper for the enforcement of the provisions of
35 this section and may designate any of its employees to take
36 evidence at the hearing on any application for a permit and
37 submit findings of fact as a part of report or reports to be
38 made to the commission.

39 (c) *Permit not franchise, etc.; assignment or transfer.* —
40 No permit issued in accordance with the terms of this
41 chapter shall be construed to be either a franchise or
42 irrevocable or to confer any proprietary or property rights in
43 the use of the public highways. No permit issued under this
44 chapter shall be assigned or otherwise transferred without
45 the approval of the commission. Upon the death of a person
46 holding a permit, his or her personal representative or
47 representatives may operate under such permit while the
48 same remains in force and effect and, with the consent of
49 the commission, may transfer such permit.

50 (d) *Suspension, revocation or amendment.* — The
51 commission may at any time, for good cause, suspend and,
52 upon not less than fifteen days' notice to the grantee of any
53 permit and an opportunity to be heard, revoke or amend any
54 permit.

55 (e) *Notice of cessation or abandonment.* — Every
56 contract carrier by motor vehicle who shall cease operation
57 or abandon his or her rights under a permit issued shall
58 notify the commission within thirty days of such cessation
59 or abandonment.

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

ARTICLE 3. FIRE PREVENTION AND CONTROL ACT.

§29-3-12. Powers and duties of State Fire Marshal.

1 (a) *Enforcement of laws.* — The State Fire Marshal and
2 any other person authorized to enforce the provisions of this
3 article under the supervision and direction of the State Fire
4 Marshal has the authority to enforce all laws of the state
5 having to do with:

6 (1) Prevention of fire;

7 (2) The storage, sale and use of any explosive,
8 combustible or other dangerous article or articles in solid,
9 flammable liquid or gas form;

10 (3) The installation and maintenance of equipment of all
11 sorts intended to extinguish, detect and control fires;

12 (4) The means and adequacy of exit, in case of fire, from
13 buildings and all other places in which persons work, live or
14 congregate, from time to time, for any purpose, except
15 buildings used wholly as dwelling houses for no more than
16 two families;

17 (5) The suppression of arson; and

18 (6) Any other thing necessary to carry into effect the
19 provisions of this article including, but not limited to,
20 confiscating any materials, chemicals, items, or personal
21 property owned, possessed or used in direct violation of the
22 State Fire Code.

23 (b) *Assistance upon request.* — Upon request, the State
24 Fire Marshal shall assist any chief of any recognized fire
25 company or department. Upon the request of any federal
26 law-enforcement officer, state police officer, natural
27 resources police officer or any county or municipal law-
28 enforcement officer, the State Fire Marshal, any deputy
29 state fire marshal or assistant state fire marshal employed
30 pursuant to section eleven of this article and any person
31 deputized pursuant to subsection (j) of this section may
32 assist in the lawful execution of the requesting officer's

33 official duties: *Provided*, That the State Fire Marshal or
34 other person authorized to act under this subsection shall at
35 all times work under the direct supervision of the requesting
36 officer.

37 (c) *Enforcement of rules.* — The State Fire Marshal
38 shall enforce the rules promulgated by the State Fire
39 Commission as authorized by this article.

40 (d) *Inspections generally.* — The State Fire Marshal
41 shall inspect all structures and facilities, other than one- and
42 two-family dwelling houses, subject to the State Fire Code
43 and this article, including, but not limited to, state, county
44 and municipally owned institutions, all public and private
45 schools, health care facilities, theaters, churches and other
46 places of public assembly to determine whether the
47 structures or facilities are in compliance with the State Fire
48 Code.

49 (e) *Right of entry.* — The State Fire Marshal may, at all
50 reasonable hours, enter any building or premises, other than
51 dwelling houses, for the purpose of making an inspection
52 which he or she may consider necessary under the
53 provisions of this article. The State Fire Marshal and any
54 deputy state fire marshal or assistant state fire marshal
55 approved by the State Fire Marshal may enter upon any
56 property, or enter any building, structure or premises,
57 including dwelling houses during construction and prior to
58 occupancy, for the purpose of ascertaining compliance with
59 the conditions set forth in any permit or license issued by
60 the office of the State Fire Marshal pursuant to subdivision
61 (1), subsection (a), section twelve-b of this article or of
62 article three-b of this chapter.

63 (f) *Investigations.* — The State Fire Marshal may, at any
64 time, investigate as to the origin or circumstances of any fire
65 or explosion or attempt to cause fire or explosion occurring
66 in the state. The State Fire Marshal has the authority at all
67 times of the day or night, in performance of the duties
68 imposed by the provisions of this article, to investigate

69 where any fires or explosions or attempt to cause fires or
70 explosions may have occurred, or which at the time may be
71 burning. Notwithstanding the above provisions of this
72 subsection, prior to entering any building or premises for the
73 purposes of the investigation, the State Fire Marshal shall
74 obtain a proper search warrant: *Provided*, That a search
75 warrant is not necessary where there is permissive waiver or
76 the State Fire Marshal is an invitee of the individual having
77 legal custody and control of the property, building or
78 premises to be searched.

79 (g) *Testimony*. — The State Fire Marshal, in making an
80 inspection or investigation when in his or her judgment the
81 proceedings are necessary, may take the statements or
82 testimony under oath of all persons who may be cognizant
83 of any facts or have any knowledge about the matter to be
84 examined and inquired into and may have the statements or
85 testimony reduced to writing; and shall transmit a copy of
86 the statements or testimony so taken to the prosecuting
87 attorney for the county wherein the fire or explosion or
88 attempt to cause a fire or explosion occurred.
89 Notwithstanding the above, no person may be compelled to
90 testify or give any statement under this subsection.

91 (h) *Arrests; warrants*. — The State Fire Marshal, any
92 full-time deputy fire marshal or any full-time assistant fire
93 marshal employed by the State Fire Marshal pursuant to
94 section eleven of this article is hereby authorized and
95 empowered and any person deputized pursuant to
96 subsection (j) of this section may be authorized and
97 empowered by the State Fire Marshal:

98 (1) To arrest any person anywhere within the confines
99 of the State of West Virginia, or have him or her arrested,
100 for any violation of the arson-related offenses of article
101 three, chapter sixty-one of this code or of the explosives-
102 related offenses of article three-e of said chapter: *Provided*,
103 That any and all persons so arrested shall be forthwith
104 brought before the magistrate or circuit court.

105 (2) To make complaint in writing before any court or
106 officer having jurisdiction and obtain, serve and execute an
107 arrest warrant when knowing or having reason to believe
108 that anyone has committed an offense under any provision
109 of this article, of the arson-related offenses of article three,
110 chapter sixty-one of this code or of the explosives-related
111 offenses of article three-e of said chapter. Proper return shall
112 be made on all arrest warrants before the tribunal having
113 jurisdiction over the violation.

114 (3) To make complaint in writing before any court or
115 officer having jurisdiction and obtain, serve and execute a
116 warrant for the search of any premises that may possess
117 evidence or unlawful contraband relating to violations of
118 this article, of the arson-related offenses of article three,
119 chapter sixty-one of this code or of the explosives-related
120 offenses of article three-e of said chapter. Proper return shall
121 be made on all search warrants before the tribunal having
122 jurisdiction over the violation.

123 (i) *Witnesses and oaths.* — The State Fire Marshal is
124 empowered and authorized to issue subpoenas and
125 subpoenas duces tecum to compel the attendance of persons
126 before him or her to testify in relation to any matter which
127 is, by the provision of this article, a subject of inquiry and
128 investigation by the State Fire Marshal and cause to be
129 produced before him or her such papers as he or she may
130 require in making the examination. The State Fire Marshal
131 is hereby authorized to administer oaths and affirmations to
132 persons appearing as witnesses before him or her. False
133 swearing in any matter or proceeding aforesaid is
134 considered perjury and is punishable as perjury.

135 (j) *Deputizing members of fire departments in this state.*
136 — The State Fire Marshal may deputize a member of any
137 fire department, duly organized and operating in this state,
138 who is approved by the chief of his or her department and
139 who is properly qualified to act as his or her assistant for the
140 purpose of making inspections with the consent of the
141 property owner or the person in control of the property and

142 the investigations as may be directed by the State Fire
143 Marshal, and the carrying out of orders as may be prescribed
144 by him or her, to enforce and make effective the provisions
145 of this article and any and all rules promulgated by the State
146 Fire Commission under authority of this article: *Provided*,
147 That in the case of a volunteer fire department, only the
148 chief thereof or his or her single designated assistant may be
149 so deputized.

150 (k) *Written report of examinations.* — The State Fire
151 Marshal shall, at the request of the county commission of
152 any county or the municipal authorities of any incorporated
153 municipality in this state, make to them a written report of
154 the examination made by him or her regarding any fire
155 happening within their respective jurisdictions.

156 (l) *Report of losses by insurance companies.* — It is the
157 duty of each fire insurance company or association doing
158 business in this state, within ten days after the adjustment of
159 any loss sustained by it that exceeds \$1,500, to report to the
160 State Fire Marshal information regarding the amount of
161 insurance, the value of the property insured and the amount
162 of claim as adjusted. This report is in addition to any
163 information required by the State Insurance Commissioner.
164 Upon the request of the owner or insurer of any property
165 destroyed or injured by fire or explosion, or in which an
166 attempt to cause a fire or explosion may have occurred, the
167 State Fire Marshal shall report in writing to the owner or
168 insurer the result of the examination regarding the property.

169 (m) *Issuance of permits and licenses.* — The State Fire
170 Marshal is authorized to issue permits, documents and
171 licenses in accordance with the provisions of this article or
172 of article three-b of this chapter: *Provided*, That unless
173 otherwise provided, the State Fire Marshall shall take final
174 action upon any completed permit applications within thirty
175 days of receipt if the application is uncontested, or within
176 ninety days if the application is contested. The State Fire
177 Marshal may require any person who applies for a permit to
178 use explosives, other than an applicant for a license to be a

179 pyrotechnic operator under section twenty-four of this
180 article, to be fingerprinted and to authorize the State Fire
181 Marshal to conduct a criminal records check through the
182 criminal identification bureau of the West Virginia State
183 Police and a national criminal history check through the
184 Federal Bureau of Investigation. The results of any criminal
185 records or criminal history check shall be sent to the State
186 Fire Marshal.

187 (n) *Issuance of citations for fire and life safety*
188 *violations.* — The State Fire Marshal, any deputy fire
189 marshal and any assistant fire marshal employed pursuant
190 to section eleven of this article are hereby authorized, and
191 any person deputized pursuant to subsection (j) of this
192 section may be authorized by the State Fire Marshal to issue
193 citations, in his or her jurisdiction, for fire and life safety
194 violations of the State Fire Code and as provided for by the
195 rules promulgated by the State Fire Commission in
196 accordance with article three, chapter twenty-nine-a of this
197 code: *Provided*, That a summary report of all citations
198 issued pursuant to this section by persons deputized under
199 subsection (j) of this section shall be forwarded monthly to
200 the State Fire Marshal in the form and containing
201 information as he or she may by rule require, including the
202 violation for which the citation was issued, the date of
203 issuance, the name of the person issuing the citation and the
204 person to whom the citation was issued. The State Fire
205 Marshal may at any time revoke the authorization of a
206 person deputized pursuant to subsection (j) of this section to
207 issue citations, if in the opinion of the State Fire Marshal,
208 the exercise of authority by the person is inappropriate.

209 Violations for which citations may be issued include,
210 but are not limited to:

- 211 (1) Overcrowding places of public assembly;
- 212 (2) Locked or blocked exits in public areas;
- 213 (3) Failure to abate a fire hazard;

214 (4) Blocking of fire lanes or fire department
215 connections; and

216 (5) Tampering with, or rendering inoperable except
217 during necessary maintenance or repairs, on-premise
218 firefighting equipment, fire detection equipment and fire
219 alarm systems.

220 (o) *Required training; liability coverage.* — No person
221 deputized pursuant to subsection (j) of this section may be
222 authorized to issue a citation unless that person has
223 satisfactorily completed a law-enforcement officer training
224 course designed specifically for fire marshals. The course
225 shall be approved by the Law-enforcement Training
226 Subcommittee of the Governor's Committee on Criminal
227 Justice and Highway Safety and the State Fire Commission.
228 In addition, no person deputized pursuant to subsection (j)
229 of this section may be authorized to issue a citation until
230 evidence of liability coverage of the person has been
231 provided, in the case of a paid municipal fire department by
232 the municipality wherein the fire department is located, or
233 in the case of a volunteer fire department, by the county
234 commission of the county wherein the fire department is
235 located or by the municipality served by the volunteer fire
236 department and that evidence of liability coverage has been
237 filed with the State Fire Marshal.

238 (p) *Penalties for violations.* — Any person who violates
239 any fire and life safety rule of the State Fire Code is guilty
240 of a misdemeanor and, upon conviction thereof, shall be
241 fined not less than \$100 nor more than \$1,000 or confined
242 in jail not more than ninety days, or both fined and confined.

243 Each and every day during which any violation of the
244 provisions of this article continues after knowledge or
245 official notice that same is illegal is a separate offense.

ARTICLE 29. VOLUNTEER FOR NONPROFIT YOUTH ORGANIZATIONS ACT.

§29-29-4. Exemption from professional licensure.

1 (a) Notwithstanding any other provision of this code,
2 any individual rendering services in this state in connection
3 with any event or program offered by the nonprofit youth
4 organization is exempt from obtaining an authorization to
5 practice from the appropriate licensing agency of this state
6 while providing services within the limits of his or her
7 authorization to practice, but is required to obtain a
8 nonprofit volunteer permit.

9 (b) The nonprofit youth organization may issue a
10 nonprofit volunteer permit to an applicant, who is a
11 registered volunteer of the nonprofit youth organization
12 serving as a volunteer, without compensation, in connection
13 with any event or program offered by the organization, if:

14 (1) All authorizations held by the medical services
15 applicant are valid, unrestricted without limitation or
16 condition and in good standing: *Provided*, That any medical
17 services applicant issued a permit pursuant to this article
18 shall:

19 (A) Not have prescriptive authority;

20 (B) Not dispense a Schedule II or Schedule III
21 controlled substance, but may dispense pharmaceutical
22 drugs in a manner consistent with the applicant's training
23 and experience; and

24 (C) At all times be subject to the direction of nonprofit
25 volunteer organization medical director.

26 (2) All authorizations held by the law-enforcement
27 applicant are valid, unrestricted without limitation or
28 condition and in good standing and the applicant is
29 deputized by the Superintendent of the West Virginia State
30 Police pursuant to subsection (e), section twelve, article
31 two, chapter fifteen of this code prior to rendering any law-
32 enforcement services: *Provided*, That:

33 (A) Any permit issued pursuant to this article shall not
34 supersede the authority or duty of a law-enforcement officer
35 certified pursuant to article twenty-nine, chapter thirty of
36 this code to preserve law and order on the premises;

37 (B) The Superintendent of the West Virginia State
38 Police has sole discretion in determining whether to
39 deputize any law-enforcement applicant; and

40 (C) The jurisdiction for a law-enforcement applicant
41 issued a permit pursuant to the provisions of this article shall
42 be limited to:

43 (i) The property owned by the nonprofit youth
44 organization;

45 (ii) Any street, road or thoroughfare, except controlled
46 access and open country highways, immediately adjacent to
47 or passing through the property owned by the nonprofit
48 youth organization; and

49 (iii) Areas of operations in support of an event
50 sponsored by the nonprofit youth organization.

51 (D) A law-enforcement applicant issued a permit
52 pursuant to the provisions of this article shall at all times be
53 subject to the direction of the Superintendent of the West
54 Virginia State Police.

55 (3) All authorizations held by the emergency medical
56 service applicant are valid, unrestricted without limitation
57 or condition and in good standing: *Provided*, That any
58 emergency medical service applicant issued a permit
59 pursuant to this article shall:

60 (A) Not have prescriptive authority;

61 (B) Not dispense a Schedule II or Schedule III
62 controlled substance, but may dispense pharmaceutical
63 drugs in a manner consistent with the applicant's training
64 and experience; and

65 (C) At all times be subject to the direction of nonprofit
66 volunteer organization medical director.

67 (c) Any services rendered by a permittee shall at all
68 times be performed under the guidelines and instructions of
69 the nonprofit volunteer organization.

70 (d) A nonprofit volunteer permit issued pursuant to the
71 provisions of this article may only be valid for a period not
72 to exceed ninety days in a calendar year.

73 (e) Unless otherwise provided, the nonprofit youth
74 organization shall take final action upon all completed
75 permit applications within thirty days of receipt if the
76 application is uncontested, or within ninety days if the
77 application is contested.

CHAPTER 47. REGULATION OF TRADE.

ARTICLE 1A. REGULATION AND CONTROL OF BEDDING AND UPHOLSTERY BUSINESSES.

*§47-1A-10. Sterilization processes; annual permits.

1 (a) Any sterilization process used in connection herewith
2 shall be approved by the commissioner. Every person desiring
3 to operate such sterilization process shall first obtain a
4 numbered permit from the commissioner and shall not operate
5 such process unless such permit is kept conspicuously posted
6 in his or her establishment. Application for such permit shall
7 be accompanied by the specifications for the sterilization
8 process to be employed by the applicant, in such form as the
9 commissioner shall require. The commissioner shall take final
10 action upon all completed permit applications within thirty
11 days of receipt if the application is uncontested, or within
12 ninety days if the application is contested. Such permit shall
13 expire one year from date of issue.

14 (b) The commissioner may revoke or suspend any
15 permit for violation of the provisions of this article. Upon
16 notification of such revocation or suspension, the person to
17 whom the permit was issued, or his or her successor or
18 assignee, shall forthwith return such permit to the
19 commissioner.

*NOTE: This section was also amended by S. B. 419 (Chapter 135),
which passed subsequent to this act.

CHAPTER 114

(Com. Sub. for S. B. 671 - By Senator Mann)

[Passed April 4, 2017; in effect ninety days from passage.]
[Approved by the Governor on April 18, 2017.]

AN ACT to amend and reenact §18B-4-8 of the Code of West Virginia, 1931, as amended, relating to the West Virginia Anatomical Board; providing that the board be reestablished under the authority of the Higher Education Policy Commission; modifying composition of the board; defining terms; modifying powers and responsibilities of the board; requiring the board to make requisition for, receiving and making disposition of dead human bodies for certain uses and purposes; requiring the board to keep full and complete records of certain information, which shall be open at all times for inspection of the Attorney General and any prosecuting attorney in the state; authorizing the Higher Education Policy Commission to promulgate legislative rules; providing that members of the board shall not be entitled to or receive compensation for services rendered in their capacity; requiring the board to operate in compliance with the Revised Anatomical Gift Act; eliminating requirement that certain dead human bodies buried at the public's expense be delivered to the board; eliminating procedures and requirements related to unclaimed bodies subject to requisition by the board; eliminating bond requirements of the board; and eliminating a criminal misdemeanor offense, penalties and the imposition of liability for certain conduct.

Be it enacted by the Legislature of West Virginia:

That §18B-4-8 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 4. GENERAL ADMINISTRATION.**§18B-4-8. West Virginia Anatomical Board; powers and duties relating to anatomical gifts; requisition of bodies; autopsies; transportation of bodies; expenses of preservation.**

1 (a) The West Virginia Anatomical Board, previously
2 created herein, is hereby reestablished under the authority
3 of the Higher Education Policy Commission and shall
4 consist of the following four members, or their designee:

5 (1) The Dean of the Marshall University School of
6 Medicine;

7 (2) The Dean of the West Virginia University School of
8 Medicine;

9 (3) The Dean of the West Virginia University School of
10 Dentistry; and

11 (4) The Dean of the West Virginia School of
12 Osteopathic Medicine.

13 (b) For purposes of this section:

14 (1) "Board" means the West Virginia Anatomical
15 Board; and

16 (2) "Commission" means the West Virginia Higher
17 Education Policy Commission.

18 (c) The responsibilities of the board shall include:

19 (1) Making requisition for, receiving and making
20 disposition of dead human bodies for the scientific and
21 educational uses and purposes of higher education
22 institutions within the state and elsewhere; and

23 (2) Keeping a full and complete record of its
24 transactions, showing, among other things, every dead
25 human body coming under its authority, giving name, sex,

26 age, date of death, place from which received and when and
27 from whom received, which record shall be open at all times
28 for the inspection of the Attorney General and any
29 prosecuting attorney in the state.

30 (d) The commission may promulgate legislative rules
31 pursuant to article three-a, chapter twenty-nine-a of this
32 code in order to effectuate the provisions of this section.

33 (e) Members of the board shall not be entitled to, or
34 receive, any compensation for services rendered in their
35 capacity as members of the board.

36 (f) The board shall operate in compliance with the
37 Revised Anatomical Gift Act under article nineteen, chapter
38 sixteen of this code.



CHAPTER 115

(Com. Sub. for S. B. 337 - By Senator Blair)

[Passed April 5, 2017; in effect from passage.]
[Approved by the Governor on April 20, 2017.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §25-1-11f, relating to authorizing the hiring of correctional officers without regard to his or her placement on the correctional officer register; and granting employment preference to otherwise qualified persons on a preference register.

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 §25-1-11f, to read as follows:

**ARTICLE 1. ORGANIZATION AND INSTITUTIONS AND
CORRECTIONS MANAGEMENT.****25-1-11f. Hiring of correctional officer without regard to
position on the register.**

1 Notwithstanding any provision of law to the contrary or
2 any rule promulgated under the provisions of this code, the
3 Division of Corrections may hire any person listed on the
4 Correctional Officer I Register for employment as a
5 Correctional Officer I without regard to the person's
6 position on said register: *Provided*, That no person on the
7 Correctional Officer I Register may be offered employment
8 or hired before an otherwise qualified person on a
9 preference register who is willing to accept the position.

CHAPTER 116**(S. B. 495 - By Senator Blair)**

[Passed April 4, 2017; in effect ninety days from passage.]
[Approved by the Governor on April 21, 2017.]

AN ACT to amend and reenact §29-5A-1, §29-5A-6, §29-5A-15, §29-5A-16, §29-5A-20 and §29-5A-24 of the Code of West Virginia, 1931, as amended, all relating to regulation of events by the State Athletic Commission; authorizing the commission in limited circumstances to approve certain event changes in writing; providing for the designation and payment of a scorekeeper; clarifying the authority of the commission to designate inspectors for an event; and providing for licensing and rules regarding the regulation of amateur mixed martial arts.

Be it enacted by the Legislature of West Virginia:

That §29-5A-1, §29-5A-6, §29-5A-15, §29-5A-16, §29-5A-20 and §29-5A-24 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 5A. STATE ATHLETIC COMMISSION.

§29-5A-1. Creation of commission; members; officers; seal and rules.

1 The State Boxing Commission, heretofore created, is
2 hereby continued and renamed the State Athletic Commission.
3 The commission shall consist of five persons appointed by the
4 Governor, by and with the consent of the Senate, no more than
5 three of whom shall belong to the same political party and no
6 two of whom shall be residents of the same county at the same
7 time. One member shall have at least three years of experience
8 in the sport of boxing. One member shall have at least three
9 years of experience in the sport of mixed martial arts. One
10 member shall have at least three years of experience in the
11 health care industry as a licensed physician, registered nurse,
12 nurse practitioner or physicians' assistant. Two members shall
13 be citizen members who are not licensed under the provisions
14 of this article and who do not perform any services related to
15 the persons regulated under this article. The members shall
16 serve without pay. At the expiration of the term of each
17 member, his or her successor shall be appointed by the
18 Governor for a term of four years. If there is a vacancy in the
19 board, the vacancy shall likewise be filled by appointment by
20 the Governor and the Governor shall likewise have the power
21 to remove any commissioner at his or her pleasure. Any three
22 members of the commission shall constitute a quorum for the
23 exercise of the power or authority conferred upon it. The
24 members of the commission shall, at the first meeting after
25 their appointment, elect one of their number chairman of the
26 commission and another of their number secretary of the
27 commission, shall adopt a seal for the commission and shall
28 make such rules for the administration of their office, not
29 inconsistent herewith, as they may consider expedient; and
30 they may hereafter amend or abrogate such rules. The
31 concurrence of at least three commissioners is necessary to

32 render a choice or decision of the commission except that,
33 notwithstanding the requirements of the Open Governmental
34 Proceedings Act, West Virginia Code § 6-9a-1 *et seq.*, a
35 quorum of the commission may vote in writing to approve
36 changes to the roster of participants or the roster of officials if
37 the need for the substitution(s) is made known to the
38 commission within forty-eight hours of an event that the
39 commission previously approved: *Provided*, That the
40 substitution(s) is necessary to effectuate the match: *Provided*,
41 *however*, That the written decision of the commission is
42 presented at the next scheduled meeting of the commission and
43 recorded in its minutes.

§29-5A-6. Payment of official in charge.

1 The deputy, inspector or other officials designated by the
2 commission to be in charge of a boxing or mixed martial arts
3 event shall be paid by the promoter at a minimum rate of \$75
4 per day for services performed prior to any event at a weigh-in
5 and each day of an event: *Provided*, That not more than one
6 official designated by the commission to be in charge of a
7 boxing or mixed martial arts event may receive compensation
8 for services performed. If a weigh-in occurs within three hours
9 before the boxing bouts are scheduled to begin, the deputy,
10 inspector or other officials will be paid only one rate at a
11 minimum of \$75 for that particular night or day's events.
12 Judges, timekeepers, scorekeepers and inspectors shall be paid
13 by the promoter at a minimum rate of \$50 per day for services
14 performed prior to any event and each day of an event.
15 Referees shall be paid by the promoter at a minimum rate of
16 \$75 per day of bouts. Payments to the officials in charge,
17 judges, timekeepers, scorekeepers, inspectors or referees
18 exceeding the amounts under this section are prohibited
19 without prior written consent of the promoter: *Provided*,
20 *however*, That the commission may revise any fees paid to
21 officials through legislative rule-making process beginning
22 June 30, 2018, and every three years thereafter. The
23 commission may not revoke an event permit or license for
24 refusal to pay a fee greater than the fees in this section:
25 *Provided further*, That approved officials are available, willing

26 and able to work the event for the proscribed fees. Deputies,
27 inspectors, judges, referees, timekeepers, scorekeepers or any
28 other officials designated by the commission to be in charge of
29 an event shall not accept, other than the fees proscribed herein,
30 any gift, pass or other thing of value in connection with any
31 event.

§29-5A-15. Reports by clubs to commission; bonds of applicants for license.

1 Every club, corporation, association or individual which
2 may hold or exercise any of the privileges conferred by this
3 article shall, within four business days after the
4 determination of any contest, furnish to the commission a
5 written report, duly verified by one of its officers, showing
6 the number of tickets sold for such contest and the amount
7 of the gross proceeds thereof, and such other matters as the
8 commission may prescribe. Before any license shall be
9 granted to any club, corporation, association or individual
10 to conduct, hold or give any boxing, sparring or exhibition,
11 such applicant therefor shall execute and file with the
12 commission a surety bond in the sum of which shall be at
13 the discretion of said commission, to be approved as to form
14 and the sufficiency of the security thereon by the said
15 commission. Such bond shall cover all purses, awards and
16 payments to be paid by the promoter.

§29-5A-16. Presence of members of commission or inspector at exhibitions and matches.

1 Each member of the commission shall have the
2 privilege of being present at all exhibitions and matches
3 without charge therefor, and shall, when present, see that the
4 rules are strictly observed, and may be present at the
5 counting of the gross receipts. The commission may appoint
6 an inspector to be present representing said commission,
7 which inspector shall have the same privilege hereby
8 conferred upon a member of the commission; and said
9 inspector shall immediately mail to the commission the
10 official box office statement received by him or her from the
11 officers of the club.

§29-5A-20. Licenses for contestants, referees and managers.

1 No contestant, trainer, inspector, referee or professional
2 manager may take part in any boxing contest or exhibition
3 unless holding a license from the state that is issued by the
4 commission upon payment of the following annual license
5 fee schedule: Professional contestant \$25; amateur
6 contestant \$20; trainer \$20; inspector \$30; referee \$30; and
7 professional manager \$50. Semiprofessional contestants
8 shall pay a license fee of \$10 for each event. Such fees shall
9 accompany the application and shall be in the form of a
10 certified check or money order and shall be issued to the
11 Treasurer of the State of West Virginia to be deposited in
12 the State Athletic Commission Fund. If a license is not
13 granted, the Treasurer shall refund the full amount.

§29-5A-24. Rules governing contestants and matches.

1 (a) The commission shall propose rules for legislative
2 approval in accordance with the provisions of article three,
3 chapter twenty-nine-a of this code.

4 (b) The commission shall propose such rules to regulate
5 professional and semiprofessional boxers, professional or
6 amateur mixed martial artists, professional and
7 semiprofessional boxing matches and exhibitions and
8 professional or amateur mixed martial arts matches and
9 exhibitions: *Provided*, That for professional boxers and boxing
10 matches and exhibitions, the commission rules shall comply
11 with the current unified rules of boxing as adopted by the
12 Association of Boxing Commissions; for professional mixed
13 martial artists and mixed martial arts matches and exhibitions,
14 the commission rules shall comply with the current unified
15 rules of mixed martial arts as adopted by the Association of
16 Boxing Commissions; for amateur boxers and boxing matches
17 or exhibitions, the commission rules shall comply with the
18 amateur rules for boxing as adopted by the United States
19 Amateur Boxing Authority; and for amateur mixed martial
20 artists and mixed martial arts matches or exhibitions, the
21 commission rules shall comply with the current unified rules
22 of mixed martial arts as recommended and/or adopted by the
23 Association of Boxing Commissions. For full contact boxing

24 and other boxing events that follow nontraditional rules, rules
25 guaranteeing the safety of the participants and the fair and
26 honest conducting of the matches or exhibitions are
27 authorized.

28 (c) The commission shall propose separate rules for
29 amateur boxers and amateur boxing, sparring matches and
30 exhibitions as follows:

31 Rules which comply with the requirements of the rules of
32 the current United States Amateur Boxing Authority to the
33 extent that any boxer complying with them will be eligible to
34 participate in any state, national or international boxing match
35 sanctioned by the current United States Amateur Boxing
36 Authority or the International Amateur Boxing Association.

CHAPTER 117

**(H. B. 3106 - By Delegates Barrett, Gearheart,
Storch, Ambler, Espinosa, Rowe, Walters, Westfall,
Sponaugle, Ellington and A. Evans)**

[Passed March 31, 2017; in effect ninety days from passage.]
[Approved by the Governor on April 10, 2017.]

AN ACT to amend and reenact §29-22B-1101 and §29-22B-1201 of the Code of West Virginia, 1931, as amended, relating to increasing number of limited video lottery terminals allowed at a licensed limited video lottery retailer; requiring Lottery Commission to conduct a bid for current permit holders prior to September 1, 2017; requiring that a public hearing be conducted prior to the placement of certain video lottery terminals; and requiring the reduction of the number of approved locations of video lottery terminals.

Be it enacted by the Legislature of West Virginia:

That §29-22B-1101 and §29-22B-1201 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 22B. LIMITED VIDEO LOTTERY.

PART 11. ALLOCATION AND DISTRIBUTION OF VIDEO LOTTERY TERMINALS.

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

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

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

9 (c) No licensed limited video lottery retailer may be
10 authorized to have on the premises for which the license was
11 issued more than seven video lottery terminals except that a
12 fraternal society or veterans' organization that is: (A) A
13 fraternal beneficiary society that is exempt from federal
14 income tax under section 501(c)(8) of the Internal Revenue
15 Code of 1986, as amended; (B) a domestic fraternal society
16 that is exempt from federal income tax under section
17 501(c)(10); or (C) a veterans' organization that is exempt
18 from federal income tax under section 501(c)(19) of the
19 Internal Revenue Code may be authorized to have on the
20 premises for which the license was issued not more than ten
21 video lottery terminals.

22 (d) Pursuant to the increase of the number of video
23 lottery terminals authorized in subsection c of this section,
24 effective 2017, the commission shall conduct a bidding
25 process no later than September 1, 2017, for permits for
26 additional terminals. Any permits for which a successful

27 bid is made shall expire June 30, 2021. The bidding process
28 is open to current permit holders only and which shall be
29 conducted in accordance with sections one thousand one
30 hundred six, one thousand one hundred seven and one
31 thousand one hundred nine of this article.

PART 12. PLACEMENT AND TRANSPORTATION OF
VIDEO LOTTERY TERMINALS.

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

1 (a) Video lottery terminals allowed by this article may
2 be placed only in licensed limited video lottery locations
3 approved by the commission: *Provided*, That prior to the
4 approval of the placement of a video lottery terminal
5 operated pursuant to a permit issued after December 31,
6 2017, the commission shall hold one or more public
7 hearings at which interested persons may express their
8 views on the proposed video lottery locations pursuant to
9 subsection (b) of this section.

10 (b) *Public Hearing.*

11 (1) *Notice of public hearing.* – Notice of the public
12 hearing or hearings shall be published as a Class II legal
13 advertisement at the expense of the permittee, in a form
14 acceptable to the commission, and accordance with the
15 requirements of article three, chapter fifty-nine of this code.
16 The published notice shall include, at a minimum:

17 (A) The date, time, place and purpose of the public
18 hearing or hearings; and

19 (B) The proposed location of a video lottery terminal.

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

22 (1) The video lottery terminals shall be continuously
23 monitored through the use of a closed circuit television
24 system capable of identifying players and terminal faces and

25 of recording activity for a continuous twenty-four hour
26 period. All video tapes or other recording medium approved
27 in writing by the commission shall be retained for a period
28 of at least sixty days and be available for viewing by an
29 authorized representative of the commission or the
30 commissioner of alcohol beverage control. The cost of
31 monitoring shall be paid by the limited video lottery retailer;

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

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

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

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

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

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

55 (g) Notwithstanding any other provision of this article
56 to the contrary, during any bidding pursuant to section 1107
57 of this article occurring after June 30, 2021, the commission

58 shall reduce the number of licensed limited video lottery
59 locations to a number less than one thousand two hundred
60 and fifty.

CHAPTER 118

**(H. B. 2833 - By Delegates Howell, Frich, Dean, Hill,
G. Foster, Martin, Hamrick, Arvon, Criss, Lewis and
Sypolt)**

[Passed April 6, 2017; in effect ninety days from passage.]
[Approved by the Governor on April 21, 2017.]

AN ACT to amend and reenact §30-1-12 of the Code of West Virginia, 1931, as amended, relating to specifying the contents and categories of information for inclusion in annual reports to be submitted by professional licensing boards.

Be it enacted by the Legislature of West Virginia:

That §30-1-12 of the Code of West Virginia, 1931, be amended and reenacted to read as follows:

**ARTICLE 1. GENERAL PROVISIONS APPLICABLE TO
ALL STATE BOARDS OF EXAMINATION OR
REGISTRATION REFERRED TO IN CHAPTER.**

§30-1-12. Record of proceedings; register of applicants; certified copies of records prima facie evidence; report to Governor and Legislature; public access.

- 1 (a) The secretary of every board shall keep a record of
- 2 its proceedings and a register of all applicants for license or
- 3 registration, showing for each the date of his or her
- 4 application, his or her name, age, educational and other
- 5 qualifications, place of residence, whether an examination

6 was required, whether the applicant was rejected or a
7 certificate of license or registration granted, the date of this
8 action, the license or registration number, all renewals of the
9 license or registration, if required, and any suspension or
10 revocation thereof. The books and register of the board shall
11 be open to public inspection at all reasonable times, and the
12 books and register, or a copy of any part thereof, certified
13 by the secretary and attested by the seal of the board, shall
14 be prima facie evidence of all matters recorded therein.

15 (b) On or before January 1, of each year in which the
16 Legislature meets in regular session, the board shall submit
17 to the Governor and to the Legislature a report of its
18 activities for the preceding two years, containing the
19 following information for that period:

20 (1) The total receipts and disbursements for each year;

21 (2) A list of amounts received in each year for the
22 following categories of receipts:

23 (A) License applications, registrations and renewals;

24 (B) Examination fees, if applicable;

25 (C) Other fees, including late fees, copying charges and
26 fees for printed certificates;

27 (D) Fines or penalties;

28 (E) Expense reimbursements from disciplinary actions;
29 and

30 (F) Grants, special appropriations or other sources of
31 revenue not from fees;

32 (3) A list of amounts spent in each year for the following
33 categories of expenditures:

34 (A) Personal services;

35 (B) Board member per diem compensation;

- 36 (C) Travel expenses and automobile mileage;
- 37 (D) Professional contracts;
- 38 (E) Rent;
- 39 (F) Office supplies;
- 40 (G) Postage;
- 41 (H) Entertainment and hosting;
- 42 (I) Insurance; and
- 43 (J) Bank costs;
- 44 (4) A complete list of the names of all persons newly
45 licensed or registered;
- 46 (5) A table or list showing numbers of licensees or
47 registrants by West Virginia county of practice or, for out-
48 of-state licensees or registrants, by state of residence, and
49 by specialty, if appropriate to the particular profession;
- 50 (6) Complaints filed and investigations opened by the
51 board, with a brief classification of the nature of the
52 complaint, together with the dates of compliance with the
53 time requirements of subsection (c), section five of this
54 article, and the disposition, if any;
- 55 (7) In addition to complaints reported under the preceding
56 subsection, complaints resolved and investigations closed by
57 the board, with a brief classification of the nature of the
58 complaint, together with the dates of compliance with the time
59 requirements of subsection (c), section five of this article, and
60 the disposition, if any; and
- 61 (8) Copies of the agendas for, and minutes of, board and
62 committee or subcommittee meetings.
- 63 The report shall be certified by the president and the
64 secretary of the board, and a copy of the report shall be filed
65 with the Secretary of State and with the legislative librarian.

66 (c) To promote public access, the secretary of every
67 board shall ensure that the address and telephone number of
68 the board are included every year in the state government
69 listings of the Charleston area telephone directory. Every
70 board shall regularly evaluate the feasibility of adopting
71 additional methods of providing public access, including,
72 but not limited to, listings in additional telephone
73 directories, toll-free telephone numbers, facsimile and
74 computer-based communications.

CHAPTER 119

**(Com. Sub. for H. B. 2503 - By Delegates Ellington,
Summers, Dean, Rohrbach, Sobonya and Hollen)**

[Passed April 6, 2017; in effect ninety days from passage.]
[Approved by the Governor on April 26, 2017.]

AN ACT to repeal §30-14-15 of the Code of West Virginia, 1931,
as amended; and to amend and reenact §30-14-14 of said code,
relating to the rulemaking authority for Board of Osteopathic
Medicine.

Be it enacted by the Legislature of West Virginia:

That §30-14-15 of the Code of West Virginia, 1931, as
amended, be repealed; and that §30-14-14 of said code be
amended and reenacted, to read as follows:

ARTICLE 14. OSTEOPATHIC PHYSICIANS AND SURGEONS.

§30-14-14. Rulemaking.

1 (a) The board shall propose rules for legislative
2 approval, in accordance with article three, chapter twenty-
3 nine-a of this code, to implement the provisions of this
4 article, including:

- 5 (1) Standards and requirements for licenses and permits;
 - 6 (2) Procedures for examinations and reexaminations;
 - 7 (3) Requirements for third parties to prepare or
8 administer, or both, examinations and reexaminations;
 - 9 (4) Educational and experience requirements;
 - 10 (5) Standards for approval of courses and curriculum;
 - 11 (6) Procedures for the issuance and renewal of licenses
12 and permits;
 - 13 (7) A fee schedule;
 - 14 (8) Regulation of osteopathic medical corporations;
 - 15 (9) Regulation of profession limited liability companies;
 - 16 (10) Regulation of osteopathic physician assistants;
 - 17 (11) Continuing education requirements for licensees;
 - 18 (12) The standards for and limitations upon the
19 utilization of telemedicine technologies;
 - 20 (13) The procedures for denying, suspending,
21 restricting, revoking, reinstating or limiting the practice of
22 licensees and permittees;
 - 23 (14) Adopting a standard for ethics;
 - 24 (15) Requirements for revoked licenses or permits; and
 - 25 (16) Any other rules necessary to effectuate the
26 provisions of this article.
- 27 (b) All of the board's rules in effect and not in conflict
28 with these provisions shall remain in effect until they are
29 amended or rescinded.

CHAPTER 120

(S. B. 400 - By Senator Blair)

[Passed April 3, 2017; in effect ninety days from passage.]
[Approved by the Governor on April 14, 2017.]

AN ACT to amend and reenact §31-15A-3 of the Code of West Virginia, 1931, as amended, relating to eliminating an unnecessary and contradictory provision concerning appointments to the West Virginia Infrastructure and Jobs Development Council.

Be it enacted by the Legislature of West Virginia:

That §31-15A-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 15A. WEST VIRGINIA INFRASTRUCTURE AND JOBS DEVELOPMENT COUNCIL.

§31-15A-3. West Virginia Infrastructure and Jobs Development Council continued; members of council; staff of council.

1 (a) The West Virginia Infrastructure and Jobs
2 Development Council is continued. The council is a
3 governmental instrumentality of the state. The exercise by
4 the council of the powers conferred by this article and the
5 carrying out of its purpose and duties shall be considered
6 and held to be, and are determined to be, essential
7 governmental functions and for a public purpose.

8 (b) The council shall consist of thirteen members,
9 including:

10 (1) The Governor or designee;

11 (2) The Executive Director of the Housing Development
12 Fund or his or her designee;

13 (3) The Director of the Division of Environmental
14 Protection or his or her designee;

15 (4) The Director of the Economic Development
16 Authority or his or her designee;

17 (5) The Director of the Water Development Authority
18 or his or her designee;

19 (6) The Director of the Division of Health or his or her
20 designee;

21 (7) The Chairman of the Public Service Commission or
22 his or her designee; and

23 (8) Six members representing the general public:
24 *Provided*, That there shall be at least one member
25 representing the general public from each congressional
26 district. No more than one member representing the general
27 public may be a resident of the same county.

28 (c) The Governor shall appoint the public members of
29 the council who shall serve three-year staggered terms.

30 (d) The Commissioner of the Division of Highways, the
31 Executive Director of the State Rail Authority, two
32 members of the West Virginia Senate, two members of the
33 West Virginia House of Delegates, the Chancellor of the
34 Higher Education Policy Commission and the Chancellor of
35 the West Virginia Council for Community and Technical
36 College Education serve as advisory members of the
37 council. The advisory members shall be *ex officio*,
38 nonvoting members of the council.

39 (e) The Governor shall appoint the legislative members
40 of the council: *Provided*, That no more than three of the
41 legislative members may be of the same political party.

42 (f) The Governor or designee shall serve as chairman
43 and the council shall annually appoint a vice chairperson
44 and shall appoint a secretary, who need not be a member of
45 the council and who shall keep records of its proceedings.
46 Seven members of the council shall constitute a quorum and
47 the affirmative vote of at least the majority of those
48 members present shall be necessary for any action taken by
49 vote of the council. A vacancy in the membership of the
50 council does not impair the rights of a quorum by such vote
51 to exercise all the rights and perform all the duties of the
52 council.

53 (g) A member of the council who serves by virtue of his
54 or her office does not receive compensation or
55 reimbursement of expenses for serving as a member. The
56 public members are reimbursed for actual expenses incurred
57 in the service of the council in a manner consistent with
58 guidelines of the travel management office of the
59 Department of Administration.

60 (h) The council meets at least monthly to review
61 projects and infrastructure projects requesting funding
62 assistance and otherwise to conduct its business and may
63 meet more frequently if necessary. Notwithstanding any
64 other provision of this article to the contrary, the Economic
65 Development Authority is not subject to council review
66 with regard to any action taken pursuant to the authority
67 established in article fifteen, chapter thirty-one of this code.
68 The Governor's Civil Contingent Fund is not subject to
69 council review with regard to projects or infrastructure
70 projects funded through the Governor's Civil Contingent
71 Fund.

72 (i) The Water Development Authority shall provide
73 office space for the council and each governmental agency
74 represented on the council shall provide staff support for the
75 council in the manner determined appropriate by the
76 council.

77 (j) The council shall invite to each meeting one or more
78 representatives of the United States Department of
79 Agriculture, Rural Economic Community Development, the
80 United States Economic Development Agency and the
81 United States Army Corps of Engineers or any successors
82 thereto. The council shall invite other appropriate parties as
83 is necessary to effectuate the purposes of this article.

CHAPTER 121

**(Com. Sub. for H. B. 2767 - By Delegates O'Neal,
Hanshaw, Sobonya, Hollen, Moore, Kessinger,
Summers, Fast, Overington and G. Foster)**

[Passed April 7, 2017; in effect ninety days from passage.]
[Approved by the Governor on April 25, 2017.]

AN ACT to amend and reenact §31B-1-111 of the Code of West Virginia, 1931, as amended; to amend and reenact §31D-5-504 of said code; to amend and reenact §31E-5-504 of said code; to amend and reenact §47-9-4 of said code; and to amend and reenact §56-3-31, §56-3-33, §56-3-33a and §56-3-34 of said code, all relating to required service of process procedures for the Secretary of State generally; modifying service of process procedures for when Secretary of State acts as an agent for limited liability companies, certain corporations, limited partnerships, and certain nonresidents of the state; requiring the Secretary of State to create a preservation duplicate of certain refused or undeliverable process, notice or demand; authorizing the Secretary of State to destroy or otherwise dispose of original returned or undeliverable mail; and requiring the Secretary of State provide written notice of such action to the circuit clerk's office of the court from which certain process, notice or demand was issued by certified mail, facsimile or by electronic mail.

Be it enacted by the Legislature of West Virginia:

That §31B-1-111 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §31D-5-504 of said code be amended and reenacted; that §31E-5-504 of said code be amended and reenacted; that §47-9-4 of said code be amended and reenacted; and that §56-3-31, §56-3-33, §56-3-33a and §56-3-34 of said code be amended and reenacted, all to read as follows:

CHAPTER 31B. UNIFORM LIMITED LIABILITY COMPANY ACT.

ARTICLE 1. GENERAL PROVISIONS.

§31B-1-111. Service of process.

1 (a) An agent for service of process appointed by a
2 limited liability company or a foreign limited liability
3 company is an agent of the company for service of any
4 process, notice or demand required or permitted by law to
5 be served upon the company.

6 (b) If a limited liability company or foreign limited
7 liability company fails to appoint or maintain an agent for
8 service of process in this state or the agent for service of
9 process cannot with reasonable diligence be found at the
10 agent's address, the Secretary of State is an agent of the
11 company upon whom process, notice or demand may be
12 served.

13 (c) Service of any process, notice or demand on the
14 Secretary of State may be made by delivering to and
15 leaving with the Secretary of State, the assistant Secretary
16 of State or clerk having charge of the limited liability
17 company department of the Secretary of State, the
18 original process, notice or demand and two copies thereof
19 for each defendant, along with the fee required by section
20 two, article one, chapter fifty-nine of this code. No
21 process, notice or demand may be served on or accepted
22 by the Secretary of State less than ten days before the
23 return day thereof. The Secretary of State, upon being

24 served with or accepting any process, notice or demand,
25 shall: (1) File in his or her office a copy of the process,
26 notice or demand, endorsed as of the time of service or
27 acceptance; and (2) transmit one copy of the process,
28 notice or demand by registered or certified mail, return
29 receipt requested, by a means which may include
30 electronic issuance and acceptance of electronic return
31 receipts, to the limited liability company's registered
32 agent: *Provided*, That if there is no registered agent, then
33 to the individual whose name and address was last given
34 to the Secretary of State's office as the person designated
35 to receive process, notice or demand. If no person has
36 been named, then to the principal office of the limited
37 liability company at the address last given to the
38 Secretary of State's office and if no address is available
39 on record with the Secretary of State then to the address
40 provided on the original process, notice or demand, if
41 available; and (3) transmit the original process, notice or
42 demand to the clerk's office of the court from which the
43 process, notice or demand was issued. Such service or
44 acceptance of process, notice or demand is sufficient if
45 the return receipt is signed by an agent or employee of
46 such company, or the registered or certified mail so sent
47 by the Secretary of State is refused by the addressee and
48 the registered or certified mail is returned to the Secretary
49 of State, showing the stamp of the United States Postal
50 Service that delivery thereof has been refused, and such
51 return receipt or registered or certified mail is received by
52 the Secretary of State by a means which may include
53 electronic issuance and acceptance of electronic return
54 receipts. After receiving verification from the United
55 States Postal Service that acceptance of process, notice or
56 demand has been signed, the Secretary of State shall
57 notify the clerk's office of the court from which the
58 process, notice or demand was issued by a means which
59 may include electronic notification. If the process, notice
60 or demand was refused or undeliverable by the United
61 States Postal Service the Secretary of State shall create a
62 preservation duplicate from which a reproduction of the

63 stored record may be retrieved which truly and accurately
64 depicts the image of the original record. The Secretary of
65 State may destroy or otherwise dispose of the original
66 returned or undeliverable mail. Written notice of the
67 action by the Secretary of State shall be provided by
68 certified mail, return receipt requested, facsimile, or by
69 electronic mail, to the clerk's office of the court from
70 which the process, notice or demand was issued. No
71 process, notice or demand may be served on the Secretary
72 of State or accepted by him or her less than ten days
73 before the return day of the process or notice. The court
74 may order continuances as may be reasonable to afford
75 each defendant opportunity to defend the action or
76 proceedings.

77 (d) The Secretary of State shall keep a record of all
78 processes, notices and demands served pursuant to this
79 section and record the time of and the action taken regarding
80 the service.

81 (e) This section does not affect the right to serve
82 process, notice or demand in any manner otherwise
83 provided by law.

CHAPTER 31D. WEST VIRGINIA BUSINESS CORPORATION ACT.

ARTICLE 5. OFFICE AND AGENT.

§31D-5-504. Service on corporation.

1 (a) A corporation's registered agent is the corporation's
2 agent for service of process, notice or demand required or
3 permitted by law to be served on the corporation.

4 (b) If a corporation has no registered agent, or the agent
5 cannot with reasonable diligence be served, the corporation
6 may be served by registered or certified mail, return receipt
7 requested, addressed to the secretary of the corporation at
8 its principal office. Service is perfected under this
9 subsection at the earliest of:

- 10 (1) The date the corporation receives the mail;
- 11 (2) The date shown on the return receipt, if signed on
12 behalf of the corporation; or
- 13 (3) Five days after its deposit in the United States mail,
14 as evidenced by the postmark, if mailed postpaid and
15 correctly addressed.
- 16 (c) In addition to the methods of service on a
17 corporation provided in subsections (a) and (b) of this
18 section, the Secretary of State is hereby constituted the
19 attorney-in-fact for and on behalf of each corporation
20 created pursuant to the provisions of this chapter. The
21 Secretary of State has the authority to accept service of
22 notice and process on behalf of each corporation and is an
23 agent of the corporation upon whom service of notice and
24 process may be made in this state for and upon each
25 corporation. No act of a corporation appointing the
26 Secretary of State as attorney-in-fact is necessary. Service
27 of any process, notice or demand on the Secretary of State
28 may be made by delivering to and leaving with the Secretary
29 of State the original process, notice or demand and two
30 copies of the process, notice or demand for each defendant,
31 along with the fee required by section two, article one,
32 chapter fifty-nine of this code: *Provided*, That with regard
33 to a class action suit in which all defendants are to be served
34 with the same process, notice or demand, service may be
35 made by filing with the Secretary of State the original
36 process, notice or demand and one copy for each named
37 defendant. Immediately after being served with or accepting
38 any process or notice, the Secretary of State shall: (1) File
39 in his or her office a copy of the process or notice, endorsed
40 as of the time of service or acceptance; (2) transmit one copy
41 of the process or notice by registered or certified mail, return
42 receipt requested, by a means which may include electronic
43 issuance and acceptance of electronic return receipts, to: (A)
44 The corporation's registered agent; or (B) if there is no
45 registered agent, to the individual whose name and address
46 was last given to the Secretary of State's office as the person

47 to whom notice and process are to be sent and if no person
48 has been named, to the principal office of the corporation as
49 that address was last given to the Secretary of State's office.
50 If no address is available on record with the Secretary of
51 State, then to the address provided on the original process,
52 notice or demand, if available; and (3) transmit the original
53 process, notice or demand to the clerk's office of the court
54 from which the process, notice or demand was issued.
55 Service or acceptance of process or notice is sufficient if
56 return receipt is signed by an agent or employee of the
57 corporation, or the registered or certified mail sent by the
58 Secretary of State is refused by the addressee and the
59 registered or certified mail is returned to the Secretary of
60 State, or to his or her office, showing the stamp of the United
61 States Postal Service that delivery has been refused, and the
62 return receipt or registered or certified mail is received by
63 the Secretary of State by a means which may include
64 electronic issuance and acceptance of electronic return
65 receipts. After receiving verification from the United States
66 Postal Service that acceptance of process, notice or demand
67 has been signed, the Secretary of State shall notify the
68 clerk's office of the court from which the process, notice or
69 demand was issued by a means which may include
70 electronic notification. If the process, notice or demand was
71 refused or undeliverable by the United States Postal Service
72 the Secretary of State shall create a preservation duplicate
73 from which a reproduction of the stored record may be
74 retrieved which truly and accurately depicts the image of the
75 original record. The Secretary of State may destroy or
76 otherwise dispose of the original returned or undeliverable
77 mail. Written notice of the action by the Secretary of State
78 must then be provided by certified mail, return receipt
79 requested, facsimile, or by electronic mail, to the clerk's
80 office of the court from which the process, notice or demand
81 was issued. No process or notice may be served on the
82 Secretary of State or accepted by him or her less than ten
83 days before the return day of the process or notice. The court
84 may order continuances as may be reasonable to afford each
85 defendant opportunity to defend the action or proceedings.

86 (d) This section does not prescribe the only means, or
87 necessarily the required means, of serving a corporation.

CHAPTER 31E. WEST VIRGINIA NONPROFIT CORPORATION ACT.

ARTICLE 5. OFFICE AND AGENT.

§31E-5-504. Service on corporation.

1 (a) A corporation's registered agent is the corporation's
2 agent for service of process, notice, or demand required or
3 permitted by law to be served on the corporation.

4 (b) If a corporation has no registered agent, or the agent
5 cannot with reasonable diligence be served, the corporation
6 may be served by registered or certified mail, return receipt
7 requested, addressed to the secretary of the corporation at
8 its principal office. Service is perfected under this
9 subsection at the earliest of:

10 (1) The date the corporation receives the mail;

11 (2) The date shown on the return receipt, if signed on
12 behalf of the corporation; or

13 (3) Five days after its deposit in the United States mail,
14 as evidenced by the postmark, if mailed postpaid and
15 correctly addressed.

16 (c) In addition to the methods of service on a
17 corporation provided in subsections (a) and (b) of this
18 section, the Secretary of State is hereby constituted the
19 attorney-in-fact for and on behalf of each corporation
20 created pursuant to the provisions of this chapter. The
21 Secretary of State has the authority to accept service of
22 notice and process on behalf of each corporation and is an
23 agent of the corporation upon whom service of notice and
24 process may be made in this state for and upon each
25 corporation. No act of a corporation appointing the
26 Secretary of State as attorney-in-fact is necessary. Service

27 of any process, notice or demand on the Secretary of State
28 may be made by delivering to and leaving with the Secretary
29 of State the original process, notice or demand and two
30 copies of the process, notice or demand for each defendant,
31 along with the fee required by section two, article one,
32 chapter fifty-nine of this code. Immediately after being
33 served with or accepting any process or notice, the Secretary
34 of State shall: (1) File in his or her office a copy of the
35 process or notice, endorsed as of the time of service, or
36 acceptance; (2) transmit one copy of the process or notice
37 by registered or certified mail, return receipt requested, by
38 a means which may include electronic issuance and
39 acceptance of electronic return receipts, to: (A) The
40 corporation's registered agent; or (B) if there is no
41 registered agent, to the individual whose name and address
42 was last given to the Secretary of State's office as the person
43 to whom notice and process are to be sent, and if no person
44 has been named, to the principal office of the corporation as
45 that address was last given to the Secretary of State's office;
46 and if no address is available on record with the Secretary
47 of State, then to the address provided on the original
48 process, notice or demand, if available; and (3) transmit the
49 original process, notice or demand to the clerk's office of
50 the court from which the process, notice or demand was
51 issued. Service or acceptance of process or notice is
52 sufficient if return receipt is signed by an agent or employee
53 of the corporation, or the registered or certified mail sent by
54 the Secretary of State is refused by the addressee and the
55 registered or certified mail is returned to the Secretary of
56 State, or to his or her office, showing the stamp of the United
57 States Postal Service that delivery has been refused, and the
58 return receipt or registered or certified mail is received by
59 the Secretary of State by a means which may include
60 electronic issuance and acceptance of electronic return
61 receipts. After receiving verification from the United States
62 Postal Service that acceptance of process, notice or demand
63 has been signed, the Secretary of State shall notify the
64 clerk's office of the court from which the process, notice or
65 demand was issued by a means which may include

66 electronic notification. If the process, notice or demand was
67 refused or undeliverable by the United States Postal Service,
68 the Secretary of State shall create a preservation duplicate
69 from which a reproduction of the stored record may be
70 retrieved which truly and accurately depicts the image of the
71 original record. The Secretary of State may destroy or
72 otherwise dispose of the original returned or undeliverable
73 mail. Written notice of the action by the Secretary of State
74 shall be provided by certified mail, return receipt requested,
75 facsimile, or by electronic mail, to the clerk's office of the
76 court from which the process, notice or demand was issued.
77 No process or notice may be served on the Secretary of State
78 or accepted by him or her less than ten days before the return
79 day of the process or notice. The court may order
80 continuances as may be reasonable to afford each defendant
81 opportunity to defend the action or proceedings.

82 (d) This section does not prescribe the only means, or
83 necessarily the required means of serving a corporation.

CHAPTER 47. REGULATION OF TRADE.

ARTICLE 9. UNIFORM LIMITED PARTNERSHIP ACT.

§47-9-4. Secretary of State constituted attorney-in-fact for all limited partnerships; manner of acceptance or service of notice and process upon Secretary of State; what constitutes conducting affairs or doing or transacting business in this state for purposes of this section.

1 The Secretary of State is hereby constituted the
2 attorney-in-fact for and on behalf of every limited
3 partnership created by virtue of the laws of this state and
4 every foreign limited partnership authorized to conduct
5 affairs or do or transact business herein pursuant to the
6 provisions of this article, with authority to accept service of
7 notice and process on behalf of every such limited
8 partnership and upon whom service of notice and process
9 may be made in this state for and upon every such limited
10 partnership. No act of such limited partnership appointing

11 the Secretary of State such attorney-in-fact shall be
12 necessary. Immediately after being served with or accepting
13 any such process or notice, of which process or notice two
14 copies for each defendant shall be furnished the Secretary
15 of State with the original notice or process, together with the
16 fee required by section two, article one, chapter fifty-nine of
17 this code, the Secretary of State shall file in his office a copy
18 of such process or notice, with a note thereon endorsed of
19 the time of service or acceptance, as the case may be, and
20 transmit one copy of such process or notice by registered or
21 certified mail, return receipt requested, to the person to
22 whom notice and process shall be sent, whose name and
23 address were last furnished to the state officer at the time
24 authorized by statute to accept service of notice and process
25 and upon whom notice and process may be served; and if no
26 such person has been named, to the principal office of the
27 limited partnership at the address last furnished to the state
28 officer at the time authorized by statute to accept service of
29 process and upon whom process may be served, as required
30 by law, or if no address is available on record with the
31 Secretary of State then to the address provided on the
32 original process or process, if available. No process or
33 notice shall be served on the Secretary of State or accepted
34 by him less than ten days before the return day thereof. Such
35 limited partnership shall pay the annual fee prescribed by
36 article twelve, chapter eleven of this code for the services of
37 the Secretary of State as its attorney-in-fact.

38 Any foreign limited partnership which shall conduct
39 affairs or do or transact business in this state without having
40 been authorized so to do pursuant to the provisions of this
41 article shall be conclusively presumed to have appointed the
42 Secretary of State as its attorney-in-fact with authority to
43 accept service of notice and process on behalf of such
44 limited partnership and upon whom service of notice and
45 process may be made in this state for and upon every such
46 limited partnership in any action or proceeding described in
47 the next following paragraph of this section. No act of such
48 limited partnership appointing the Secretary of State as such

49 attorney-in-fact shall be necessary. Immediately after being
50 served with or accepting any such process or notice, of
51 which process or notice two copies for each defendant shall
52 be furnished the Secretary of State with the original notice
53 or process, together with the fee required by section two,
54 article one, chapter fifty-nine of this code, the Secretary of
55 State shall file in his office a copy of such process or notice,
56 with a note thereon endorsed of the time of service or
57 acceptance, as the case may be, and transmit one copy of
58 such process or notice by registered or certified mail, return
59 receipt requested, by a means which may include electronic
60 issuance and acceptance of electronic return receipts, to
61 such limited partnership at the address of its principal office,
62 which address shall be stated in such process or notice. Such
63 service or acceptance of such process or notice shall be
64 sufficient if such return receipt shall be signed by an agent
65 or employee of such limited partnership. After receiving
66 verification from the United States Postal Service that
67 acceptance of process or notice has been signed, the
68 Secretary of State shall notify the clerk's office of the court
69 from which the process or notice was issued by a means
70 which may include electronic notification. If the process or
71 notice was refused or undeliverable by the United States
72 Postal Service the Secretary of State shall create a
73 preservation duplicate from which a reproduction of the
74 stored record may be retrieved which truly and accurately
75 depicts the image of the original record. The Secretary of
76 State may destroy or otherwise dispose of the original
77 returned or undeliverable mail. Written notice of the action
78 by the Secretary of State shall be provided by certified mail,
79 return receipt requested, facsimile, or by electronic mail, to
80 the clerk's office of the court from which the process, notice
81 or demand was issued. No process or notice shall be served
82 on the Secretary of State or accepted by him or her less than
83 ten days before the return date thereof. The court may order
84 such continuances as may be reasonable to afford each
85 defendant opportunity to defend the action or proceedings.

86 For the purpose of this section, a foreign limited
87 partnership not authorized to conduct affairs or do or
88 transact business in this state pursuant to the provisions of
89 this article shall nevertheless be deemed to be conducting
90 affairs or doing or transacting business herein: (a) If such
91 limited partnership makes a contract to be performed, in
92 whole or in part, by any party thereto in this state; (b) if such
93 limited partnership commits a tort, in whole or in part, in
94 this state; or (c) if such limited partnership manufactures,
95 sells, offers for sale or supplies any product in a defective
96 condition and such product causes injury to any person or
97 property within this state notwithstanding the fact that such
98 limited partnership had no agents, servants or employees or
99 contacts within this state at the time of said injury. The
100 making of such contract, the committing of such tort or the
101 manufacture or sale, offer of sale or supply of such defective
102 product as herein above described shall be deemed to be the
103 agreement of such limited partnership that any notice or
104 process served upon, or accepted by, the Secretary of State
105 pursuant to the next preceding paragraph of this section in
106 any action or proceeding against such limited partnership
107 arising from or growing out of such contract, tort or
108 manufacture or sale, offer of sale or supply of such defective
109 product shall be of the same legal force and validity as
110 process duly served on such limited partnership in this state.

CHAPTER 56. PLEADING AND PRACTICE.

ARTICLE 3. WRITS, PROCESS AND ORDER OF PUBLICATION.

§56-3-31. Actions by or against nonresident operators of motor vehicles involved in highway accidents; appointment of Secretary of State, insurance company, as agents; service of process.

- 1 (a) Every nonresident, for the privilege of operating a
- 2 motor vehicle on a public street, road or highway of this
- 3 state, either personally or through an agent, appoints the
- 4 Secretary of State, or his or her successor in office, to be his

5 or her agent or attorney-in-fact upon whom may be served
6 all lawful process in any action or proceeding against him
7 or her in any court of record in this state arising out of any
8 accident or collision occurring in the State of West Virginia
9 in which the nonresident was involved: *Provided*, That in
10 the event process against a nonresident defendant cannot be
11 effected through the Secretary of State, as provided by this
12 section, for the purpose only of service of process, the
13 nonresident motorist shall be considered to have appointed
14 as his or her agent or attorney-in-fact any insurance
15 company which has a contract of automobile or liability
16 insurance with the nonresident defendant.

17 (b) For purposes of service of process as provided in this
18 section, every insurance company shall be considered the
19 agent or attorney-in-fact of every nonresident motorist
20 insured by that company if the insured nonresident motorist
21 is involved in any accident or collision in this state and
22 service of process cannot be effected upon the nonresident
23 through the office of the Secretary of State. Upon receipt of
24 process as provided in this section, the insurance company
25 may, within thirty days, file an answer or other pleading or
26 take any action allowed by law on behalf of the defendant.

27 (c) A nonresident operating a motor vehicle in this state,
28 either personally or through an agent, is considered to
29 acknowledge the appointment of the Secretary of State, or,
30 as the case may be, his or her automobile insurance
31 company, as his or her agent or attorney-in-fact, or the agent
32 or attorney-in-fact of his or her administrator,
33 administratrix, executor or executrix in the event the
34 nonresident dies, and furthermore is considered to agree that
35 any process against him or her or against his or her
36 administrator, administratrix, executor or executrix, which
37 is served in the manner provided in this section, shall be of
38 the same legal force and validity as though the nonresident
39 or his or her administrator, administratrix, executor or
40 executrix were personally served with a summons and
41 complaint within this state.

42 Any action or proceeding may be instituted, continued
43 or maintained on behalf of or against the administrator,
44 administratrix, executor or executrix of any nonresident
45 who dies during or subsequent to an accident or collision
46 resulting from the operation of a motor vehicle in this state
47 by the nonresident or his or her duly authorized agent.

48 (d) Service of process upon a nonresident defendant
49 shall be made by leaving the original and two copies of both
50 the summons and complaint, together with the bond
51 certificate of the clerk, and the fee required by section two,
52 article one, chapter fifty-nine of this code with the Secretary
53 of State, or in his or her office, and the service shall be
54 sufficient upon the nonresident defendant or, if a natural
55 person, his or her administrator, administratrix, executor or
56 executrix: *Provided*, That notice of service and a copy of the
57 summons and complaint shall be sent by registered or
58 certified mail, return receipt requested, by a means which
59 may include electronic issuance and acceptance of
60 electronic return receipts, by the Secretary of State to the
61 nonresident defendant. After receiving verification from the
62 United States Postal Service that acceptance of process,
63 notice or demand has been signed, the Secretary of State
64 shall notify the clerk's office of the court from which the
65 process, notice or demand was issued by a means which
66 may include electronic notification. If the process, notice or
67 demand was refused or undeliverable by the United States
68 Postal Service the Secretary of State shall create a
69 preservation duplicate from which a reproduction of the
70 stored record may be retrieved which truly and accurately
71 depicts the image of the original record. The Secretary of
72 State may destroy or otherwise dispose of the original
73 returned or undeliverable mail. Written notice of the action
74 by the Secretary of State must then be provided by certified
75 mail, return receipt requested, facsimile, or by electronic
76 mail, to the clerk's office of the court from which the
77 process, notice or demand was issued. The court may order
78 any reasonable continuances to afford the defendant
79 opportunity to defend the action.

80 (e) The fee remitted to the Secretary of State at the time
81 of service shall be taxed in the costs of the proceeding. The
82 Secretary of State shall keep a record in his or her office of
83 all service of process and the day and hour of service of
84 process.

85 (f) In the event service of process upon a nonresident
86 defendant cannot be effected through the Secretary of State
87 as provided by this section, service may be made upon the
88 defendant's insurance company. The plaintiff shall file with
89 the clerk of the circuit court an affidavit alleging that the
90 defendant is not a resident of this state; that process directed
91 to the Secretary of State was sent by registered or certified
92 mail, return receipt requested; that the registered or certified
93 mail was returned to the office of the Secretary of State
94 showing the stamp of the post office department that
95 delivery was refused or that the notice was unclaimed or that
96 the defendant addressee moved without any forwarding
97 address; and that the Secretary of State has complied with
98 the provisions of subsection (d) of this section. Upon receipt
99 of process the insurance company may, within thirty days,
100 file an answer or other pleading and take any action allowed
101 by law in the name of the defendant.

102 (g) The following words and phrases, when used in this
103 article, for the purpose of this article and unless a different
104 intent on the part of the Legislature is apparent from the
105 context, have the following meanings:

106 (1) "Duly authorized agent" means and includes, among
107 others, a person who operates a motor vehicle in this state
108 for a nonresident as defined in this section and chapter, in
109 pursuit of business, pleasure or otherwise, or who comes
110 into this state and operates a motor vehicle for, or with the
111 knowledge or acquiescence of, a nonresident; and includes,
112 among others, a member of the family of the nonresident or
113 a person who, at the residence, place of business or post
114 office of the nonresident, usually receives and
115 acknowledges receipt for mail addressed to the nonresident.

116 (2) “Motor vehicle” means and includes any self-
117 propelled vehicle, including a motorcycle, tractor and
118 trailer, not operated exclusively upon stationary tracks.

119 (3) “Nonresident” means any person who is not a
120 resident of this state or a resident who has moved from the
121 state subsequent to an accident or collision and among
122 others includes a nonresident firm, partnership, corporation
123 or voluntary association, or a firm, partnership, corporation
124 or voluntary association that has moved from the state
125 subsequent to an accident or collision.

126 (4) “Nonresident plaintiff or plaintiffs” means a
127 nonresident who institutes an action in a court in this state
128 having jurisdiction against a nonresident in pursuance of the
129 provisions of this article.

130 (5) “Nonresident defendant or defendants” means a
131 nonresident motorist who, either personally or through his
132 or her agent, operated a motor vehicle on a public street,
133 highway or road in this state and was involved in an accident
134 or collision which has given rise to a civil action filed in any
135 court in this state.

136 (6) “Street”, “road” or “highway” means the entire
137 width between property lines of every way or place of
138 whatever nature when any part of the street, road or highway
139 is open to the use of the public, as a matter of right, for
140 purposes of vehicular traffic.

141 (7) “Insurance company” means any firm, corporation,
142 partnership or other organization which issues automobile
143 insurance.

144 (h) The provision for service of process in this section
145 is cumulative and nothing contained in this section shall be
146 construed as a bar to the plaintiff in any action from having
147 process in the action served in any other mode and manner
148 provided by law.

§56-3-33. Actions by or against nonresident persons having certain contacts with this state; authorizing Secretary of State to receive process; bond and fees; service of process; definitions; retroactive application.

1 (a) The engaging by a nonresident, or by his or her duly
2 authorized agent, in any one or more of the acts specified in
3 subdivisions (1) through (7) of this subsection shall be
4 deemed equivalent to an appointment by such nonresident
5 of the Secretary of State, or his or her successor in office, to
6 be his or her true and lawful attorney upon whom may be
7 served all lawful process in any action or proceeding against
8 him or her, in any circuit court in this state, including an
9 action or proceeding brought by a nonresident plaintiff or
10 plaintiffs, for a cause of action arising from or growing out
11 of such act or acts, and the engaging in such act or acts shall
12 be a signification of such nonresident's agreement that any
13 such process against him or her, which is served in the
14 manner hereinafter provided, shall be of the same legal force
15 and validity as though such nonresident were personally
16 served with a summons and complaint within this state:

17 (1) Transacting any business in this state;

18 (2) Contracting to supply services or things in this state;

19 (3) Causing tortious injury by an act or omission in this
20 state;

21 (4) Causing tortious injury in this state by an act or
22 omission outside this state if he or she regularly does or
23 solicits business, or engages in any other persistent course
24 of conduct, or derives substantial revenue from goods used
25 or consumed or services rendered in this state;

26 (5) Causing injury in this state to any person by breach
27 of warranty expressly or impliedly made in the sale of goods
28 outside this state when he or she might reasonably have
29 expected such person to use, consume or be affected by the
30 goods in this state: *Provided*, That he or she also regularly
31 does or solicits business, or engages in any other persistent

32 course of conduct, or derives substantial revenue from
33 goods used or consumed or services rendered in this state;

34 (6) Having an interest in, using or possessing real
35 property in this state; or

36 (7) Contracting to insure any person, property or risk
37 located within this state at the time of contracting.

38 (b) When jurisdiction over a nonresident is based solely
39 upon the provisions of this section, only a cause of action
40 arising from or growing out of one or more of the acts
41 specified in subdivisions (1) through (7), subsection (a) of
42 this section may be asserted against him or her.

43 (c) Service shall be made by leaving the original and
44 two copies of both the summons and the complaint, and the
45 fee required by section two, article one, chapter fifty-nine of
46 this code with the Secretary of State, or in his or her office,
47 and such service shall be sufficient upon such nonresident:
48 *Provided*, That notice of such service and a copy of the
49 summons and complaint shall forthwith be sent by
50 registered or certified mail, return receipt requested, by a
51 means which may include electronic issuance and
52 acceptance of electronic return receipts, by the Secretary of
53 State to the defendant at his or her nonresident address and
54 the defendant's return receipt signed by himself or herself
55 or his or her duly authorized agent or the registered or
56 certified mail so sent by the Secretary of State which is
57 refused by the addressee and which registered or certified
58 mail is returned to the Secretary of State, or to his or her
59 office, showing thereon the stamp of the post-office
60 department that delivery has been refused. After receiving
61 verification from the United States Postal Service that
62 acceptance of process, notice or demand has been signed,
63 the Secretary of State shall notify the clerk's office of the
64 court from which the process, notice or demand was issued
65 by a means which may include electronic notification. If the
66 process, notice or demand was refused or undeliverable by
67 the United States Postal Service the Secretary of State shall

68 create a preservation duplicate from which a reproduction
69 of the stored record may be retrieved which truly and
70 accurately depicts the image of the original record. The
71 Secretary of State may destroy or otherwise dispose of the
72 original returned or undeliverable mail. Written notice of
73 the action by the Secretary of State must then be provided
74 by certified mail, return receipt requested, facsimile, or by
75 electronic mail, to the clerk's office of the court from which
76 the process, notice or demand was issued. If any defendant
77 served with summons and complaint fails to appear and
78 defend within thirty days of service, judgment by default
79 may be rendered against him or her at any time thereafter.
80 The court may order such continuances as may be
81 reasonable to afford the defendant opportunity to defend the
82 action or proceeding.

83 (d) The fee remitted to the Secretary of State at the time
84 of service shall be taxed in the costs of the action or
85 proceeding. The Secretary of State shall keep a record in his
86 or her office of all such process and the day and hour of
87 service thereof.

88 (e) The following words and phrases, when used in this
89 section, shall for the purpose of this section and unless a
90 different intent be apparent from the context, have the
91 following meanings:

92 (1) "Duly authorized agent" means and includes among
93 others a person who, at the direction of or with the
94 knowledge or acquiescence of a nonresident, engages in
95 such act or acts and includes among others a member of the
96 family of such nonresident or a person who, at the residence,
97 place of business or post office of such nonresident, usually
98 receives and receipts for mail addressed to such nonresident.

99 (2) "Nonresident" means any person, other than
100 voluntary unincorporated associations, who is not a resident
101 of this state or a resident who has moved from this state
102 subsequent to engaging in such act or acts, and among
103 others includes a nonresident firm, partnership or

104 corporation or a firm, partnership or corporation which has
105 moved from this state subsequent to any of said such act or
106 acts.

107 (3) “Nonresident plaintiff or plaintiffs” means a
108 nonresident of this state who institutes an action or
109 proceeding in a circuit court in this state having jurisdiction
110 against a nonresident of this state pursuant to the provisions
111 of this section.

112 (f) The provision for service of process herein is
113 cumulative and nothing herein contained shall be construed
114 as a bar to the plaintiff in any action or proceeding from
115 having process in such action served in any other mode or
116 manner provided by the law of this state or by the law of the
117 place in which the service is made for service in that place
118 in an action in any of its courts of general jurisdiction.

119 (g) This section shall not be retroactive and the
120 provisions hereof shall not be available to a plaintiff in a
121 cause of action arising from or growing out of any of said
122 acts occurring prior to the effective date of this section.

§56-3-33a. Actions against nonresident persons by petitioners seeking domestic violence or personal safety relief; service of process; authorizing Secretary of State to receive process against nonresidents.

1 (a) Any person who is:

2 (1) Not a resident of this state; or

3 (2) A resident of this state who has left this state; or

4 (3) A person whose residence is unknown shall be
5 considered to have submitted to the jurisdiction of the courts
6 of this state as to any action arising from the conduct
7 specified in subsection (b) of this section, if such conduct
8 was:

9 (A) Committed in this state; or

10 (B) If such conduct was not committed in this state if
11 the conduct was purposely directed at a resident and has an
12 effect within this state.

13 (b) Conduct compelling application of this section
14 consists of:

15 (1) Any act constituting domestic violence or abuse as
16 defined in section two hundred two, article twenty-seven,
17 chapter forty-eight of this code; or

18 (2) Any act constituting a basis for seeking personal
19 safety relief as defined in section four, article eight, chapter
20 fifty-three of this code; or

21 (3) Any act or omission violating the provisions of a
22 duly authorized protective or restraining order, whether
23 issued by this state or another jurisdiction, for the protection
24 of any person within this state.

25 (c) Any person subject to or considered to have
26 submitted to the jurisdiction of the courts of this state who
27 is made a respondent in an action may be served with the
28 petition and order initiating such action either:

29 (1) By law-enforcement officers, wherever the
30 respondent may be found, whether inside or outside the
31 boundaries of this state; or

32 (2) If the respondent is alleged to have committed
33 conduct specified in subsection (b) of this section, this shall
34 be considered equivalent to an appointment by such
35 nonresident of the Secretary of State, or his or her successor
36 in office, to be his or her true and lawful attorney upon
37 whom may be served all lawful process in any action or
38 proceeding against him or her, in any court in this state, for
39 a cause of action arising from or growing out of such
40 conduct, and the engaging in such conduct is a signification
41 of such nonresident's agreement that any such process
42 against him or her, which is served in the manner hereinafter

43 provided, is of the same legal force and validity as though
44 such nonresident were personally served within this state.

45 (A) Such service shall be made by leaving two copies of
46 both the petition and order, with the Secretary of State, or in
47 his or her office, and such service shall be sufficient upon
48 such nonresident: *Provided*, That notice of such service and
49 a copy of the petition and order shall forthwith be sent by
50 registered or certified mail, return receipt requested, by a
51 means which may include electronic issuance and
52 acceptance of electronic return receipts, by the Secretary of
53 State to the respondent at his or her nonresident address and
54 the respondent's return receipt signed by himself or herself
55 or his or her duly authorized agent or the registered or
56 certified mail so sent by the Secretary of State which is
57 refused by the addressee and which registered or certified
58 mail is returned to the Secretary of State, or to his or her
59 office, showing thereon the stamp of the post-office
60 department that delivery has been refused. After receiving
61 verification from the United States Postal Service that
62 acceptance of the notice, petition and order has been signed,
63 the Secretary of State shall notify the clerk's office of the
64 court from which the petition and order were issued by a
65 means which may include electronic notification. If the
66 notice, petition and order were refused or undeliverable by
67 the United States Postal Service, the Secretary of State shall
68 create a preservation duplicate from which a reproduction
69 of the stored record may be retrieved which truly and
70 accurately depicts the image of the original record. The
71 Secretary of State may destroy or otherwise dispose of the
72 original returned or undeliverable mail. Written notice of
73 the action by the Secretary of State must then be provided
74 by certified mail, return receipt requested, facsimile, or by
75 electronic mail, to the clerk's office of the court from which
76 the process, notice or demand was issued. If any respondent
77 served with a petition and order fails to appear and defend
78 at the time and place set forth in the order, judgment may be
79 rendered against him or her at any time thereafter. The court
80 may order such continuances as may be reasonable to afford

81 the respondent an opportunity to defend the action or
82 proceeding.

83 (B) As provided in section three hundred eight, article
84 twenty-seven, chapter forty-eight of this code regarding
85 domestic violence proceedings and in section thirteen,
86 article eight, chapter fifty-three of this code regarding
87 personal safety proceedings, no fees may be charged for
88 service of petitions or orders until the matter is brought
89 before the appropriate court for final resolution. Any fees
90 ordinarily remitted to the Secretary of State or to a law-
91 enforcement agency at the time of service shall be deferred
92 and taxed in the costs of the action or proceeding.

93 (C) Data and records regarding service maintained by
94 law-enforcement agencies and by the office of the Secretary
95 of State for purposes of fulfilling the obligations of this
96 section are not public records subject to disclosure under the
97 provisions of article one, chapter twenty-nine-b of this code.

98 (d) The following words and phrases, when used in this
99 section, shall for the purpose of this section and unless a
100 different intent be apparent from the context, have the
101 following meanings:

102 (1) "Duly authorized agent" means and includes among
103 others a person who, at the direction of or with the
104 knowledge or acquiescence of a nonresident, engages in
105 such act or acts and includes among others a member of the
106 family of such nonresident or a person who, at the residence,
107 place of business or post office of such nonresident, usually
108 receives and receipts for mail addressed to such nonresident.

109 (2) "Nonresident" means any person who is not a
110 resident of this state or a resident who has moved from this
111 state subsequent to engaging in such acts or acts covered by
112 this section.

§56-3-34. Actions by or against nonresident bail bond enforcement agents or bail bondsmen; appointment of Secretary of State as agents; service of process.

1 (a) Every nonresident bail bond enforcer or bail
2 bondsman, for the privilege of entering this state to act in
3 the capacity of a bail bond enforcer, either personally or
4 through an agent, appoints the Secretary of State, or his or
5 her successor in office, to be his or her agent or attorney-in-
6 fact upon whom may be served all lawful process in any
7 action or proceeding against him or her in any court of
8 record in this state for any act occurring within this state
9 resulting in injury arising out of any breach of the applicable
10 standard of care with respect to any person other than a
11 defendant whose custody or appearance the bail bond
12 enforcer secures or attempts to secure, or with respect to the
13 property of any person other than a defendant whose
14 custody or appearance the bail bond enforcer secures or
15 attempts to secure; or for enforcement of any civil penalty
16 for breach of a duty imposed by this code with respect to
17 bail bondsmen employing or contracting with bail bond
18 enforcers: *Provided*, That in the event process against a
19 nonresident defendant cannot be effected through the
20 Secretary of State, as provided by this section, for the
21 purpose only of service of process, the nonresident bail
22 bond enforcer or bondsman shall be deemed to have
23 appointed as his or her agent or attorney-in-fact any
24 insurance company which has a contract of liability
25 insurance for his or her activities.

26 (b) For purposes of service of process as provided in this
27 section, every insurance company shall be deemed the agent
28 or attorney-in-fact of every nonresident bail bond enforcer
29 or bondsman insured by the company if the insured
30 nonresident bail bond enforcer or bondsman is involved in
31 any bail bond enforcement activity occurring within this
32 state resulting in injury arising out of any breach of the
33 applicable standard of care with respect to any person other
34 than a defendant whose custody or appearance the bail bond
35 enforcer secures or attempts to secure, or with respect to the

36 property of any person other than a defendant whose
37 custody or appearance the bail bond enforcer secures or
38 attempts to secure and service of process cannot be effected
39 upon the nonresident through the office of the Secretary of
40 State. Upon receipt of process as hereinafter provided, the
41 insurance company may, within thirty days, file an answer
42 or other pleading or take any action allowed by law on
43 behalf of the defendant.

44 (c) A nonresident bail bond enforcer or bail bondsman
45 entering this state, either personally or through an agent, is
46 deemed to acknowledge the appointment of the Secretary of
47 State, or, as the case may be, his or her liability insurance
48 company, as his or her agent or attorney-in-fact, or the agent
49 or attorney-in-fact of his or her administrator,
50 administratrix, executor or executrix in the event the
51 nonresident dies, and furthermore is deemed to agree that
52 any process against him or her or against his or her
53 administrator, administratrix, executor or executrix, which
54 is served in the manner hereinafter provided, shall be of the
55 same legal force and validity as though said nonresident or
56 his or her administrator, administratrix, executor or
57 executrix were personally served with a summons and
58 complaint within this state.

59 Any action or proceeding may be instituted, continued
60 or maintained on behalf of or against the administrator,
61 administratrix, executor or executrix of any nonresident
62 who dies subsequent to bail bond enforcement activity in
63 this state by the nonresident or his or her duly authorized
64 agent.

65 (d) At the time of filing a complaint against a
66 nonresident bail bond enforcer or bondsman who has been
67 involved in bail bond enforcement activity in the State of
68 West Virginia and before a summons is issued thereon, the
69 plaintiff, or someone for him or her, shall execute a bond in
70 the sum of \$100 before the clerk of the court in which the
71 action is filed, with surety to be approved by said clerk,
72 conditioned that on failure of the plaintiff to prevail in the

73 action he or she will reimburse the defendant, or cause the
74 defendant to be reimbursed, the necessary expense incurred
75 in the defense of the action in this state. Upon the issue of a
76 summons the clerk will certify thereon that the bond has
77 been given and approved.

78 (e) Service of process upon a nonresident defendant
79 shall be made by leaving the original and two copies of both
80 the summons and complaint, together with the bond
81 certificate of the clerk, and the fee required by section two,
82 article one, chapter fifty-nine of this code with the Secretary
83 of State, or in his or her office, and said service shall be
84 sufficient upon the nonresident defendant or, if a natural
85 person, his or her administrator, administratrix, executor or
86 executrix: *Provided*, That notice of service and a copy of the
87 summons and complaint shall be sent by registered or
88 certified mail, return receipt requested, by the Secretary of
89 State to the nonresident defendant. The return receipt signed
90 by the defendant or his or her duly authorized agent shall be
91 attached to the original summons and complaint and filed in
92 the office of the clerk of the court from which the process is
93 issued. In the event the registered or certified mail sent by the
94 Secretary of State is refused or unclaimed by the addressee or
95 if the addressee has moved without any forwarding address,
96 the registered or certified mail returned to the Secretary of
97 State, or to his or her office, showing thereon the stamp of the
98 post-office department that delivery has been refused or not
99 claimed or that the addressee has moved without any
100 forwarding address, the Secretary of State shall create a
101 preservation duplicate from which a reproduction of the
102 stored record may be retrieved which truly and accurately
103 depicts the image of the original record. The Secretary of
104 State may destroy or otherwise dispose of the original
105 returned or undeliverable mail. Written notice of the action
106 by the Secretary of State must then be provided by certified
107 mail, return receipt requested, facsimile, or by electronic
108 mail, to the clerk's office of the court from which the process,
109 notice or demand was issued. The court may order such

110 continuances as may be reasonable to afford the defendant
111 opportunity to defend the action.

112 (f) The fee remitted to the Secretary of State at the time
113 of service, shall be taxed in the costs of the proceeding and
114 the Secretary of State shall pay into the State Treasury all
115 funds so coming into his or her hands from the service. The
116 Secretary of State shall keep a record in his or her office of
117 all service of process and the day and hour of service thereof.

118 (g) In the event service of process upon a nonresident
119 defendant cannot be effected through the Secretary of State
120 as provided by this section, service may be made upon the
121 defendant's insurance company. The plaintiff must file with
122 the clerk of the circuit court an affidavit alleging that the
123 defendant is not a resident of this state; that process directed
124 to the Secretary of State was sent by registered or certified
125 mail, return receipt requested; that the registered or certified
126 mail was returned to the office of the Secretary of State
127 showing the stamp of the post-office department that
128 delivery was refused or that the notice was unclaimed or that
129 the defendant addressee moved without any forwarding
130 address; and that the Secretary of State has complied with
131 the provisions of subsection (e) of this section. Upon receipt
132 of process the insurance company may, within thirty days,
133 file an answer or other pleading and take any action allowed
134 by law in the name of the defendant.

135 (h) The following words and phrases, when used in this
136 article, shall, for the purpose of this article and unless a
137 different intent on the part of the Legislature is apparent
138 from the context, have the following meanings:

139 (1) "Agent" or "duly authorized agent" means and
140 includes, among others, a bail bond enforcer who, on behalf
141 of a bail bondsman, is involved in any bail bond
142 enforcement activity occurring within this state resulting in
143 injury arising out of any breach of the applicable standard
144 of care with respect to any person other than a defendant
145 whose custody or appearance the bail bond enforcer secures

146 or attempts to secure, or with respect to the property of any
147 person other than a defendant whose custody or appearance
148 the bail bond enforcer secures or attempts to secure;

149 (2) “Nonresident” means any person who is not a
150 resident of this state or a resident who has moved from the
151 state subsequent to bail bond enforcement activity within
152 this state, and among others includes a nonresident firm,
153 partnership, corporation or voluntary association, or a firm,
154 partnership, corporation or voluntary association that has
155 moved from the state subsequent to bail bond enforcement
156 activity;

157 (3) “Nonresident defendant or defendants” means a
158 nonresident bail bond enforcer or bondsman who, either
159 personally or through his or her agent, is involved in any
160 bail bond enforcement activity occurring within this state
161 resulting in injury arising out of any breach of the applicable
162 standard of care with respect to any person other than a
163 defendant whose custody or appearance the bail bond
164 enforcer secures or attempts to secure, or with respect to the
165 property of any person other than a defendant whose
166 custody or appearance the bail bond enforcer secures or
167 attempts to secure, which has given rise to a civil action filed
168 in any court in this state;

169 (4) “Insurance company” means any firm, corporation,
170 partnership or other organization which issues liability
171 insurance.

172 (i) The provision for service of process herein is
173 cumulative and nothing herein contained shall be construed
174 as a bar to the plaintiff in any action from having process in
175 the action served in any other mode and manner provided
176 by law.

177 (j) This section is not retroactive and its provisions are
178 not available to a plaintiff in a cause of action arising out of
179 acts occurring prior to the effective date of this section.

CHAPTER 122

**(Com. Sub. for H. B. 2815 - By Mr. Speaker (Mr.
Armstead) and Delegate Miley)
[By Request of the Executive]**

[Passed April 8, 2017; in effect ninety days from passage.]
[Approved by the Governor on April 25, 2017.]

AN ACT to repeal §18B-1-5a and 18B-1-10 of the Code of West Virginia, 1931, as amended; to repeal §18B-1A-3 of said code; to repeal §18B-1B-10 and §18B-1B-13 of said code; to repeal §18B-2-5 and §18B-2-7 of said code; to repeal §18B-5-2a of said code; to amend and reenact §18B-1-2 and §18B-1-6 of said code; to amend and reenact §18B-1B-1, §18B-1B-2, §18B-1B-4 and §18B-1B-6 of said code; to amend and reenact §18B-1D-2, §18B-1D-4 and §18B-1D-7 of said code; to amend said code by adding thereto a new section, designated §18B-1F-10; to amend and reenact §18B-2A-3 and §18B-2A-4 of said code; to amend and reenact §18B-3-1 of said code; to amend and reenact §18B-4-7 of said code; to amend and reenact §18B-5-4, §18B-5-6, §18B-5-7 and §18B-5-9 of said code; to amend and reenact §18B-10-1, §18B-10-1c, §18B-10-8 and §18B-10-16 of said code; to amend and reenact §18B-19-1, §18B-19-3, §18B-19-4, §18B-19-5, §18B-19-6, §18B-19-7, §18B-19-9, §18B-19-10, §18B-19-11, §18B-19-13 and §18B-19-14 of said code; and to amend said code by adding thereto a new section, designated §18B-19-19, all relating to public education higher education governance generally; defining terms; repealing obsolete provisions of code; clarifying scope of rule-making authority of higher education policy commission and certain institutions of higher education; eliminating outdated language; providing for rule-making procedures; requiring promulgation of rules by commission, council and certain institutions of higher education; providing for shorter time period for commission and council to review and comment on rules proposed by governing boards of

institutions of higher education; providing legislative intent; providing for composition of commission; providing for primary responsibility of commission; updating and clarifying powers of commission; limiting authority of commission over certain institutions of higher education; eliminating authority of commission to assess institutions for payment of expenses of commission and for funding of statewide higher education services, obligations, or initiatives; clarifying authority of commission over review and approval of academic programs; repealing and eliminating outdated language; eliminating authority of commission with respect to certain financial and budget reviews and approvals; directing the commission to examine general revenue appropriations of higher education institutions and to report findings to the Joint Committee on Government and Finance and the Legislative Oversight Commission on Education Accountability with a recommendation to the Legislature on a formula for allocation of general revenue to be appropriated to the institutions; expanding authority of certain governing boards over appointment of president of certain higher education institutions; eliminating requirement for approval by commission of appointment of president for certain institutions of higher education; eliminating jurisdiction of commission relative to the accountability system over certain institutions of higher education; providing for updated responsibility of commission in development and advancement of public policy agenda and collection of data for certain institutions of higher education; eliminating certain reporting responsibilities for certain institutions of higher education; altering authority of commission over institutional compacts of certain institutions of higher education; eliminating requirement for certain institutions of higher education to prepare an institutional compact for submission to the commission; eliminating application of certain data-based measures on certain institutions of higher education; altering timeframe for updates to institutional compacts; eliminating commission approval of institutional compacts of certain institutions of higher education; providing for a study by the West Virginia Development Office relating to foundations and private entities who focus on research and job development and

that receive or have received since July 1, 2012, appropriation support from the State of West Virginia; eliminating authority of chancellor over coordination of policies, purposes and rules of governing boards of certain institutions of higher education; updating powers of governing boards; eliminating requirement of commission approval of master plans for certain institutions of higher education; requiring certain institutions to provide copies of master plan to Legislative Oversight Commission on Educational Accountability; providing that rules of commission and council related to administering a system for the management of personnel matters do not apply to certain institutions of higher education; authorizing governing boards to contract and pay for any supplemental employee benefit; providing for legislative findings and purposes; clarifying authority of certain governing boards to delegate authority to its president; clarifying authority of commission and governing boards of certain institutions of higher education with respect to development of rules for accreditation and determination of minimum standards for conferring degrees; eliminating authority of commission to revoke an institution's authority to confer degrees when governing board or chief executive officer do not provide certain information to commission; eliminating applicability of certain commission and council rules on certain institutions of higher education; requiring certain governing boards to promulgate and adopt rules related to acquisitions and purchases; clarifying authority of certain governing boards over certain purchasing activities; authorizing prepayment by commission, council or governing boards in certain instance; expanding scope of authorized purchasers on certain purchase contracts; updating power of Joint Committee over performance audits of purchasing; updating authority of commission, council and governing boards over purchase card procedures; requiring certain governing boards to establish purchasing card procedures; clarifying authority for state institutions to enter into design-build contracts and other commonly accepted methods of procurement and financing for construction projects; providing that Design-Build Procurement Act does not apply to state institutions of higher education; providing authority to donate equipment, supplies and materials to not for profit entity to

promote public welfare; updating certain best practices applicable to ensuring fiscal integrity of institutions of higher education; authorizing additional situation where emergency purchase card use is permitted; authorizing different tuition and fees for online courses; updating time frame for payment of fees by students; authorizing deposit of certain fees into single special revenue account by certain institutions; updating applicability of rule by commission and council for tuition and deferred payment plans; authorizing certain governing board to proposed a rule related to tuition and fee deferred payment plans; authorizing certain governing boards to authorize a mandatory auxiliary fee without commission approval; updating tuition and fee increase percentage that requires commission or council approval; updating conditions commission or council are required to consider in determining whether to approve a tuition or fee increase; revising requirements and parameters for certain revenue bonds issued by certain governing boards; updating approvals required for issuance of certain revenue bonds by state institutions of higher education; providing for transfer and deposit of certain fees by certain governing boards into single special revenue account; requiring commission and council to develop system capital development oversight policy and providing content for such policy; requiring each governing board to adopt a campus development plan; updating time frame for reporting to commission and council on campus development plans; eliminating requirement for commission approval of campus development plans of certain governing boards; providing for content of campus development plans; eliminating commission approval over certain capital and maintenance project lists; authorizing certain governing boards to undertake projects not contained in campus development plan; eliminating certain commission approvals related to capital improvements for certain institutions; authorizing capital improvements to be funded through notes; updating conditions to be met for certain institutions to be responsible for capital project management; updating requirements for capital project management rule to be promulgated and adopted by certain governing boards; providing updated applicability and functions of higher education facilities information system; eliminating certain requirements related to

leasing of real property by commission, council, and governing boards; requiring notice to certain local governmental entities and legislators for certain sales and leases of land; updating permitted uses of proceeds from sale, conveyance or other disposal of real property received by commission, council or a governing board; authorizing certain governing boards to enter into lease-purchase agreements in certain instances without commission approval; eliminating requirement of commission approval for certain real estate and construction transactions; providing for the approval by the Council for Community and Technical College Education of acquisitions, bequests, donations, construction of new buildings, repairs, renovations or lease payments over the lifetime of the lease which exceed \$1 million, if made or accepted by the institution's research corporation or an affiliated foundation; providing additional requirements for governing boards to enter into sale lease-back transactions; and requiring certain governing boards to provide certain information to commission.

Be it enacted by the Legislature of West Virginia:

That §18B-1-5a and §18B-1-10 of the Code of West Virginia, 1931, as amended, be repealed; that §18B-1A-3 of said code be repealed; that §18B-1B-10 and §18B-1B-13 of said code be repealed; that §18B-2-5 and §18B-2-7 of said code be repealed; that §18B-5-2a of said code be repealed; that §18B-1-2 and §18B-1-6 of said code be amended and reenacted; that §18B-1B-1, §18B-1B-2, §18B-1B-4 and §18B-1B-6 of said code be amended and reenacted; that §18B-1D-2, §18B-1D-4 and §18B-1D-7 of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §18B-1F-10; that §18B-2A-3 and §18B-2A-4 of said code be amended and reenacted; that §18B-3-1 of said code be amended and reenacted; that §18B-4-7 of said code be amended and reenacted; that §18B-5-4, §18B-5-6, §18B-5-7 and §18B-5-9 of said code be amended and reenacted; that §18B-10-1, §18B-10-1c, §18B-10-8 and §18B-10-16 of said code be amended and reenacted; that §18B-19-1, §18B-19-3, §18B-19-4, §18B-19-5, §18B-19-6, §18B-19-7, §18B-19-9, §18B-19-10, §18B-19-11, §18B-19-13 and §18B-19-14 of said code be amended and reenacted; and that said code be

amended by adding thereto a new section, designated §18B-19-19, all to read as follows:

ARTICLE 1. GOVERNANCE.

§18B-1-2. Definitions.

1 The following words when used in this chapter and
2 chapter eighteen-c of this code have the meanings ascribed
3 to them unless the context clearly indicates a different
4 meaning:

5 (1) “Administratively linked community and technical
6 college” means a state institution of higher education
7 delivering community and technical college education and
8 programs which has maintained a contractual agreement to
9 receive essential services from another accredited state
10 institution of higher education prior to July 1, 2008;

11 (2) “Advanced technology center” means a facility
12 established under the direction of an independent
13 community and technical college or the council for the
14 purpose of implementing and delivering education and
15 training programs for high-skill, high-performance Twenty-
16 first Century workplaces;

17 (3) “Approve” or “approval”, when used in reference to
18 action by the Commission or the Council, means action in
19 which the governance rationale of a governing board under
20 its jurisdiction is given due consideration, and the action of
21 the Commission is to additionally establish whether the
22 proposed institutional action is consistent with law and
23 established policy and is an appropriate advancement of the
24 public interest;

25 (4) “Board of visitors” means the advisory board
26 previously appointed for the West Virginia Graduate
27 College and the advisory board previously appointed for
28 West Virginia University Institute of Technology, which
29 provide guidance to the Marshall University Graduate

30 College and West Virginia University Institute of
31 Technology, respectively;

32 (5) “Broker” or “brokering” means serving as an agent
33 on behalf of students, employers, communities or
34 responsibility areas to obtain education services not offered
35 at that institution. These services include courses, degree
36 programs or other services contracted through an agreement
37 with a provider of education services either in-state or out-
38 of-state;

39 (6) “Chancellor” means the Chancellor for Higher
40 Education where the context refers to a function of the
41 Higher Education Policy Commission. “Chancellor” means
42 the Chancellor for Community and Technical College
43 Education where the context refers to a function of the West
44 Virginia Council for Community and Technical College
45 Education;

46 (7) “Chancellor for Community and Technical College
47 Education” means the chief executive officer of the West
48 Virginia Council for Community and Technical College
49 Education employed pursuant to section three, article two-b
50 of this chapter;

51 (8) “Chancellor for Higher Education” means the chief
52 executive officer of the Higher Education Policy
53 Commission employed pursuant to section five, article one-
54 b of this chapter;

55 (9) “Collaboration” means entering into an agreement
56 with one or more providers of education services in order to
57 enhance the scope, quality or efficiency of education
58 services;

59 (10) “Community and technical college”, in the singular
60 or plural, means the free-standing community and technical
61 colleges and other state institutions of higher education
62 which deliver community and technical college education.
63 This definition includes Blue Ridge Community and

64 Technical College, Bridgemont Community and Technical
65 College, Eastern West Virginia Community and Technical
66 College, Kanawha Valley Community and Technical
67 College, Mountwest Community and Technical College,
68 New River Community and Technical College, Pierpont
69 Community and Technical College, Southern West Virginia
70 Community and Technical College, West Virginia Northern
71 Community and Technical College and West Virginia
72 University at Parkersburg;

73 (11) “Community and technical college education”
74 means the programs, faculty, administration and funding
75 associated with the delivery of community and technical
76 college education programs;

77 (12) “Community and technical college education
78 program” means any college-level course or program
79 beyond the high school level provided through a public
80 institution of higher education resulting in or which may
81 result in a two-year associate degree award including an
82 associate of arts, an associate of science and an associate of
83 applied science; certificate programs and skill sets;
84 developmental education; continuing education; collegiate
85 credit and noncredit workforce development programs; and
86 transfer and baccalaureate parallel programs. All programs
87 are under the jurisdiction of the council. Any reference to
88 “post-secondary vocational education programs” means
89 community and technical college education programs as
90 defined in this subsection;

91 (13) “Confirm” or “confirmation”, when used in
92 reference to action by the Commission, means action in
93 which substantial deference is allocated to the governing
94 authority of a governing board under its jurisdiction and the
95 action of the Commission is to review whether the proposed
96 institutional action is consistent with law and established
97 policy;

98 (14) “Council” means the West Virginia Council for
99 Community and Technical College Education created by
100 article two-b of this chapter;

101 (15) “Dual credit course” or “dual enrollment course”
102 means a credit-bearing college-level course offered in a
103 high school by a state institution of higher education for
104 high school students in which the students are concurrently
105 enrolled and receiving credit at the secondary level.

106 (16) “Essential conditions” means those conditions
107 which shall be met by community and technical colleges as
108 provided in section three, article three-c of this chapter;

109 (17) “Exempted schools” means West Virginia
110 University, including West Virginia University Potomac
111 State College and West Virginia University Institute of
112 Technology; Marshall University; and the West Virginia
113 School of Osteopathic Medicine;

114 (18) “Free-standing community and technical colleges”
115 means Southern West Virginia Community and Technical
116 College, West Virginia Northern Community and Technical
117 College, and Eastern West Virginia Community and
118 Technical College, which may not be operated as branches
119 or off-campus locations of any other state institution of
120 higher education;

121 (19) “Governing boards” or “boards” means the
122 institutional boards of Governors created by section one,
123 article two-a of this chapter;

124 (20) “Higher Education Policy Commission”, “Policy
125 Commission” or “Commission” means the commission
126 created by section one, article one-b of this chapter;

127 (21) “Independent community and technical college”
128 means a state institution of higher education under the
129 jurisdiction of the council which is independently
130 accredited, is governed by its own independent governing
131 board, and may not be operated as a branch or off-campus

132 location of any other state institution of higher education.
133 This definition includes Blue Ridge Community and
134 Technical College, Bridgemont Community and Technical
135 College, Eastern West Virginia Community and Technical
136 College, Kanawha Valley Community and Technical
137 College, Mountwest Community and Technical College,
138 New River Community and Technical College, Pierpont
139 Community and Technical College, Southern West Virginia
140 Community and Technical College, West Virginia Northern
141 Community and Technical College, and West Virginia
142 University at Parkersburg;

143 (22) “Institutional compact” means the compact
144 developed by a state institution of higher education,
145 consistent with the public policy agenda for higher
146 education;

147 (23) “Institutional operating budget” or “operating
148 budget” means for any fiscal year an institution’s total
149 unrestricted education and general funding from all sources,
150 including, but not limited to, tuition and fees and legislative
151 appropriation, and any adjustments to that funding as
152 approved by the commission or council based on
153 comparisons with peer institutions or to reflect consistent
154 components of peer operating budgets;

155 (24) “Rule” or “rules” means a regulation, standard,
156 policy or interpretation of general application and future
157 effect;

158 (25) “Sponsoring institution” means a state institution
159 of higher education that maintained an administrative link
160 to a community and technical college providing essential
161 services prior to July 1, 2008. This definition includes
162 institutions whose governing boards had under their
163 jurisdiction a community and technical college, regional
164 campus or a division delivering community and technical
165 college education and programs;

166 (26) “State college and university” means Bluefield
167 State College, Concord University, Fairmont State
168 University, Glenville State College, Shepherd University,
169 West Liberty University or West Virginia State University;

170 (27) “State institution of higher education” means any
171 university, college or community and technical college
172 under the jurisdiction of a governing board as that term is
173 defined in this section;

174 (28) “Statewide network of independently accredited
175 community and technical colleges” or “community and
176 technical college network” means the state institutions of
177 higher education under the jurisdiction of the West Virginia
178 Council for Community and Technical College Education
179 which are independently accredited, each governed by its
180 own independent governing board, and each having a core
181 mission of providing affordable access to and delivering
182 high quality community and technical education in every
183 region of the state; and

184 (29) “Vice Chancellor for Administration” means the
185 person employed in accordance with section two, article
186 four of this chapter. Any reference in this chapter or chapter
187 eighteen-c of this code to “Senior Administrator” means
188 Vice Chancellor for Administration.

§18B-1-6. Rulemaking.

1 (a) The commission is hereby empowered to
2 promulgate, adopt, amend or repeal rules, in accordance
3 with article three-a, chapter twenty-nine-a of this code,
4 subject to section three of this article. This grant of rule-
5 making authority does not limit, overrule, restrict, supplant
6 or supersede the rule-making authority provided to the
7 exempted schools.

8 (b) The council is hereby empowered to promulgate,
9 adopt, amend or repeal rules in accordance with article
10 three-a, chapter twenty-nine-a of this code, subject to
11 section three of this article. This grant of rule-making power

12 extends only to those areas over which the council has been
13 granted specific authority and jurisdiction by law.

14 (c) As it relates to the authority granted to governing
15 boards of state institutions of higher education to
16 promulgate, adopt, amend or repeal any rule under this
17 code:

18 (1) "Rule" means any regulation, guideline, directive,
19 standard, statement of policy or interpretation of general
20 application which has institution-wide effect or which
21 affects the rights, privileges or interests of employees,
22 students or citizens. Any regulation, guideline, directive,
23 standard, statement of policy or interpretation of general
24 application that meets this definition is a rule for the
25 purposes of this section.

26 (2) Regulations, guidelines or policies established for
27 individual units, divisions, departments or schools of the
28 institution, which deal solely with the internal management
29 or responsibilities of a single unit, division, department or
30 school or with academic curricular policies that do not
31 constitute a mission change for the institution, are excluded
32 from this subsection, except for the requirements relating to
33 posting.

34 (3) The commission shall promulgate a rule to guide the
35 development of rules made by the governing boards,
36 including a process for comment by the commission as
37 appropriate, except the exempted schools, who shall each
38 promulgate their own such rules. The council shall
39 promulgate a rule to guide the development and approval of
40 rules made by the governing boards. The commission and
41 council shall provide technical assistance in rulemaking as
42 requested. The rules promulgated by the exempted schools,
43 the commission and council shall include, but are not
44 limited to, the following provisions which shall be included
45 in the rule on rules adopted by each governing board of a
46 state institution of higher education:

47 (A) A procedure to ensure that public notice is given and
48 that the right of interested parties to have a fair and adequate
49 opportunity to respond is protected, including providing for
50 a thirty-day public comment period prior to final adoption
51 of a rule;

52 (B) Designation of a single location where all proposed
53 and approved rules, guidelines and other policy statements
54 are posted and can be accessed by the public;

55 (C) A procedure to maximize Internet access to all
56 proposed and approved rules, guidelines and other policy
57 statements to the extent technically and financially feasible;
58 and

59 (D) Except for the exempted schools, a procedure for
60 the governing board to follow in submitting its rules for
61 review and comment by the commission and approval by
62 the council, as appropriate:

63 (i) The governing boards shall submit rules for review
64 and comment to the commission.

65 (ii) The commission shall return to the governing board
66 its comments and suggestions within fifteen business days
67 of receiving the rule.

68 (iii) If a governing board receives comments or
69 suggestions on a rule from the commission, it shall record
70 these as part of the minute record. The rule is not effective
71 and may not be implemented until the governing board
72 holds a meeting and places on the meeting agenda the
73 comments it has received from the commission.

74 (d) Nothing in this section requires that any rule
75 reclassified or transferred by the commission or the council
76 under this section be promulgated again under the
77 procedures set out in article three-a, chapter twenty-nine-a
78 of this code unless the rule is amended or modified.

79 (e) The commission and council each shall file with the
80 Legislative Oversight Commission on Education
81 Accountability any rule it proposes to promulgate, adopt,
82 amend or repeal under the authority of this article.

83 (f) The governing boards shall promulgate and adopt
84 any rule which they are required to adopt by this chapter or
85 chapter eighteen-c of this code no later than July 1, 2011
86 unless a later date is specified. On and after this date:

87 (1) Any rule of a governing board which meets the
88 definition set out in subsection (c) of this section and which
89 has not been promulgated and adopted by formal vote of the
90 appropriate governing board is void and may not be
91 enforced;

92 (2) Any authority granted by this code which inherently
93 requires the governing board to promulgate and adopt a rule
94 is void until the governing board complies with this section.

95 (g) Within fifteen business days of the adoption of a
96 rule, including repeal or amendment of an existing rule, and
97 before the change is implemented, a governing board shall
98 furnish a copy of each rule which it has adopted to the
99 commission or the council, respectively, for review.

100 (h) Annually, by October 1, each governing board shall
101 file with the commission or the council, as appropriate, a list
102 of all rules that were in effect for that institution on July 1
103 of that year, including the most recent date on which each
104 rule was considered and adopted, amended or repealed by
105 the governing board. For all rules adopted, amended or
106 repealed after the effective date of this section, the list shall
107 include a statement by the chair of the governing board
108 certifying that the governing board has complied with this
109 section when each listed rule was promulgated and adopted.

110 (i) Any rule of the commission or council in effect at the
111 time of the re-enactment of this section or approved by the
112 Legislature during its 2017 Regular Session shall remain in

113 effect and applicable to an institution of higher education
114 under the jurisdiction of the commission or council until
115 such time as an institution exercises its authority to adopt a
116 rule pursuant to this chapter.

ARTICLE 1B. HIGHER EDUCATION POLICY COMMISSION.

§18B-1B-1. Higher education policy commission established; development of public policy agenda.

1 There is hereby created the “Higher Education Policy
2 Commission”, hereinafter referred to as the “commission”.
3 It is the intent of the Legislature that the commission be
4 responsible to provide shared services in a cost-effective
5 manner upon request by the state colleges and universities,
6 the council, and the community and technical colleges;
7 undertake certain statewide and regional initiatives as
8 specifically designated in this code, including those related
9 to the administration of grants and scholarships and
10 including those in conjunction with the council; to review,
11 confirm or approve certain actions undertaken by the
12 governing boards, as delineated in this chapter; and develop
13 and gain consensus around the public policy agenda for
14 higher education and other statewide issues pursuant to
15 section one-a, article one of this chapter under the following
16 conditions:

17 (a) It is the responsibility of the commission to work
18 collaboratively with the governing boards and the council to
19 develop and gain consensus around the public policy agenda
20 for higher education.

21 (b) It is the responsibility of the council to oversee the
22 implementation of the public policy agenda for the
23 institutions under its jurisdiction.

24 (c) All matters of governance not specifically assigned
25 to the commission or council by law are the duty and
26 responsibility of the governing boards.

§18B-1B-2. Composition of commission; terms and qualifications of members; vacancies; eligibility for reappointment; oath of office; removal from office.

1 (a) The commission is comprised of ten members, all of
2 whom are entitled to vote. The membership of the
3 commission is as follows:

4 (1) The Secretary of Education and the Arts, ex officio.

5 (2) The State Superintendent of Schools, ex officio;

6 (3) The chair of the West Virginia Council for
7 Community and Technical College Education, ex officio.

8 (4) Four at-large members who are citizens of the state,
9 appointed by the Governor, by and with the advice and
10 consent of the Senate.

11 (5) Three at-large members who are designated as
12 higher education representatives, appointed by the
13 Governor, by and with the advice and consent of the Senate;
14 for each of the higher education representatives, the
15 Governor shall choose from recommendations made by any
16 state college and university or exempted school and the
17 Governor may request additional recommendations from
18 state colleges and universities or exempted schools if in the
19 governor in his or her sole discretion determines that
20 additional recommendations are necessary for appointments
21 to the commission.

22 (b) Each of the at-large members appointed by the
23 Governor shall represent the public interest and shall be
24 committed to the legislative intent and goals set forth in state
25 law and policy.

26 (c) The Governor may not appoint any person to be a
27 member of the commission who is an officer, employee or
28 member of the council or an advisory board of any state
29 college or university or exempted school; an officer or
30 member of any political party executive committee; the

31 holder of any other public office or public employment
32 under the government of this state or any of its political
33 subdivisions; an appointee or employee of any governing
34 board; or an immediate family member of any employee
35 under the jurisdiction of the commission, the council or any
36 governing board.

37 (d) Of the seven, at-large members appointed by the
38 Governor:

39 (1) No more than four may belong to the same political
40 party;

41 (2) At least two shall be appointed from each
42 congressional district; and

43 (3) Effective July 1, 2008, no more than one member
44 may serve from the same county.

45 (e) The at-large members appointed by the Governor
46 serve overlapping terms of four years.

47 (f) The Governor shall appoint a member to fill any
48 vacancy among the seven at-large members, by and with the
49 advice and consent of the Senate. Any member appointed to
50 fill a vacancy serves for the unexpired term of the vacating
51 member. The Governor shall fill the vacancy within thirty
52 days of the occurrence of the vacancy.

53 (g) An at-large member appointed by the Governor may
54 not serve more than two consecutive terms.

55 (h) Before exercising any authority or performing any
56 duties as a member of the commission, each member shall
57 qualify as such by taking and subscribing to the oath of
58 office prescribed by section five, article IV of the
59 Constitution of West Virginia and the certificate thereof
60 shall be filed with the Secretary of State.

61 (i) A member of the commission appointed by the
62 Governor may not be removed from office by the Governor

63 except for official misconduct, incompetence, neglect of
64 duty or gross immorality and then only in the manner
65 prescribed by law for the removal of the state elective
66 officers by the Governor.

§18B-1B-4. Powers and duties of Higher Education Policy Commission.

1 (a) The primary responsibility of the commission is to
2 provide shared services in a cost-effective manner upon
3 request to the state colleges and universities, the council,
4 and the community and technical colleges; undertake
5 certain statewide and regional initiatives as specifically
6 designated in this chapter, including those related to the
7 administration of grants and scholarships and including
8 those in conjunction with the council; to review, confirm or
9 approve certain actions undertaken by governing boards, as
10 delineated in this chapter; and assist in the development of
11 policy that will achieve the goals, objectives and priorities
12 found in section one-a, article one and article one-d of this
13 chapter. The commission shall exercise its authority and
14 carry out its responsibilities in a manner that is consistent
15 and not in conflict with the powers and duties assigned by
16 law to the West Virginia Council for Community and
17 Technical College Education and the powers and duties
18 assigned to the governing boards. To that end, the
19 commission has the following powers and duties relating to
20 the governing boards under its jurisdiction:

21 (1) Develop and advance the public policy agenda
22 pursuant to article one-d of this chapter to address major
23 challenges facing the state, including, but not limited to, the
24 following:

25 (A) The goals, objectives and priorities established in
26 this chapter including specifically those goals, objectives
27 and priorities pertaining to the compacts created pursuant to
28 section seven, article one-d of this chapter; and

29 (B) Development of the master plan described in section
30 five, article one-d of this chapter for the purpose of
31 accomplishing the mandates of this section;

32 (2) Develop, oversee and advance the promulgation and
33 implementation of a financing rule for state institutions of
34 higher education under its jurisdiction except the exempted
35 schools. The rule shall meet the following criteria:

36 (A) Provide for an adequate level of educational and
37 general funding for institutions pursuant to section five,
38 article one-a of this chapter;

39 (B) Serve to maintain institutional assets, including, but
40 not limited to, human and physical resources and
41 eliminating deferred maintenance; and

42 (C) Invest and provide incentives for achieving the
43 priority goals in the public policy agenda, including, but not
44 limited to, those found in section one-a, article one and
45 article one-d of this chapter;

46 (3) In collaboration with the council and the governing
47 boards:

48 (A) Building public consensus around and sustaining
49 attention to a long-range public policy agenda. In
50 developing the agenda, the commission and council shall
51 seek input from the Legislature, the Governor, the
52 governing boards, and specifically from the State Board of
53 Education and local school districts in order to create the
54 necessary linkages to assure smooth, effective and seamless
55 movement of students through the public education and
56 post-secondary education systems and to ensure that the
57 needs of public school courses and programs can be fulfilled
58 by the graduates produced and the programs offered;

59 (B) Assisting governing boards to carry out their duty
60 effectively to govern the individual institutions of higher
61 education;

62 (4) Except the exempted schools, review and comment
63 on each compact for the governing boards under its
64 jurisdiction, and final confirmation of each compact;

65 (5) Review and confirm the bi-annual updates of the
66 institutional compacts, except the exempted schools;

67 (6) Serve as a point of contact to state policymakers:

68 (A) The Governor for the public policy agenda; and

69 (B) The Legislature by maintaining a close working
70 relationship with the legislative leadership and the
71 Legislative Oversight Commission on Education
72 Accountability.

73 (7) Upon request, provide shared services to a state
74 institution of higher education;

75 (8) Administer scholarship and grant programs as
76 provided for in this code;

77 (9) Establish and implement the benchmarks and
78 performance indicators for state colleges and universities
79 necessary to measure institutional progress in achieving
80 state policy priorities and institutional missions pursuant to
81 section seven, article one-d of this chapter;

82 (10) Establish a formal process for recommending
83 capital investment needs and for determining priorities for
84 state colleges and universities for these investments for
85 consideration by the Governor and the Legislature as part of
86 the appropriation request process pursuant to article
87 nineteen of this chapter;

88 (11) Except the exempted schools, develop standards
89 and evaluate governing board requests for capital project
90 financing in accordance with article nineteen of this chapter;

91 (12) Except the exempted schools, ensure that
92 governing boards manage capital projects and facilities

93 needs effectively, including review and approval of capital
94 projects, in accordance with article nineteen of this chapter;

95 (13) Acquire legal services as considered necessary,
96 including representation of the commission, the governing
97 boards, employees and officers before any court or
98 administrative body, notwithstanding any other provision of
99 this code to the contrary. The counsel may be employed
100 either on a salaried basis or on a reasonable fee basis. In
101 addition, the commission may, but is not required to, call
102 upon the Attorney General for legal assistance and
103 representation as provided by law;

104 (14) Employ a Chancellor for Higher Education
105 pursuant to section five of this article;

106 (15) Employ other staff as necessary and appropriate to
107 carry out the duties and responsibilities of the commission
108 and the council, in accordance with article four of this
109 chapter;

110 (16) Provide suitable offices in Kanawha County for the
111 chancellor, vice chancellors and other staff;

112 (17) Advise and confirm in the appointment of the
113 presidents of the institutions of higher education under its
114 jurisdiction pursuant to section six of this article, except the
115 exempted schools. The role of the commission in
116 confirming an institutional president is to assure through
117 personal interview that the person selected understands and
118 is committed to achieving the goals, objectives and
119 priorities set forth in the compact, in section one-a, article
120 one and article one-d of this chapter;

121 (18) Approve the total compensation package from all
122 sources for presidents of institutions under its jurisdiction,
123 except the exempted schools, as proposed by the governing
124 boards. The governing boards, except the exempted schools,
125 must obtain approval from the commission of the total
126 compensation package both when institutional presidents

127 are employed initially and afterward when any change is
128 made in the amount of the total compensation package:
129 *Provided*, That the Commission will receive notice, but
130 need not approve or confirm, an increase in the
131 compensation of an institutional president that is exactly in
132 the ratio of compensation increases allocated to all
133 institutional employees and approved by the governing
134 board to expressly include the president;

135 (19) Assist and facilitate the work of the institutions to
136 implement the policy of the state to assure that parents and
137 students have sufficient information at the earliest possible
138 age on which to base academic decisions about what is
139 required for students to be successful in college, other post-
140 secondary education and careers related, as far as possible,
141 to results from current assessment tools in use in West
142 Virginia;

143 (20) Approve and implement a uniform standard jointly
144 with the council to determine which students shall be placed
145 in remedial or developmental courses. The standard shall be
146 aligned with college admission tests and assessment tools
147 used in West Virginia and shall be applied uniformly by the
148 governing boards. The chancellors shall develop a clear,
149 concise explanation of the standard which they shall
150 communicate to the State Board of Education and the state
151 superintendent of Schools;

152 (21) Jointly with the council, develop and implement an
153 oversight plan to manage systemwide technology except the
154 exempted schools, including, but not limited to, the
155 following:

156 (A) Expanding distance learning and technology
157 networks to enhance teaching and learning, promote access
158 to quality educational offerings with minimum duplication
159 of effort; and

160 (B) Increasing the delivery of instruction to
161 nontraditional students, to provide services to business and

162 industry and increase the management capabilities of the
163 higher education system.

164 (C) Notwithstanding any other provision of law or this
165 code to the contrary, the council, commission and governing
166 boards are not subject to the jurisdiction of the Chief
167 Technology Officer for any purpose;

168 (22) Establish and implement policies and procedures to
169 ensure that a student may transfer and apply toward the
170 requirements for a bachelor's degree the maximum number
171 of credits earned at any regionally accredited in-state or out-
172 of-state community and technical college with as few
173 requirements to repeat courses or to incur additional costs
174 as are consistent with sound academic policy;

175 (23) Establish and implement policies and procedures to
176 ensure that a student may transfer and apply toward the
177 requirements for any degree the maximum number of
178 credits earned at any regionally accredited in-state or out-
179 of-state higher education institution with as few
180 requirements to repeat courses or to incur additional costs
181 as are consistent with sound academic policy;

182 (24) Establish and implement policies and procedures to
183 ensure that a student may transfer and apply toward the
184 requirements for a master's degree the maximum number of
185 credits earned at any regionally accredited in-state or out-
186 of-state higher education institution with as few
187 requirements to repeat courses or to incur additional costs
188 as are consistent with sound academic policy;

189 (25) Establish and implement policies and programs, in
190 cooperation with the council and the governing boards,
191 through which a student who has gained knowledge and
192 skills through employment, participation in education and
193 training at vocational schools or other education
194 institutions, or Internet-based education programs, may
195 demonstrate by competency-based assessment that he or she
196 has the necessary knowledge and skills to be granted

197 academic credit or advanced placement standing toward the
198 requirements of an associate's degree or a bachelor's degree
199 at a state institution of higher education;

200 (26) Seek out and attend regional, national and
201 international meetings and forums on education and
202 workforce development-related topics as, in the
203 commission's discretion, are critical for the performance of
204 their duties as members, for the purpose of keeping abreast
205 of education trends and policies to aid it in developing the
206 policies for this state to meet the established education
207 goals, objectives and priorities pursuant to section one-a,
208 article one and article one-d of this chapter;

209 (27) Promulgate and implement a rule for higher
210 education governing boards and institutions, except the
211 exempted schools, to follow when considering capital
212 projects pursuant to article nineteen of this chapter, which
213 rule shall provide for appropriate deference to the value
214 judgments of governing boards under the jurisdiction of the
215 commission;

216 (28) Submit to the appropriate agencies of the executive
217 and legislative branches of state government an appropriation
218 request that reflects recommended appropriations for the
219 commission and the governing boards under its jurisdiction.
220 The commission shall submit as part of its appropriation
221 request the separate recommended appropriation request it
222 received from the council, both for the council and for the
223 governing boards under the council's jurisdiction, including
224 the exempted schools. The commission annually shall submit
225 the proposed allocations based on each institution's progress
226 toward meeting the goals of its compact;

227 (29) The commission may assess institutions under its
228 jurisdiction, including the exempted schools, for the
229 payment of expenses of the commission or for the funding
230 of statewide higher education services, obligations or
231 initiatives related to the goals set forth for the provision of
232 public higher education in the state: *Provided*, That the

233 commission may not assess institutions pursuant to this
234 subdivision on or after July 1, 2018;

235 (30) Promulgate rules allocating reimbursement of
236 appropriations, if made available by the Legislature, to
237 governing boards for qualifying noncapital expenditures
238 incurred in providing services to students with physical,
239 learning or severe sensory disabilities;

240 (31) Pursuant to article three-a, chapter twenty-nine-a of
241 this code and section six, article one of this chapter,
242 promulgate rules necessary or expedient to fulfill the
243 purposes of this chapter;

244 (32) Determine when a joint rule among the governing
245 boards under its jurisdiction is necessary or required by law
246 and, in those instances, in consultation with the governing
247 boards under its jurisdiction, promulgate the joint rule;

248 (33) Promulgate and implement a rule jointly with the
249 council whereby course credit earned at a community and
250 technical college transfers for program credit at any other
251 state institution of higher education and is not limited to
252 fulfilling a general education requirement;

253 (34) By October 1, 2011, promulgate a rule pursuant to
254 section one, article ten of this chapter, establishing tuition
255 and fee policy for all governing boards under the
256 jurisdiction of the commission, except the exempted
257 schools. The rule shall include, but is not limited to, the
258 following:

259 (A) Differences among institutional missions;

260 (B) Strategies for promoting student access;

261 (C) Consideration of charges to out-of-state students;
262 and

263 (D) Such other policies as the commission and council
264 consider appropriate;

265 (35) Assist governing boards in actions to implement
266 general disease awareness initiatives to educate parents
267 and students, particularly dormitory residents, about
268 meningococcal meningitis; the potentially life-threatening
269 dangers of contracting the infection; behaviors and
270 activities that can increase risks; measures that can be
271 taken to prevent contact or infection; and potential benefits
272 of vaccination. The commission shall encourage governing
273 boards that provide medical care to students to provide
274 access to the vaccine for those who wish to receive it; and

275 (36) Notwithstanding any other provision of this code to
276 the contrary sell, lease, convey or otherwise dispose of all
277 or part of any real property that it owns, in accordance with
278 article nineteen of this chapter.

279 (37) Policy analysis and research focused on issues
280 affecting institutions of higher education generally or a
281 geographical region thereof;

282 (38) Development and approval of institutional mission
283 definitions except the exempted schools, including use of
284 incentive funds to influence institutional behavior in ways
285 that are consistent with public priorities;

286 (39) Academic program review and approval for
287 governing boards under its jurisdiction. The review and
288 approval includes use of institutional missions as a template
289 to judge the appropriateness of both new and existing
290 programs and the authority to implement needed changes.

291 (A) The commission's authority to review and approve
292 academic programs for the exempted schools is limited to
293 programs that are proposed to be offered at a new location
294 not presently served by that institution: *Provided*, That West
295 Virginia University and the West Virginia University
296 Institute of Technology are subject to the commission's
297 authority as provided in section two, article one-c of this
298 chapter;

299 (B) In reviewing and approving academic programs, the
300 commission shall focus on the following policy concerns:

301 (1) New programs should not be implemented which
302 change the institutional mission, unless the institution also
303 receives approval for expanding the institutional mission;

304 (2) New programs which will require significant
305 additional expense investments for implementation should
306 not be implemented unless the institution demonstrates that:

307 (i) The expenses will be addressed by effective
308 reallocations of existing institutional resources; or

309 (ii) The expenses can be legitimately spread out over
310 future years and will be covered by reasonably anticipated
311 additional net revenues from new enrollments;

312 (3) A new undergraduate program which is significantly
313 similar to an existing program already in the geographic
314 service area should not be implemented unless the
315 institution requesting the new program demonstrates a
316 compelling need in the service area that is not being met by
317 the existing program: *Provided*, That the academic
318 programs of the exempted schools are not to be taken into
319 consideration except as it relates to academic programs
320 offered at West Virginia University in Beckley and West
321 Virginia University Institute of Technology in Beckley.

322 (C) The commission shall approve or disapprove
323 proposed academic degree programs in those instances
324 where approval is required as soon as practicable. The
325 commission shall maintain by rule a format model by which
326 a new program approval shall be requested by an institution.
327 When a request for approval of a new program is submitted
328 to the commission, the chancellor shall provide notice
329 within two weeks as to whether the submission meets the
330 required format, and if it does not the chancellor shall
331 identify each specific deficiency and return the request to
332 the institution. The institution may re-file the request for

333 approval with the commission to address any identified
334 deficiencies. Within thirty days after the chancellor's
335 confirmation that the request meets the required format, the
336 commission shall either approve or disapprove the request
337 for the new program. The commission may not withhold
338 approval unreasonably.

339 (40) Distribution of funds appropriated to the
340 commission, including incentive and performance-based
341 funds;

342 (41) Administration of state and federal student aid
343 programs under the supervision of the vice chancellor for
344 administration, including promulgation of rules necessary to
345 administer those programs;

346 (42) Serving as the agent to receive and disburse public
347 funds when a governmental entity requires designation of a
348 statewide higher education agency for this purpose;

349 (43) Developing and distributing information,
350 assessment, accountability and personnel systems for state
351 colleges and universities, including maintaining statewide
352 data systems that facilitate long-term planning and accurate
353 measurement of strategic outcomes and performance
354 indicators;

355 (44) Jointly with the council, promulgating and
356 implementing rules for licensing and oversight for both
357 public and private degree-granting and nondegree-granting
358 institutions that provide post-secondary education courses
359 or programs in the state. The council has authority and
360 responsibility for approval of all post-secondary courses or
361 programs providing community and technical college
362 education as defined in section two, article one of this
363 chapter;

364 (45) Developing, facilitating, and overseeing statewide
365 and regional projects and initiatives related to providing
366 post-secondary education at the baccalaureate level and

367 above such as those using funds from federal categorical
368 programs or those using incentive and performance-based
369 funds from any source;

370 (46) (A) For all governing boards under its jurisdiction,
371 except for the exempted schools, the commission shall
372 review institutional operating budgets, review and approve
373 capital budgets, and distribute incentive and performance-
374 based funds;

375 (B) For the governing boards of, the exempted schools, the
376 commission shall distribute incentive and performance-based
377 funds and may review and comment upon the institutional
378 operating budgets and capital budgets. The commission's
379 comments, if any, shall be made part of the governing board's
380 minute record and shall be filed with the Legislative Oversight
381 Commission on Education Accountability;

382 (47) May provide information, research, and
383 recommendations to state colleges and universities relating
384 to programs and vocations with employment rates greater
385 than ninety percent within six months post-graduation; and

386 (48) May provide information, research and
387 recommendations to state colleges and universities on
388 coordinating with the West Virginia State Board of
389 Education about complimentary programs.

390 (b) In addition to the powers and duties provided in
391 subsections (a) and (b) of this section and any other powers
392 and duties assigned to it by law, the commission has other
393 powers and duties necessary or expedient to accomplish the
394 purposes of this article: *Provided*, That the provisions of
395 this subsection shall not be construed to shift management
396 authority from the governing boards to the commission.

397 (c) The commission may withdraw specific powers of a
398 governing board under its jurisdiction for a period not to
399 exceed two years, if the commission determines that any of
400 the following conditions exist:

401 (1) The commission has received information,
402 substantiated by independent audit, of significant
403 mismanagement or failure to carry out the powers and duties
404 of the governing board according to state law; or

405 (2) Other circumstances which, in the view of the
406 commission, severely limit the capacity of the governing
407 board to exercise its powers or carry out its duties and
408 responsibilities.

409 The commission may not withdraw specific powers for
410 a period exceeding two years. During the withdrawal
411 period, the commission shall take all steps necessary to
412 reestablish sound, stable and responsible institutional
413 governance.

414 (d) The Higher Education Policy Commission shall
415 examine the question of general revenue appropriations to
416 individual higher education institutions per student, and per
417 credit hour, and by other relevant measures at all higher
418 education institutions, including four-year baccalaureate
419 institutions and the community and technical colleges, and on
420 or before January 1, 2018, the commission shall deliver its
421 report to the Joint Committee on Government and Finance and
422 the Legislative Oversight Commission on Education
423 Accountability. This report shall include a recommendation to
424 the Legislature on a formula for the allocation of general
425 revenue to be appropriated to such institutions that provides for
426 ratable funding across all four-year institutions and community
427 and technical colleges on a ratable basis, by enrolled student,
428 by credit hour or by other relevant measures. On such basis,
429 the commission shall make a recommendation to the
430 Legislature as to the amounts that each such institution should
431 have appropriated to it in the general revenue budget for fiscal
432 year 2019, based upon the total general revenue appropriations
433 that such institutions receive in aggregate in the enacted budget
434 for fiscal year 2018.

§18B-1B-6. Appointment of institutional presidents; evaluation.

1 (a) *Appointment of institutional presidents.* —
2 Appointment of presidents of the state institutions of higher
3 education, except the exempted schools, shall be made as
4 follows:

5 (1) The initial contract term for a president may not
6 exceed two years. At the end of the initial contract period,
7 and subject to the provisions of subsection (c) of this
8 section, the governing board may offer the president a
9 contract of longer duration, but not to exceed five years.

10 (2) The president of a state institution of higher
11 education serves at the will and pleasure of the appointing
12 governing board.

13 (3) Subject to the confirmation of the commission, the
14 governing boards of the following institutions, appoint a
15 president: Bluefield State College, Concord University,
16 Fairmont State University, Glenville State College,
17 Shepherd University, West Liberty University and West
18 Virginia State University. The exempted schools may
19 appoint a president without the confirmation or approval of
20 the Commission.

21 (4) Subject to the approval of the council, the governing
22 board of the community and technical college appoints a
23 president for Blue Ridge Community and Technical
24 College, Bridge Valley Community and Technical College,
25 Eastern West Virginia Community and Technical College,
26 Mountwest Community and Technical College, New River
27 Community and Technical College, Pierpont Community
28 and Technical College, Southern West Virginia Community
29 and Technical College, West Virginia Northern Community
30 and Technical College and West Virginia University at
31 Parkersburg.

32 (b) *Other appointments.* — The President of West
33 Virginia University appoints a campus president to be the
34 administrative head of Potomac State College of West
35 Virginia University and a campus president to be the

36 administrative head of West Virginia University Institute of
37 Technology.

38 (c) *Evaluation of presidents.* —

39 (1) The appointing governing board shall conduct
40 written performance evaluations of the institution's
41 president. Evaluations shall be done at the end of the initial
42 contract period and in every third year of employment as
43 president thereafter, recognizing unique characteristics of
44 the institution and using institutional personnel, boards of
45 advisors as appropriate, staff of the appropriate governing
46 board and persons knowledgeable in higher education
47 matters who are not otherwise employed by a governing
48 board. A part of the evaluation shall be a determination of
49 the success of the institution in meeting the requirements of
50 its institutional compact and in achieving the goals,
51 objectives and priorities established in articles one and one-
52 d of this chapter.

53 (2) After reviewing the evaluations, the governing board
54 shall make a determination by majority vote of its members
55 on continuing employment and the compensation level for
56 the president in accordance with subsection (a) of this
57 section.

58 (d) The legislative rules of the commission and council
59 promulgated in accordance with section six, article one of
60 this chapter and article three-a, chapter twenty-nine-a of this
61 code which are in effect on January 1, 2014, continue in
62 effect unless amended or repealed. The rules provide
63 guidance for the governing boards, but are not applicable to
64 the exempted schools, in filling vacancies in the office of
65 president in accordance with this chapter and shall include,
66 but are not limited to, clarifying the powers, duties and roles
67 of the governing boards, commission, council and
68 chancellors in the presidential appointment process.

ARTICLE 1D. HIGHER EDUCATION ACCOUNTABILITY.

§18B-1D-2. Definitions.

1 (a) *General.* — For the purposes of this article and
2 section one-a, article one of this chapter, terms have the
3 meaning ascribed to them in section two, article one of this
4 chapter, unless the context in which the term is used clearly
5 requires a different meaning or a specific definition is
6 provided in this section.

7 (b) *Definitions.* —

8 (1) “Accountability system for public higher education”
9 or “accountability system” means all research, reports,
10 documents, data and any other materials, the collection,
11 analysis and dissemination of which are necessary or
12 expedient to accomplish the purposes of this article or
13 section one-a, article one of this chapter. The system
14 includes legislative goals, objectives and priorities; public
15 policy agendas; statewide master plans; state and
16 institutional compacts; implementation plans; institutional
17 mission statements and master plans; and the statewide
18 report card.

19 (2) “Education partnership to achieve state goals and
20 objectives” or “education partnership” means the formal
21 and informal working relationships established between and
22 among the State of West Virginia, the commission, the
23 council, the State Board of Education and State Department
24 of Education and the state institutions of higher education
25 for the purpose of achieving state goals and objectives.

26 (3) “Functional literacy rate” means the percentage of
27 adults over the age of seventeen who are able to read beyond
28 a fourth grade level and interpret basic information from
29 sources such as road signs, job applications, newspaper
30 articles and food and medicine labels.

31 (4) “Goals” means those long-term public purposes
32 which are the desired and expected end result for which
33 public higher education is established.

34 (5) “Implementation plan” means a document
35 developed within the higher education community that
36 identifies a series of objectives, sets forth performance
37 indicators that can be used to determine if objectives are
38 being achieved, outlines strategies for accomplishing the
39 objectives and identifies benchmarks for evaluating
40 progress in accomplishing the objectives over the life cycle
41 of the plan.

42 (6) “Institutions under the jurisdiction of the
43 commission” relative to the accountability system
44 established by this article and section one-a, article one of
45 this chapter means Bluefield State College, Concord
46 University, Fairmont State University, Glenville State
47 College, Shepherd University, West Liberty State College,
48 and West Virginia State University.

49 (7) “Institutions under the jurisdiction of the council”
50 relative to the accountability system established by this
51 article and section one-a, article one of this chapter means
52 Blue Ridge Community and Technical College, the
53 Community and Technical College at West Virginia
54 University Institute of Technology, Eastern West Virginia
55 Community and Technical College, Marshall Community
56 and Technical College, New River Community and
57 Technical College, Pierpont Community and Technical
58 College, Southern West Virginia Community and Technical
59 College, West Virginia Northern Community and Technical
60 College, West Virginia State Community and Technical
61 College and West Virginia University at Parkersburg.

62 (8) “Net college costs” means the total cost of tuition,
63 room and board minus the amount of financial aid a student
64 receives.

65 (9) “Objectives” means the ends to be accomplished or
66 attained within a specified period of time for the purpose of
67 meeting the established goals.

68 (10) “Priority” or “priorities” means the order in which
69 objectives are to be addressed for the purpose of achieving
70 state goals.

71 (11) “Strategy” or “strategies” means specific activities
72 carried out by public higher education which are directed
73 toward accomplishing specific objectives.

74 (12) “Statewide master plan” or “system master plan”
75 means a document developed by the council or commission
76 that sets forth system goals, objectives and strategies and is
77 aligned with, but not limited to, meeting state goals,
78 objectives and priorities.

79 (13) “STEM courses and programs” means curricula
80 leading to a degree or other recognized credential in the
81 science, technology, engineering and mathematics fields of
82 study or specialization.

83 (14) “State compact” means a formal, written agreement
84 between the council and/or the commission and at least one
85 other member of the education partnership to achieve state
86 goals and objectives where significant collaboration and
87 commitment of resources between the parties to the
88 agreement is required in order to achieve the desired results.

**§18B-1D-4. Responsibilities of Higher Education Policy
Commission and Council for Community and Technical
College Education; development of public policy agendas;
reports; institutional responsibilities.**

1 (a) It is the responsibility of the commission, in
2 cooperation with the council, to develop, oversee and
3 advance the public policy agenda mandated by section four,
4 article one-b of this chapter to address the goals and
5 objectives established pursuant to this article and section
6 one-a, article one of this chapter, including, but not limited
7 to, aligning state and institutional compacts, master plans,
8 implementation plans and institutional missions for
9 institutions of higher education except the exempted schools
10 with state goals and objectives to accomplish the purposes
11 of this article.

12 (b) It is the responsibility of the council, in cooperation
13 with the commission when applicable, to develop, oversee
14 and advance the public policy agenda mandated by section
15 six, article two-b of this chapter to address the goals and
16 objectives established pursuant to this article and section
17 one-a, article one of this chapter, including, but not limited
18 to, aligning state and institutional compacts, master plans,
19 implementation plans and institutional missions with state
20 goals and objectives to accomplish the purposes of this
21 article.

22 (c) It is further the responsibility of the commission and
23 council to collect the data, for institutions of higher
24 education including the exempted schools, assemble it in the
25 appropriate format and transmit all reports and any other
26 essential documents as needed to fulfill the purposes of this
27 article. Each report shall contain a brief, concise executive
28 summary and shall include trends and recommendations in
29 text format. Recommendations shall be ranked by order of
30 importance and shall be supported by objective data
31 available elsewhere in the report. In addition to those
32 specifically mandated by this chapter or chapter eighteen-c
33 of this code, reporting responsibilities include, but are not
34 limited to, the following:

35 (1) Ensuring that data systems collect the essential
36 information state-level policymakers' need to answer key
37 policy questions to fulfill the purposes of the accountability
38 system established pursuant to this article and section one-
39 a, article one of this chapter;

40 (2) Collaborating with public education to establish
41 policies to link existing pre-K, K-12, higher education and
42 teacher data systems to enable tracking of student progress
43 and teacher performance over time; and

44 (3) Ensuring that reports provide data analyses to
45 determine if students entering the public higher education
46 systems are prepared for post-secondary education and if
47 students obtaining degrees, certificates or other credentials
48 are prepared to pursue careers or to continue their education.

49 (d) It is the responsibility of public institutions of higher
50 education except the exempted schools to report to the
51 commission or the council, as appropriate, on plans,
52 accomplishments and recommendations to implement the
53 goals and objectives contained in the institutional and state
54 compacts.

**§18B-1D-7. Findings; establishment of institutional compacts;
compact elements; submission date; review and approval
process; rule required.**

1 (a) The Legislature finds that West Virginia long has
2 recognized the value of education and, on a per capita
3 income basis, ranks very high among the states in its
4 investment to support public education. The Legislature
5 further finds that a combination of state and national
6 demographic and economic factors as well as significant
7 changes in methods of course and program delivery compel
8 both the state and public higher education to create a process
9 that will strengthen institutional capacity to provide the
10 services so valued by the citizens of the state and so
11 essential to promoting economic vitality.

12 (b) Therefore, each state college or university except the
13 exempted schools, shall prepare an institutional compact for
14 submission to the commission and each community and
15 technical college shall prepare an institutional compact for
16 submission to the council. When the process herein
17 provided is completed, the resulting institutional compact
18 shall contain at a minimum the following basic components:

19 (1) Institutional strategies for focusing resources on
20 meeting the goals and objectives set forth in this article and
21 section one-a, article one of this chapter; and

22 (2) Commission or council strategies for promoting and
23 supporting the institution in fulfilling its mission and
24 objectives, to make it more competitive with its peers and
25 to ensure the continuity of academic programs and services
26 to its students.

27 (c) In addition to the basic contract components
28 described in subsection (b) of this section, each compact
29 shall contain at least the following elements:

30 (1) A determination of the mission of the institution
31 which specifically addresses changes necessary or
32 expedient to accomplish the goals and objectives articulated
33 by the state and the appropriate statewide master plan;

34 (2) A detailed statement of how the compact is aligned
35 with and will be implemented in conjunction with the
36 master plan of the institution;

37 (3) A comprehensive assessment of education needs
38 within the institution's geographic area of responsibility;

39 (4) A strategy to ensure access to comprehensive
40 community and technical college and workforce
41 development services within each respective region of the
42 state consistent with the mission of the institution;

43 (5) Provision for collaboration and brokering of
44 education services as necessary or expedient to carry out the
45 institutional mission and meet its objectives;

46 (6) Provision of student services at the optimum level to
47 support the institutional mission and to achieve state goals
48 and objectives;

49 (7) Strategies for using existing infrastructure and
50 resources within each region, where feasible, to increase
51 student access while controlling costs and maintaining
52 academic quality; and

53 (8) Other public policy objectives or initiatives adopted
54 by the commission or council pursuant to the intent and
55 purposes of this article and section one-a, article one of this
56 chapter.

57 (d) Each institutional compact shall be updated bi-
58 annually and shall follow the same general guidelines
59 contained in this section.

60 (e) Development and updating of the institutional
61 compacts is subject to the following conditions:

62 (1) The ultimate responsibility for developing and
63 updating the compacts at the institutional level resides with
64 the board of advisors or the board of governors, as
65 appropriate. It is the responsibility of the commission or
66 council to provide technical assistance as requested and to
67 assist the institution, with the exception of the exempted
68 schools, in development of the strategies to promote and
69 support the institution pursuant to subsection (b) of this
70 section;

71 (2) The commission and the council each shall establish
72 a date by which institutions, with the exception of the
73 exempted schools, under their respective jurisdictions shall
74 submit their compacts to the commission or council
75 pursuant to the provisions of this article. The date
76 established by each state-level coordinating board shall
77 apply uniformly to all institutions under the jurisdiction of
78 that coordinating board and shall meet the following
79 additional conditions:

80 (A) Allow sufficient time for careful analysis of the
81 compacts by the central office staff and for review by
82 members of the commission or the council, as appropriate;
83 and

84 (B) Allow sufficient time for the institutions to make
85 necessary revisions to the compacts as provided in this
86 section.

87 (3) The commission shall review each compact from the
88 institutions under its jurisdiction and either confirm the
89 compact or return it with specific comments for change or
90 improvement. The council shall review each compact from

91 the institutions under its jurisdiction and either adopt the
92 compact or return it with specific comments for change or
93 improvement. The commission and council, respectively,
94 shall continue this process as long as each considers
95 advisable;

96 (4) By May 1 bi-annually, if the institutional compact of
97 any institution as presented by that institution is not
98 confirmed by the commission or adopted by the council,
99 then the commission or council is empowered and directed
100 to develop and adopt the institutional compact for the
101 institution and the institution is bound by the compact so
102 adopted; and

103 (5) As far as practicable, the commission and council
104 each shall establish uniform processes and forms for the
105 development and submission of the institutional compacts
106 by the institutions under their respective jurisdictions,
107 taking into consideration the differences in institutional
108 missions and objectives. As a part of this function, the
109 commission and council each shall organize the statements
110 of legislative goals and objectives contained in this article
111 and section one-a, article one of this chapter in a manner that
112 facilitates the purposes therein.

113 (f) *Assignment of geographic areas of responsibility.* —

114 (1) The commission shall assign geographic areas of
115 responsibility to the state institutions of higher education
116 under its jurisdiction, except for the exempted schools. For
117 institutions other than the exempted schools, the geographic
118 areas of responsibility are made a part of their institutional
119 compacts to ensure that all areas of the state are provided
120 necessary programs and services to achieve state goals and
121 objectives. The commission and the council each shall
122 develop data-based measures to determine the extent to
123 which institutions, with the exception of the exempted
124 schools, under their respective jurisdictions are providing
125 higher education services aligned with state goals and
126 objectives and institutional missions within their geographic

127 areas of responsibility. This information shall be reported in
128 the statewide report card established pursuant to section
129 eight of this article.

130 (2) The council shall assign geographic areas of
131 responsibility to the state institutions of higher education
132 under its jurisdiction, including the administratively linked
133 institution known as Marshall Community and Technical
134 College, the administratively linked institution known as the
135 Community and Technical College at West Virginia
136 University Institute of Technology and the regional campus
137 known as West Virginia University at Parkersburg.

138 (3) The geographic areas of responsibility for the state
139 institutions of higher education known as West Virginia
140 School of Osteopathic Medicine, Marshall University and
141 West Virginia University are assigned by the Legislature.

142 (4) The benchmarks established in the institutional
143 compacts include measures of programs and services by
144 geographic area throughout the assigned geographic area of
145 responsibility.

146 (g) The compacts shall contain benchmarks to be used
147 to determine progress toward meeting the objectives
148 established in the compacts. The benchmarks shall meet the
149 following criteria:

150 (1) They shall be objective;

151 (2) They shall be directly linked to the objectives in the
152 compacts;

153 (3) They shall be measured by the indicators described
154 in subsection (h) of this section; and

155 (4) Where applicable, they shall be used to measure
156 progress in geographic areas of responsibility.

157 (h) The rules required by subsection (c), section one of
158 this article shall include indicators which measure the

159 degree to which the goals and objectives set forth in this
160 article and section one-a, article one of this chapter are being
161 met by the institutions under the jurisdiction of the
162 commission and the council, respectively.

163 (1) The rules pertaining to benchmarks and indicators in
164 effect for the commission and the council on the effective
165 date of this section remain in effect for the institutions under
166 their respective jurisdictions until amended, modified,
167 repealed or replaced by the commission or the council,
168 respectively, pursuant to the provisions of this article,
169 section six, article one of this chapter and article three-a,
170 chapter twenty-nine-a of this code.

171 (2) The rules shall set forth at least the following as
172 pertains to all state institutions of higher education, except
173 the exempted schools:

174 (A) The indicators used to measure the degree to which
175 the goals and objectives are being met;

176 (B) Uniform definitions for the various data elements to
177 be used in establishing the indicators;

178 (C) Guidelines for the collection and reporting of data;
179 and

180 (D) Sufficient detail within the benchmarks and
181 indicators to provide the following information:

182 (i) Measurable evidence that the pursuits of the
183 institution are focused on the education needs of the citizens
184 of the state and are aligned with the objectives of the
185 institutional compacts and statewide master plans;

186 (ii) Delineation of the objectives and benchmarks for an
187 institution so that the commission or council can precisely
188 measure the degree to which progress is being made toward
189 achieving the goals and objectives provided in this article
190 and section one-a, article one of this chapter: *Provided, That*

191 the commission has no authority regarding the objectives
192 and benchmarks for exempted schools; and

193 (iii) Identification of specific objectives within the
194 master plan or compact of an institution that are not being
195 met or toward which sufficient progress is not being made.

196 (3) In addition to any other requirement, the rule
197 established by the council shall set forth at least the
198 following as pertains to community and technical college
199 education:

200 (A) Benchmarks and indicators which are targeted to
201 identify the following:

202 (i) The degree to which progress is being made by
203 institutions toward meeting state goals and objectives and
204 the essential conditions for community and technical
205 college education pursuant to section three, article three-c
206 of this chapter;

207 (ii) Information and data necessary to be considered by
208 the council in making the determination required by section
209 three, article two-c of this chapter; and

210 (B) Sufficient detail within the benchmarks and
211 indicators to provide clear evidence to support an objective
212 determination by the council that an institution's progress
213 toward achieving state goals and objectives and the essential
214 conditions for community and technical college education
215 is so deficient that implementation of the provisions of
216 section four, article two-c of this chapter is warranted and
217 necessary.

218 (i) The commission shall confirm the compacts
219 developed for the institutions under its jurisdiction, with the
220 exception of the exempted schools, by the boards of
221 governors or the boards of advisors pursuant to this section
222 and consistent with the powers and duties prescribed in
223 section four, article two-a of this chapter and section one,
224 article six of this chapter.

225 (ii) The council shall approve the compacts developed
226 for the institutions under its jurisdiction, by the boards of
227 governors or the boards of advisors pursuant to this section
228 and consistent with the powers and duties prescribed in
229 section four, article two-a of this chapter and section one,
230 article six of this chapter.

§18B-1F-10. Department of commerce to study and report relating to research and technology parks.

1 The West Virginia Development Office shall research,
2 investigate and make recommendations relating to
3 advancing research activities, economic development and
4 job creation relating to foundations and private entities,
5 including the I-79 Technology Park, who focus on research
6 and job development and that receive or have received since
7 July 1, 2012, appropriation support from the State of West
8 Virginia. The Development Office shall submit a report of
9 its investigation and findings to the Governor and the
10 Legislature on or before December 31, 2017.

ARTICLE 2A. INSTITUTIONAL BOARDS OF GOVERNORS.

§18B-2A-3. Oversight of governing boards; promulgation of rules; data collection and dissemination.

1 (a) The governing boards are subject to the oversight of
2 the commission or the council, as appropriate, except that
3 the authority of the commission relating to the exempted
4 schools is limited to the specific authorities granted under
5 this chapter.

6 (b) The Chancellor for Higher Education and the
7 Chancellor for Community and Technical College
8 Education, under the supervision of their respective boards,
9 are responsible for the coordination of policies, purposes
10 and rules of the governing boards except the exempted
11 schools and shall provide for and facilitate sufficient
12 interaction among the governing boards and between the
13 governing boards and the State Board of Education to meet

14 the goals and objectives provided in the compacts and in
15 section one-a, article one and article one-d of this chapter.

16 (c) The governing boards and the State Board of
17 Education shall provide all information requested by the
18 commission and the council, whether the request is made
19 separately or jointly, in an appropriate format and in a
20 timely manner.

21 (d)(1) Each governing board shall cooperate with the
22 West Virginia Network for Educational Telecomputing
23 (WVNET) in designing appropriate interfaces with the
24 databases of institutions under its jurisdiction and shall
25 grant WVNET direct access to these databases.

26 (2) WVNET, on behalf of the commission or council or
27 both, shall generate reports from the data accessed for the
28 purposes set forth in section five, article one-a and sections
29 eight and ten, article one-d of this chapter.

30 (3) All data accessed or received from an institution
31 shall be treated in a manner consistent with the privacy
32 protections outlined in section ten, article one-d of this
33 chapter.

§18B-2A-4. Powers and duties of governing boards generally.

1 Each governing board separately has the following
2 powers and duties:

3 (a) Determine, control, supervise and manage the
4 financial, business and education policies and affairs of the
5 state institution of higher education under its jurisdiction;

6 (b) Develop a master plan for the institution under its
7 jurisdiction.

8 (1) The ultimate responsibility for developing and
9 updating each master plan at the institution resides with the
10 governing board, but the ultimate responsibility for
11 approving the final version of each master plan, including

12 periodic updates, resides with the commission or council, as
13 appropriate: *Provided*, That commission approval is not
14 required for master plans of exempted schools.

15 (2) Each master plan shall include, but is not limited to,
16 the following:

17 (A) A detailed demonstration of how the master plan
18 will be used to meet the goals, objectives and priorities of
19 the compact;

20 (B) A well-developed set of goals, objectives and
21 priorities outlining missions, degree offerings, resource
22 requirements, physical plant needs, personnel needs,
23 enrollment levels and other planning determinates and
24 projections necessary in a plan to assure that the needs of
25 the institution's area of responsibility for a quality system
26 of higher education are addressed;

27 (C) Documentation showing how the governing board
28 involved the commission or council, as appropriate,
29 constituency groups, clientele of the institution and the
30 general public in the development of all segments of the
31 master plan.

32 (3) The plan shall be established for periods of not fewer
33 than three nor more than five years and shall be revised
34 periodically as necessary, including adding or deleting
35 programs. The commission may review and comment upon
36 the master plan of an exempted school. The commission
37 may review, but may not approve or disapprove, additions
38 or deletions of degree programs, except as expressly
39 provided for in subdivision (39), subsection (a), section four
40 of article one-b of this chapter.

41 (4) For the exempted schools, the master plan shall be
42 updated at least bi-annually and include the steps taken to
43 meet the legislatively established policies contained in
44 article one-d of this chapter and reports on each of the data
45 elements identified in article one-d of this chapter, including

46 progress that the exempted schools are making relating to
47 retention and graduation rates for resident students by
48 organization and each college within the organization. The
49 exempted schools shall provide copies of their respective
50 master plan to the Legislative Oversight Commission on
51 Education Accountability and the commission.

52 (c) Develop a ten-year campus development plan in
53 accordance with article nineteen of this chapter;

54 (d) Prescribe for the institution, under its jurisdiction, in
55 accordance with its master plan and compact, specific
56 functions and responsibilities to achieve the goals,
57 objectives and priorities established in articles one and one-
58 d of this chapter to meet the higher education needs of its
59 area of responsibility and to avoid unnecessary duplication;

60 (e) Direct the preparation of an appropriation request for
61 the institution under its jurisdiction, which relates directly
62 to missions, goals and projections found in the master plan
63 and the compact;

64 (f) Consider, revise and submit for review and approval
65 to the commission or council, as appropriate, an
66 appropriation request on behalf of the institution under its
67 jurisdiction, including the exempted schools;

68 (g) Review, at least every five years, all academic
69 programs offered at the institution under its jurisdiction. The
70 review shall address the viability, adequacy and necessity of
71 the programs in relation to established state goals,
72 objectives and priorities, the master plan, the compact and
73 the education and workforce needs of its responsibility
74 district. As a part of the review, each governing board shall
75 require the institution under its jurisdiction to conduct
76 periodic studies of its graduates and their employers to
77 determine placement patterns and the effectiveness of the
78 education experience. Where appropriate, these studies
79 should coincide with the studies required of many academic
80 disciplines by their accrediting bodies;

81 (h) Ensure that the sequence and availability of
82 academic programs and courses offered by the institution
83 under its jurisdiction is such that students have the
84 maximum opportunity to complete programs in the time
85 frame normally associated with program completion. Each
86 governing board is responsible to see that the needs of
87 nontraditional college-age students are appropriately
88 addressed and, to the extent it is possible for the individual
89 governing board to control, to assure core course work
90 completed at the institution is transferable to any other state
91 institution of higher education for credit with the grade
92 earned;

93 (i) Subject to article one-b of this chapter, approve the
94 teacher education programs offered in the institution under
95 its control. In order to permit graduates of teacher education
96 programs to receive a degree from a nationally accredited
97 program and in order to prevent expensive duplication of
98 program accreditation, the commission may select and use
99 one nationally recognized teacher education program
100 accreditation standard as the appropriate standard for
101 program evaluation;

102 (j) Involve faculty, students and classified employees in
103 institution-level planning and decision making when those
104 groups are affected;

105 (k) Subject to federal law and pursuant to articles seven,
106 eight, nine and nine-a of this chapter and to rules adopted
107 by the commission and the council, administer a system for
108 the management of personnel matters, including, but not
109 limited to, discipline for employees at the institution under
110 its jurisdiction: *Provided*, That any rules adopted by the
111 commission and the council do not apply to exempted
112 schools;

113 (l) Administer a system for hearing employee
114 grievances and appeals. Notwithstanding any other
115 provision of this code to the contrary, the procedure
116 established in article two, chapter six-c of this code is the

117 exclusive mechanism for hearing prospective employee
118 grievances and appeals;

119 (m) Solicit and use or expend voluntary support,
120 including financial contributions and support services, for
121 the institution under its jurisdiction;

122 (n) Appoint a president for the institution under its
123 jurisdiction, subject to section six, article one-b of this
124 chapter;

125 (o) Conduct written performance evaluations of the
126 president, pursuant to section six, article one-b of this
127 chapter;

128 (p) Employ all faculty and staff at the institution under
129 its jurisdiction. The employees operate under the
130 supervision of the president, but are employees of the
131 governing board;

132 (q) Submit to the commission or council, as
133 appropriate, any data or reports requested by the
134 commission or council within the time frame set by the
135 commission or council;

136 (r) Enter into contracts or consortium agreements with
137 the public schools, private schools or private industry to
138 provide technical, vocational, college preparatory, remedial
139 and customized training courses at locations either on
140 campuses of the state institutions of higher education or at
141 off-campus locations in the institution's responsibility
142 district. To accomplish this goal, the boards may share
143 resources among the various groups in the community;

144 (s) Provide and transfer funds and property to certain
145 corporations pursuant to section ten, article twelve of this
146 chapter;

147 (t) Delegate, with prescribed standards and limitations,
148 the part of its power and control over the business affairs of
149 the institution to the president in any case where it considers

150 the delegation necessary and prudent in order to enable the
151 institution to function in a proper and expeditious manner
152 and to meet the requirements of its master plan and compact.
153 If a governing board elects to delegate any of its power and
154 control under this subsection, it shall enter the delegation in
155 the minutes of the meeting when the decision was made and
156 shall notify the commission or council, as appropriate. Any
157 delegation of power and control may be rescinded by the
158 appropriate governing board, the commission or council, as
159 appropriate, at any time, in whole or in part, except that the
160 commission may not revoke delegations of authority made
161 by the governing board of the exempted schools.

162 (u) Unless changed by the commission or the council,
163 as appropriate, continue to abide by existing rules setting
164 forth standards for accepting advanced placement credit for
165 the institution under its jurisdiction. Individual departments
166 at a state institution of higher education, with approval of
167 the faculty senate, may require higher scores on the
168 advanced placement test than scores designated by the
169 governing board when the credit is to be used toward
170 meeting a requirement of the core curriculum for a major in
171 that department;

172 (v) Consult, cooperate and coordinate with the State
173 Treasurer and the State Auditor to update as necessary and
174 maintain an efficient and cost-effective system for the
175 financial management and expenditure of appropriated and
176 nonappropriated revenue at the institution under its
177 jurisdiction. The system shall ensure that properly
178 submitted requests for payment are paid on or before the due
179 date but, in any event, within fifteen days of receipt in the
180 State Auditor's Office;

181 (w) In consultation with the appropriate chancellor and
182 the Secretary of the Department of Administration, develop,
183 update as necessary and maintain a plan to administer a
184 consistent method of conducting personnel transactions,
185 including, but not limited to, hiring, dismissal, promotions,
186 changes in salary or compensation and transfers at the

187 institution under its jurisdiction. Each personnel transaction
188 shall be accompanied by the appropriate standardized
189 system or forms, as appropriate, which shall be submitted to
190 the respective governing board and the Department of
191 Administration:

192 (1) Not later than July 1, 2012, the Department of
193 Administration shall make available to each governing
194 board the option of using a standardized electronic system
195 for these personnel transactions.

196 (2) The Secretary of the Department of Administration
197 may suspend a governing board's participation in the
198 standardized electronic system if he or she certifies to the
199 Governor that the governing board has failed repeatedly and
200 substantially to comply with the department's policies for
201 administering the electronic system;

202 (x) Notwithstanding any other provision of this code to
203 the contrary, transfer funds from any account specifically
204 appropriated for its use to any corresponding line item in a
205 general revenue account at any agency or institution under
206 its jurisdiction as long as the transferred funds are used for
207 the purposes appropriated;

208 (y) Transfer funds from appropriated special revenue
209 accounts for capital improvements under its jurisdiction to
210 special revenue accounts at agencies or institutions under its
211 jurisdiction as long as the transferred funds are used for the
212 purposes appropriated in accordance with article nineteen of
213 this chapter;

214 (z) Notwithstanding any other provision of this code to
215 the contrary, acquire legal services that are necessary,
216 including representation of the governing board, its
217 institution, employees and officers before any court or
218 administrative body. The counsel may be employed either
219 on a salaried basis or on a reasonable fee basis. In addition,
220 the governing board may, but is not required to, call upon

221 the Attorney General for legal assistance and representation
222 as provided by law; and

223 (aa) Contract and pay for disability insurance for a class
224 or classes of employees at a state institution of higher
225 education under its jurisdiction.

226 (bb) A governing board under the jurisdiction of the
227 commission may contract and pay for any supplemental
228 employee benefit, at the governing board's discretion:
229 *Provided*, That if such supplemental benefit program
230 incurs institutional expense, then the board may not
231 delegate the approval of such supplemental employee
232 benefit program.

ARTICLE 3. ADDITIONAL POWERS AND DUTIES OF EXEMPTED SCHOOLS.

§18B-3-1. Legislative findings, purpose; intent; definition.

1 (a) The Legislature finds that an effective and efficient
2 system of doctoral-level education is vital to providing for
3 the economic well-being of the citizens of West Virginia
4 and for accomplishing established state goals and
5 objectives. As the institutions that focus on one or more of
6 the following activities: research, masters-degree granting,
7 doctoral-granting, medical doctoral-granting, or doctor of
8 osteopathy doctor-granting; doctoral-granting medical
9 doctoral-granting, or doctor of osteopathy doctor-granting
10 public universities in the state, Marshall University, West
11 Virginia University and the School of Osteopathic Medicine
12 are major assets to the citizens of West Virginia and must
13 be an integral part of any plan to strengthen and expand the
14 economy and improve health outcomes for the citizenry.

15 (b) The Legislature further finds that these three
16 institutions must compete in both a national and global
17 environment that is rapidly changing, while they continue to
18 provide high quality education that is both affordable and
19 accessible and remain accountable to the people of West

20 Virginia for the most efficient and effective use of scarce
21 resources.

22 (c) The Legislature further finds that the exempted
23 schools, under the direction of their respective governing
24 boards, may manage operational governance of their
25 institutions in an efficient and accountable manner and may
26 best fulfill their public missions when their governing
27 boards are given flexibility and autonomy sufficient to meet
28 state goals, objectives and priorities established in this
29 article, and in section one-a, article one and article one-d of
30 this chapter.

31 (d) Therefore, the purposes of this article include, but
32 are not limited to, the following:

33 (1) Enhancing the competitive position of the exempted
34 schools in the current environment for research and medical
35 professional development;

36 (2) Providing the governing boards of these institutions
37 with operational flexibility and autonomy in certain areas,
38 including tools to promote economic development and
39 healthcare in West Virginia;

40 (3) Encouraging the development of research and
41 medical expertise in areas directly beneficial to the state;

42 (4) Focusing the attention and resources of the
43 governing boards on state goals, objectives and priorities to
44 enhance the competitive position of the state and the
45 economic, social, health, and cultural well-being of its
46 citizens; and

47 (5) Providing additional autonomy and operational
48 flexibility and assigning certain additional responsibilities
49 to governing boards of other state institutions of higher
50 education.

51 (e) The governing boards of the exempted schools each
52 have the power and the obligation to perform functions,
53 tasks and duties as prescribed by law.

54 (f) While the governing boards may choose to delegate
55 powers and duties to their respective presidents pursuant to
56 subsection(s), section four, article two-a of this chapter,
57 ultimately, it is they who are accountable to the Legislature,
58 the Governor and the citizens of West Virginia for meeting
59 the established state goals, objectives and priorities set forth
60 in this article, and in section one-a, article one and article
61 one-d of this chapter. Therefore, grants of operational
62 flexibility and autonomy are made directly to the governing
63 boards and are not grants of operational flexibility and
64 autonomy to the president of an institution.

ARTICLE 4. GENERAL ADMINISTRATION.

§18B-4-7. Accreditation of institutions of higher education; standards for degrees.

1 (a) The council shall make rules for the accreditation of
2 community and technical colleges in this state and shall
3 determine the minimum standards for conferring degrees.
4 The commission shall make rules for the accreditation of
5 colleges in this state except the governing boards of the
6 exempted schools shall make rules for their respective
7 institutions, and each shall determine the minimum
8 standards for conferring degrees. The governing boards of
9 the exempted schools shall promulgate rules pursuant to the
10 provisions of section six, article one of this chapter for the
11 accreditation of their respective institutions.

12 (b) An institution of higher education may not confer a
13 degree on any basis of work or merit below the minimum
14 standards prescribed by the council or commission.

15 (c) With the approval of the commission and subject to
16 subsections (e), (f) and (g) of this section, governing boards
17 of institutions which currently offer substantial

18 undergraduate course offerings and a master's degree in a
19 discipline are authorized to grant baccalaureate degrees in
20 that discipline.

21 (d) Except as otherwise provided in this section, a
22 charter or other instrument containing the right to confer
23 degrees of higher education status may not be granted by the
24 State of West Virginia to an institution, association or
25 organization within the state, nor may a degree be awarded,
26 until the condition of conferring the degree first has been
27 approved in writing by the council or commission, as
28 appropriate, or by the institution's governing board in the
29 case of the exempted schools.

30 (e) To retain the authority to confer degrees pursuant to
31 this section, each institution shall provide annually to the
32 commission or council, as requested, all information the
33 commission or council considers necessary to assess the
34 performance of the institution and to determine whether the
35 institution continues to meet the minimum standards for
36 conferring degrees. This information includes, but is not
37 limited to, the following data:

38 (1) All information current and future federal or state
39 laws and regulations require the institution to report to the
40 public, to students, to employees or to federal or state
41 agencies;

42 (2) Other consumer information the commission or
43 council considers necessary, including, but not limited to,
44 graduation and retention rates, transfers, post-graduation
45 placements, loan defaults and numbers and types of student
46 complaints;

47 (3) A detailed explanation of financial operations
48 including, but not limited to, policies, formulas and
49 procedures related to calculation, payment and refund for all
50 tuition and fees; and

51 (4) An assessment of the adequacy of the institution's
52 curriculum, personnel, facilities, materials and equipment to
53 meet the minimum standards for conferring degrees.

54 (f) The commission and council may conduct on-site
55 reviews to evaluate an institution's academic standards,
56 may conduct financial audits, or may require the institution
57 to perform these audits and provide detailed data to the
58 commission or council.

59 (g) The commission or council shall revoke an
60 institution's authority to confer degrees when the
61 institution's governing body, chief executive officer, or
62 both, have done any one or more of the following:

63 (1) Failed to maintain the minimum standards for
64 conferring degrees; or

65 (2) Willfully provided false, misleading or incomplete
66 information to the commission or council.

67 (h) The commission and council each shall compile the
68 information collected pursuant to subdivisions (e), (f) and
69 (g) of this section and submit a report on the information to
70 the Legislative Oversight Commission on Education
71 Accountability annually beginning December 1, 2012. The
72 commission and council each shall make the information
73 and report available to the public in a form and manner that
74 is accessible to the general public, including, but not limited
75 to, posting on its website.

ARTICLE 5. HIGHER EDUCATION BUDGETS AND EXPENDITURES.

§18B-5-4. Purchase or acquisition of materials, supplies, equipment, services and printing.

1 (a) The council, commission and each governing board
2 shall purchase or acquire all materials, supplies, equipment,
3 services and printing required for their respective needs:
4 *Provided*, That the governing boards under the jurisdiction

5 of the commission, including the exempted schools, are
6 subject to subsection (d) of this section.

7 (b) The commission and council jointly shall adopt rules
8 governing and controlling acquisitions and purchases in
9 accordance with this section: *Provided*, That these rules do
10 not apply to the exempted schools and the governing boards
11 of the exempted schools shall adopt their own rules
12 consistent with this section: *Provided, however*, That the
13 joint rules shall provide for appropriate deference to the
14 value judgments of governing boards under the jurisdiction
15 of the commission. The rules shall ensure that the following
16 procedures are followed:

17 (1) No person is precluded from participating and
18 making sales thereof to the council, commission or
19 governing board except as otherwise provided in section
20 five of this article. Providing consulting services such as
21 strategic planning services does not preclude or inhibit the
22 governing boards, council or commission from considering
23 a qualified bid or response for delivery of a product or a
24 commodity from the individual providing the services;

25 (2) Specifications are established and prescribed for
26 materials, supplies, equipment, services and printing to be
27 purchased;

28 (3) Purchase order, requisition or other forms as may be
29 required are adopted and prescribed;

30 (4) Purchases and acquisitions in such quantities, at such
31 times and under contract, are negotiated for and made in the
32 open market or through other accepted methods of
33 governmental purchasing as may be practicable in
34 accordance with general law;

35 (5) Bids are advertised on all purchases exceeding
36 \$50,000 and made by means of sealed or electronically
37 submitted bids and competitive bidding or advantageous
38 purchases effected through other accepted governmental

39 methods and practices. Competitive bids are not required for
40 purchases of \$50,000 or less.

41 (6) Notices for acquisitions and purchases for which
42 competitive bids are being solicited are posted either in the
43 purchasing office of the specified institution involved in the
44 purchase or by electronic means available to the public at
45 least five days prior to making the purchases. The rules shall
46 ensure that the notice is available to the public during
47 business hours;

48 (7) Purchases are made in the open market;

49 (8) Vendors are notified of bid solicitation and
50 emergency purchasing; and

51 (9) No fewer than three bids are obtained when bidding
52 is required, except if fewer than three bids are submitted, an
53 award may be made from among those received.

54 (c) When a state institution of higher education submits
55 a contract, agreement or other document to the Attorney
56 General for approval as to form as required by this chapter,
57 the following conditions apply:

58 (1) "Form" means compliance with the Constitution and
59 statutes of the State of West Virginia;

60 (2) The Attorney General does not have the authority to
61 reject a contract, agreement or other document based on the
62 substantive provisions in the contract, agreement or
63 document or any extrinsic matter as long as it complies with
64 the Constitution and statutes of this state;

65 (3) Within fifteen days of receipt, the Attorney General
66 shall notify the appropriate state institution of higher
67 education in writing that the contract, agreement or other
68 document is approved or disapproved as to form. If the
69 contract, agreement or other document is disapproved as to
70 form, the notice of disapproval shall identify each defect
71 that supports the disapproval; and

72 (4) If the state institution elects to challenge the
73 disapproval by filing a writ of mandamus or other action and
74 prevails, then the Attorney General shall pay reasonable
75 attorney fees and costs incurred.

76 (d) Pursuant to this subsection, the governing boards
77 under the jurisdiction of the commission, including the
78 exempted schools, respectively, may carry out the following
79 actions:

80 (1) Purchase or acquire all materials, supplies,
81 equipment, services and printing required for the governing
82 board without approval from the commission or the Vice
83 Chancellor for Administration and may issue checks in
84 advance to cover postage as provided in subsection (f) of
85 this section;

86 (2) Purchase from cooperative buying groups, consortia,
87 the federal government or from federal government
88 contracts, or from West Virginia public institution of higher
89 education contracts, if the materials, supplies, services,
90 equipment or printing to be purchased is available from
91 these groups and if this would be the most financially
92 advantageous manner of making the purchase;

93 (3) Select and acquire by contract or lease all grounds,
94 buildings, office space or other space, and capital
95 improvements, including equipment, if the rental is
96 necessarily required by the governing board; and

97 (4) Use purchase cards.

98 (e) The governing boards shall adopt sufficient
99 accounting and auditing procedures and promulgate and
100 adopt appropriate rules subject to section six, article one of
101 this chapter to govern and control acquisitions, purchases,
102 leases and other instruments for grounds, buildings, office
103 or other space, and capital improvements, including
104 equipment, or lease-purchase agreements.

105 (f) The council, commission or each governing board
106 may issue a check in advance to a company supplying
107 postage meters for postage used by that board, the council
108 or commission and by the state institutions of higher
109 education under their jurisdiction.

110 (g) When a purchase is to be made by bid, any or all bids
111 may be rejected. However, all purchases based on
112 advertised bid requests shall be awarded to the lowest
113 responsible bidder taking into consideration the qualities of
114 the articles to be supplied, their conformity with
115 specifications, their suitability to the requirements of the
116 governing boards, council or commission and delivery
117 terms. The preference for resident vendors as provided in
118 section thirty-seven, article three, chapter five-a of this code
119 applies to the competitive bids made pursuant to this
120 section.

121 (h) The governing boards, council and commission shall
122 maintain a purchase file, which shall be a public record and
123 open for public inspection.

124 (1) After the award of the order or contract, the
125 governing boards, council and commission shall indicate
126 upon the successful bid the following information:

127 (A) Designation as the successful bid;

128 (B) The reason any bids were rejected; and

129 (C) The reason for rejection, if the mathematical low
130 vendor was not awarded the order or contract.

131 (2) A record in the purchase file may not be destroyed
132 without the written consent of the Legislative Auditor.
133 Those files in which the original documentation has been
134 held for at least one year and in which the original
135 documents have been reproduced and archived on
136 microfilm or other equivalent method of duplication may be
137 destroyed without the written consent of the Legislative
138 Auditor.

139 (3) All files, no matter the storage method, shall be open
140 for inspection by the Legislative Auditor upon request.

141 (i) The commission and council, also jointly, shall
142 promulgate rules to prescribe qualifications to be met by any
143 person who is to be employed as a buyer at a state college
144 and university or community and technical college pursuant
145 to this section. These rules shall require that a person may
146 not be employed as a buyer unless that person, at the time
147 of employment, has one of the following qualifications:

148 (1) Is a graduate of an accredited college or university;
149 or

150 (2) Has at least four years' experience in purchasing for
151 any unit of government or for any business, commercial or
152 industrial enterprise.

153 (j) Any person making purchases and acquisitions
154 pursuant to this section shall execute a bond in the penalty
155 of \$50,000, payable to the State of West Virginia, with a
156 corporate bonding or surety company authorized to do
157 business in this state as surety thereon, in form prescribed
158 by the Attorney General and conditioned upon the faithful
159 performance of all duties in accordance with this section and
160 sections five through eight, inclusive, of this article and the
161 rules of the governing board and the council and
162 commission. In lieu of separate bonds for these buyers, a
163 blanket surety bond may be obtained. The bond shall be
164 filed with the Secretary of State and the cost of the bond
165 shall be paid from funds appropriated to the applicable
166 governing board or the council or commission.

167 (k) All purchases and acquisitions shall be made in
168 consideration and within limits of available appropriations
169 and funds and in accordance with applicable provisions of
170 article two, chapter five-a of this code relating to
171 expenditure schedules and quarterly allotments of funds.
172 Notwithstanding any other provision of this code to the
173 contrary, only those purchases exceeding the dollar amount

174 for competitive sealed bids in this section are required to be
175 encumbered. Such purchases may be entered into the state's
176 centralized accounting system by the staff of the
177 commission, council or governing boards to satisfy the
178 requirements of article two, chapter five-a of this code to
179 determine whether the amount of the purchase is within the
180 quarterly allotment of the commission, council or governing
181 board, is in accordance with the approved expenditure
182 schedule and otherwise conforms to the article: *Provided,*
183 That, notwithstanding the foregoing provisions of this
184 subsection or any other provision of this code to the
185 contrary, purchases by exempted schools are not required to
186 be encumbered.

187 (l) The governing boards, council or commission may
188 make requisitions upon the State Auditor for a sum to be
189 known as an advance allowance account, not to exceed five
190 percent of the total of the appropriations for the governing
191 board, council or commission, and the State Auditor shall
192 draw a warrant upon the Treasurer for those accounts. All
193 advance allowance accounts shall be accounted for by the
194 applicable governing board or the council or commission
195 once every thirty days or more often if required by the State
196 Auditor.

197 (m) Contracts entered into pursuant to this section shall
198 be signed by the applicable governing board or the council
199 or commission in the name of the state and shall be
200 approved as to form by the Attorney General. A contract
201 which requires approval as to form by the Attorney General
202 is considered approved if the Attorney General has not
203 responded within fifteen days of presentation of the
204 contract. A contract or a change order for that contract and
205 notwithstanding any other provision of this code to the
206 contrary, associated documents such as performance and
207 labor/material payments, bonds and certificates of insurance
208 which use terms and conditions or standardized forms
209 previously approved by the Attorney General and do not
210 make substantive changes in the terms and conditions of the

211 contract do not require approval as to form by the Attorney
212 General. The Attorney General shall make a list of those
213 changes which he or she considers to be substantive and the
214 list, and any changes to the list, shall be published in the
215 State Register. A contract that exceeds the dollar amount
216 requiring competitive sealed bids in this section shall be
217 filed with the State Auditor. If requested to do so, the
218 governing boards, council or commission shall make all
219 contracts available for inspection by the State Auditor. The
220 governing board, council or commission, as appropriate,
221 shall prescribe the amount of deposit or bond to be
222 submitted with a bid or contract, if any, and the amount of
223 deposit or bond to be given for the faithful performance of
224 a contract.

225 (n) If the governing board, council or commission
226 purchases or contracts for materials, supplies, equipment,
227 services and printing contrary to sections four through
228 seven, inclusive, of this article or the rules pursuant to this
229 article, the purchase or contract is void and of no effect.

230 (o) A governing board or the council or commission, as
231 appropriate, may request the director of purchasing to make
232 available the facilities and services of that department to the
233 governing boards, council or commission in the purchase
234 and acquisition of materials, supplies, equipment, services
235 and printing. The director of purchasing shall cooperate
236 with that governing board, council or commission, as
237 appropriate, in all such purchases and acquisitions upon that
238 request.

239 (p) Each governing board or the council or commission,
240 as appropriate, may permit affiliated organizations, state
241 institutions of higher education, or private institutions of
242 higher education to join as purchasers on purchase contracts
243 for materials, supplies, services and equipment entered into
244 by that governing board or the council or commission. An
245 affiliated organization, state institution of higher education
246 or private institution desiring to join as purchaser on
247 purchase contracts shall file with that governing board or

248 the council or commission, as appropriate, an affidavit
249 signed by the president or designee of the affiliated
250 organization, state institution of higher education, or private
251 institution requesting that it be authorized to join as
252 purchaser on purchase contracts of that governing board or
253 the council or commission, as appropriate. The affiliated
254 organization, state institution of higher education or private
255 institution shall agree that it is bound by such terms and
256 conditions as that governing board or the council or
257 commission may prescribe and that it will be responsible for
258 payment directly to the vendor under each purchase
259 contract.

260 (q) Notwithstanding any other provision of this code to
261 the contrary, the governing boards, council and
262 commission, as appropriate, may make purchases from
263 cooperative buying groups, consortia, the federal
264 government or from federal government contracts if the
265 materials, supplies, services, equipment or printing to be
266 purchased is available from that source, and purchasing
267 from that source would be the most financially
268 advantageous manner of making the purchase.

269 (r) An independent performance audit of all purchasing
270 functions and duties which are performed at any state
271 institution of higher education shall be performed at least
272 once in each three-year period. The Joint Committee on
273 Government and Finance shall require a performance audit
274 and the governing boards, council and commission, as
275 appropriate, are responsible for paying the cost of the audit
276 from funds appropriated to the governing boards, council or
277 commission.

278 (1) The governing board shall provide for independent
279 performance audits of all purchasing functions and duties on
280 its campus at least once in each three-year period.

281 (2) Each audit shall be inclusive of the entire time period
282 that has elapsed since the date of the preceding audit.

283 (3) Copies of all appropriate documents relating to any
284 audit performed by a governing board shall be furnished to
285 the Joint Committee on Government and Finance and the
286 Legislative Oversight Commission on Education
287 Accountability within thirty days of the date the audit report
288 is completed.

289 (s) The governing boards shall require each institution
290 under their respective jurisdictions to notify and inform
291 every vendor doing business with that institution of section
292 fifty-four, article three, chapter five-a of this code, also
293 known as the Prompt Pay Act of 1990.

294 (t) Consultant services, such as strategic planning
295 services, do not preclude or inhibit the governing boards,
296 council or commission from considering any qualified bid
297 or response for delivery of a product or a commodity
298 because of the rendering of those consultant services.

299 (u) Purchasing card use may be expanded by the
300 council, commission and state institutions of higher
301 education pursuant to this subsection.

302 (1) The council and commission jointly shall establish
303 procedures to be implemented by the council, commission
304 and any state college and university or community and
305 technical college using purchasing cards. The governing
306 boards of the exempted schools shall establish procedures
307 to be implemented by their respective institutions. The
308 procedures shall ensure that each meets the following
309 conditions:

310 (A) Appropriate use of the purchasing card system;

311 (B) Full compliance with article three, chapter twelve of
312 this code relating to the purchasing card program; and

313 (C) Sufficient accounting and auditing procedures for
314 all purchasing card transactions.

315 (2) Notwithstanding any other provision of this code to
316 the contrary, the council, commission and any institution
317 authorized pursuant to subdivision (3) of this subsection
318 may use purchasing cards for the following purposes:

319 (A) Payment of travel expenses directly related to the
320 job duties of the traveling employee, including, but not
321 limited to, fuel and food; and

322 (B) Payment of any routine, regularly scheduled
323 payment, including, but not limited to, utility payments and
324 real property rental fees.

325 (3) The commission and council each shall evaluate the
326 capacity of each state college and university and community
327 and technical college under its jurisdiction for complying
328 with the procedures established pursuant to subdivision (2)
329 of this subsection. The commission and council each shall
330 authorize expanded use of purchasing cards pursuant to that
331 subdivision for any state college and university and
332 community and technical college it determines has the
333 capacity to comply.

§18B-5-6. Other code provisions relating to purchasing and design-build procurement not controlling; exceptions; criminal provisions and penalties; financial interest of governing boards, etc.; receiving anything of value from interested party and penalties therefor; application of bribery statute.

1 (a) The provisions of article three, chapter five-a of this
2 code and article twenty-two-a, chapter five of this code do
3 not control or govern design-build procurement or the
4 purchase, acquisition or other disposition of any equipment,
5 materials, supplies, services or printing by the commission
6 or the governing boards, except as provided in sections four
7 through seven, inclusive, of this article. Sections twenty-
8 nine, thirty and thirty-one, article three, chapter five-a of
9 this code apply to all purchasing activities of the
10 commission and the governing boards.

11 (b) Notwithstanding any provision of this code to the
12 contrary, state institutions of higher education, through their
13 governing boards, may enter into design-build contracts and
14 are not subject to the provisions of article twenty-two-a,
15 chapter five of this code and may also utilize other
16 commonly accepted methods of procurement and
17 contracting for construction projects: *Provided*, That such
18 state institution of higher education meets the following
19 criteria:

20 (1) Employs at least one Leadership in Energy and
21 Environmental Design (LEED) certified administrator; and

22 (2) Employs at least one Certified Facilities Manager
23 (CFM) as credentialed by the International Facility
24 Management Association, or employs at least one Project
25 Management Professional (PMP) as certified by the Project
26 Management Institute.

27 (c) Neither the commission, the governing boards, nor
28 any employee of the commission or governing boards may
29 be financially interested, or have any beneficial personal
30 interest, directly or indirectly, in the purchase of any
31 equipment, materials, supplies, services or printing, nor in
32 any firm, partnership, corporation or association furnishing
33 them, except as may be authorized by the provisions of
34 chapter six-b of this code. Neither the commission, the
35 governing boards nor any employee of the commission or
36 governing boards may accept or receive directly or
37 indirectly from any person, firm or corporation, known by
38 the commission, governing boards or such employee to be
39 interested in any bid, contract or purchase, by rebate, gift or
40 otherwise, any money or other thing of value whatsoever or
41 any promise, obligation or contract for future reward or
42 compensation, except as may be authorized by the
43 provisions of chapter six-b of this code.

44 A person who violates any of the provisions of this
45 section is guilty of a misdemeanor and, upon conviction
46 thereof, shall be imprisoned in jail not less than three

47 months nor more than one year, or fined not less than \$50
48 nor more than \$1,000, or both imprisoned and fined, in the
49 discretion of the court. Any person who violates any
50 provisions of this section by receiving money or other thing
51 of value under circumstances constituting the crime of
52 bribery under the provisions of section three, article five-a,
53 chapter sixty-one of this code shall, upon conviction of
54 bribery, be punished as provided in section nine of said
55 article.

**§18B-5-7. Disposition of obsolete and unusable equipment,
surplus supplies and other unneeded materials.**

1 (a) The commission, the council and the governing
2 boards shall dispose of obsolete and unusable equipment,
3 surplus supplies and other unneeded materials, either by
4 transfer to other governmental agencies or institutions, by
5 exchange or trade, or by sale as junk or otherwise. The
6 commission, the council and each governing board shall
7 adopt rules governing and controlling the disposition of all
8 such equipment, supplies and materials. The rules shall
9 provide for disposition of the equipment, supplies and
10 materials as sound business practices warrant under existing
11 circumstances and conditions and for adequate prior notice
12 to the public of the disposition.

13 (b) The commission, council or governing board, as
14 appropriate, shall report biannually to the Legislative
15 Auditor all sales of commodities made during the preceding
16 biennium. The report shall include a description of the
17 commodities sold, the name of the buyer to whom each
18 commodity was sold, the price paid by the buyer.

19 (c) The proceeds of sales or transfers shall be deposited
20 in the state treasury to the credit on a pro rata basis of the
21 fund or funds from which the purchase of the particular
22 commodities or expendable commodities was made. The
23 commission, council or governing board, as appropriate,
24 may charge and assess fees reasonably related to the costs
25 of care and handling with respect to the transfer,

26 warehousing, sale and distribution of state property that is
27 disposed of or sold pursuant to the provisions of this section.

28 (d) Notwithstanding the provisions of this section, the
29 commission, council or a governing board may donate
30 equipment, supplies and materials with the approval of the
31 commission, council or governing board or their designee,
32 as appropriate to any not for profit entity to promote public
33 welfare.

§18B-5-9. Higher education fiscal responsibility.

1 (a) The governing boards shall ensure the fiscal integrity
2 of their operations using best business and management
3 practices.

4 (1) The practices include at least the following:

5 (A) Complying with Generally Accepted Accounting
6 Principles of the Governmental Accounting Standards
7 Board (GAAP); and the Generally Accepted Government
8 Auditing Standards of the Government Accountability
9 Office (GAGAS);

10 (B) Operating without material weakness in internal
11 controls as defined by GAAP, GAGAS and, where
12 applicable, the Office of Management and Budget (OMB)
13 Uniform Guidance Audit requirements;

14 (C) Maintaining annual audited financial statements
15 with an unqualified opinion;

16 (D) Preparing annual audited financial statements as
17 coordinated and directed by the commission and council,
18 respectively, and as the commission requires to complete
19 the higher education fund audit;

20 (E) Maintaining quarterly financial statements certified
21 by the chief financial officer of the institution; and

22 (F) Implementing best practices from Sarbanes-Oxley,
23 or adopting the applicable tenets of Sarbanes-Oxley as best
24 practices.

25 (2) Each governing board and any affiliated research
26 corporation shall comply with the OMB Uniform Guidance
27 Audit requirements and are exempt from section fourteen,
28 article four, chapter twelve of this code.

29 (3) Within thirty days of the completion of the financial
30 audit report, the governing boards shall furnish to the
31 commission or council, respectively, copies of the annual
32 audited financial statements.

33 (b) The commission and council, each, shall ensure the
34 fiscal integrity of any electronic process conducted at its
35 offices and by the governing boards under its respective
36 jurisdiction by applying best business and management
37 practices.

38 (c) To the maximum extent practicable, each higher
39 education organization shall provide for its employees to
40 receive their wages via electronic transfer or direct deposit.

41 (d) Notwithstanding any other provision of this code to
42 the contrary, a purchasing card may be used by the council,
43 the commission or a governing board of a state institution
44 of higher education to make any payment authorized by the
45 Auditor, including regular routine payments and travel and
46 emergency payments. Payments are set at an amount to be
47 determined by the Auditor.

48 (1) Subject to approval of the Auditor, an emergency
49 payment and a routine, regularly scheduled payment,
50 including, but not limited to, utility payments, contracts and
51 real property rental fees, may exceed this limit by an amount
52 to be determined by the Auditor.

53 (2) The council, commission and a governing board of
54 a state institution of higher education may use a purchasing
55 card for travel expenses directly related to the job duties of

56 the traveling employee. Where approved by the Auditor, the
57 expenses may exceed \$5,000 by an amount to be determined
58 by the Auditor. Traveling expenses may include registration
59 fees and airline and other transportation reservations, if
60 approved by the president of the institution. Traveling
61 expenses may include purchases of fuel and food.

62 (3) The commission, council, and governing boards
63 each shall maintain one purchasing card for use only in a
64 situation declared an emergency by the appropriate
65 chancellor or the institution's president. Emergencies may
66 include, but are not limited to, partial or total destruction of
67 a facility; loss of a critical component of utility
68 infrastructure; heating, ventilation or air condition failure in
69 an essential academic building; loss of campus road,
70 parking lot or campus entrance; a technology breach; or a
71 local, regional, or national emergency situation that has a
72 direct impact on the campus.

73 (e) Notwithstanding section ten-f, article three, chapter
74 twelve of this code, or any other provision of this code or
75 law to the contrary, the Auditor shall accept any receiving
76 report submitted in a format utilizing electronic media. The
77 Auditor shall conduct any audit or investigation of the
78 council, commission or governing board at its own expense
79 and at no cost to the council, commission or governing
80 board.

81 (f) The council and the commission each shall maintain
82 a rule in accordance with article three-a, chapter twenty-
83 nine-a of this code. The rule shall provide for governing
84 boards individually or cooperatively to maximize their use
85 of any of the following purchasing practices that are
86 determined to provide a financial advantage:

87 (1) Bulk purchasing;

88 (2) Reverse bidding;

89 (3) Electronic marketplaces; and

90 (4) Electronic remitting.

91 (g) Each governing board may establish a consortium
92 with at least one other governing board, in the most cost-
93 efficient manner feasible, to consolidate the following
94 operations and student services:

95 (1) Payroll operations;

96 (2) Human resources operations;

97 (3) Warehousing operations;

98 (4) Financial transactions;

99 (5) Student financial aid application, processing and
100 disbursement;

101 (6) Standard and bulk purchasing; and

102 (7) Any other operation or service appropriate for
103 consolidation as determined by the council or commission.

104 (h) A governing board may charge a fee to the
105 governing board of each institution for which it provides a
106 service or performs an operation. The fee rate shall be in the
107 best interest of both the institution being served and the
108 governing board providing the service.

109 (i) A governing board may provide the services
110 authorized by this section for the benefit of any
111 governmental body or public or private institution.

112 (j) Each governing board shall strive to minimize its
113 number of low-enrollment sections of introductory courses.
114 To the maximum extent practicable, governing boards shall
115 use distance learning to consolidate the course sections. The
116 council and commission shall report the progress of
117 reductions as requested by the Legislative Oversight
118 Commission on Education Accountability.

119 (k) A governing board shall use its natural resources and
120 alternative fuel resources to the maximum extent feasible.
121 The governing board:

122 (1) May supply the resources for its own use and for use
123 by the governing board of any other institution;

124 (2) May supply the resources to the general public at fair
125 market value;

126 (3) Shall maximize all federal or grant funds available
127 for research regarding alternative energy sources; and

128 (4) May develop research parks to further the purpose
129 of this section and to expand the economic development
130 opportunities in the state.

131 (l) Any cost-savings realized or fee procured or retained
132 by a governing board pursuant to this section is retained by
133 the governing board.

134 (m) Each governing board is authorized, but not
135 required, to implement subsections (f), (g) and (h) of this
136 section.

137 If a governing board elects to implement subsection (g)
138 of this section, the following conditions apply:

139 (1) The governing board makes the determination
140 regarding any additional operation or service which is
141 appropriate for consolidation without input from the council
142 or commission;

143 (2) The governing board sets the fee charged to the
144 governing board of the institution for which it provides a
145 service or performs an operation. The fee rate shall be in the
146 best interest of both the institution being served and the
147 governing board providing the service and is not subject to
148 approval by the council or commission; and

149 (3) The governing board may not implement this
150 subdivision in a manner which supersedes the requirements
151 established in section twelve, article three-c of this chapter.

152 (n) The governing boards of the exempted schools,
153 respectively, each shall promulgate a rule on purchasing
154 procedures in accordance with section six, article one of this
155 chapter.

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.

1 (a) Each governing board shall fix tuition and other fees
2 for each academic term for the different classes or
3 categories of students enrolling at the state institution of
4 higher education under its jurisdiction, including the fixing
5 of different tuition and fees for online course delivery, and
6 may include among the tuition and fees any one or more of
7 the following as defined in section one-b of this article:

8 (1) Tuition and required educational and general fees;

9 (2) Auxiliary and auxiliary capital fees; and

10 (3) Required educational and general capital fees.

11 (b) A governing board may establish a single special
12 revenue account for each or all of the following
13 classifications of fees:

14 (1) All tuition and required educational and general fees
15 collected;

16 (2) All auxiliary and auxiliary capital fees collected; and

17 (3) All required educational and general capital fees
18 collected to support existing systemwide and institutional
19 debt service and future systemwide and institutional debt

20 service, capital projects and campus renewal for educational
21 and general facilities.

22 (4) Subject to any covenants or restrictions imposed
23 with respect to revenue bonds payable from the accounts, a
24 governing board may expend funds from each special
25 revenue account for any purpose for which funds were
26 collected within that account regardless of the original
27 purpose for which the funds were collected.

28 (5) If a governing board of an Exempted School
29 establishes a single special revenue account for all the
30 foregoing classifications of fees in this subsection, the
31 governing board must account for each classification of fee
32 separately in their internal accounting system.

33 (c) The purposes for which tuition and fees may be
34 expended include, but are not limited to, health services,
35 student activities, recreational, athletic and extracurricular
36 activities. Additionally, tuition and fees may be used to
37 finance a student's attorney to perform legal services for
38 students in civil matters at the institutions. The legal
39 services are limited to those types of cases, programs or
40 services approved by the president of the institution where
41 the legal services are to be performed.

42 (d) By October 1, 2011, the commission and council
43 each shall propose a rule for legislative approval in
44 accordance with article three-a, chapter twenty-nine-a of
45 this code to govern the fixing, collection and expenditure of
46 tuition and other fees by the governing boards under their
47 respective jurisdictions.

48 (e) The schedule of all tuition and fees, and any changes
49 in the schedule, shall be entered in the minutes of the
50 meeting of the appropriate governing board and the board
51 shall file with the commission or council, or both, as
52 appropriate, and the Legislative Auditor a certified copy of
53 the schedule and changes.

54 (f) The governing boards shall establish the rates to be
55 charged full-time students, as defined in section one-b of
56 this article, who are enrolled during a regular academic
57 term. A governing board shall require by rule all fees be
58 due not later than the end of the academic term, and shall
59 provide for appropriate measures to provide for collections
60 of fees past due.

61 (1) Undergraduate students taking fewer than twelve
62 credit hours in a regular term shall have their fees reduced
63 pro rata based upon one twelfth of the full-time rate per
64 credit hour and graduate students taking fewer than nine
65 credit hours in a regular term shall have their fees reduced
66 pro rata based upon one ninth of the full-time rate per credit
67 hour.

68 (2) Fees for students enrolled in summer terms or other
69 nontraditional time periods shall be prorated based upon the
70 number of credit hours for which the student enrolls in
71 accordance with this subsection.

72 (3) The governing boards may establish rates applicable
73 to tuition and fees for online course delivery without regard
74 to the limitations contained in this subsection.

75 (g) All fees are due and payable by the student upon
76 enrollment and registration for classes except as provided in
77 this subsection:

78 (1) The governing boards shall permit fee payments to
79 be made in installments over the course of the academic
80 term.

81 (2) The governing boards also shall authorize the
82 acceptance of credit cards or other payment methods which
83 may be generally available to students for the payment of
84 fees. The governing boards may charge the students for the
85 reasonable and customary charges incurred in accepting
86 credit cards and other methods of payment.

87 (3) If a governing board determines that a student's
88 finances are affected adversely by a legal work stoppage, it
89 may allow the student an additional six months to pay the
90 fees for any academic term. The governing board shall
91 determine on a case-by-case basis whether the finances of a
92 student are affected adversely.

93 (4) A governing board may charge interest or fees for
94 any deferred or installment payment plans.

95 (h) In addition to the other fees provided in this section,
96 each governing board may impose, collect and distribute a
97 fee to be used to finance a nonprofit, student-controlled
98 public interest research group if the students at the
99 institution demonstrate support for the increased fee in a
100 manner and method established by that institution's elected
101 student government. The fee may not be used to finance
102 litigation against the institution.

103 (i) Governing boards shall retain tuition and fee
104 revenues not pledged for bonded indebtedness or other
105 purposes in accordance with the tuition rules proposed by
106 the commission and council pursuant to this section. The
107 tuition rules shall address the following areas:

108 (1) Providing a basis for establishing nonresident tuition
109 and fees;

110 (2) Allowing governing boards to charge different
111 tuition and fees for different programs;

112 (3) Authorizing a governing board to propose to the
113 commission, council or both, as appropriate, a mandatory
114 auxiliary fee under the following conditions: *Provided*, That
115 the governing boards for the exempted schools may
116 authorize a mandatory auxiliary fee without seeking
117 approval of the commission:

118 (A) The fee shall be approved by the commission,
119 council or both, as appropriate, and either the students

120 below the senior level at the institution or the Legislature
121 before becoming effective;

122 (B) Increases may not exceed previous state subsidies
123 by more than ten percent;

124 (C) The fee may be used only to replace existing state
125 funds subsidizing auxiliary services such as athletics or
126 bookstores;

127 (D) If the fee is approved, the amount of the state
128 subsidy shall be reduced annually by the amount of money
129 generated for the institution by the fees. All state subsidies
130 for the auxiliary services shall cease five years from the date
131 the mandatory auxiliary fee is implemented;

132 (4) Establishing methodology, where applicable, to
133 ensure that, within the appropriate time period under the
134 compact, community and technical college tuition rates for
135 students in all community and technical colleges will be
136 commensurate with the tuition and fees charged by their
137 peer institutions.

138 (j) A penalty may not be imposed by the commission or
139 council upon any governing board based upon the number
140 of nonresidents who attend the institution unless the
141 commission or council determines that admission of
142 nonresidents to any institution or program of study within
143 the institution is impeding unreasonably the ability of
144 resident students to attend the institution or participate in the
145 programs of the institution. The governing boards shall
146 report annually to the commission or council on the
147 numbers of nonresidents and any other enrollment
148 information the commission or council may request.

149 (k) Tuition and fee increases of the governing boards,
150 except the exempted schools, are subject to rules adopted by
151 the commission and council pursuant to this section and in
152 accordance with article three-a, chapter twenty-nine-a of
153 this code. The commission or council, as appropriate, shall

154 examine individually each request from a governing board,
155 including the exempted schools, for an increase and make
156 its determinations as follows:

157 (1) A tuition and fee increase for resident students
158 proposed by a governing board requires the approval of the
159 commission or council, as appropriate, for any tuition and
160 fee increase greater than ten percent in any one year or
161 where the increase would be more than seven percent per
162 year, averaged over a rolling three year period calculated by
163 averaging the proposed increase with the increase for the
164 immediate two previous years;

165 (2) In determining whether to approve or deny a
166 governing board's request for a tuition and/or fee increase
167 for resident students greater than the increases granted
168 pursuant to subdivision (1) of this subsection, the
169 commission or council shall determine the progress the
170 governing board has made toward meeting the conditions
171 outlined in this subsection and shall make this determination
172 the predominate factor in its decision. The commission or
173 council shall consider the degree to which each governing
174 board has met the following conditions:

175 (A) Maximizes resources available through nonresident
176 tuition and fee charges to the satisfaction of the commission
177 or council;

178 (B) Consistently achieves the benchmarks established in
179 the compact pursuant to article one-d of this chapter or the
180 master plan for exempted schools in article two-a of this
181 chapter, including the provisions of article one-d required in
182 the master plan;

183 (C) Continuously pursues the statewide goals for post-
184 secondary education;

185 (D) Demonstrates to the satisfaction of the commission
186 or council that an increase will be used to maintain high-
187 quality programs at the institution;

188 (E) Demonstrates to the satisfaction of the commission
189 or council that the governing board is making adequate
190 progress toward achieving the goals for education
191 established by the Southern Regional Education Board;

192 (F) Demonstrates to the satisfaction of the commission
193 or council that the governing board has considered the
194 average per capita income of West Virginia families and
195 their ability to pay for any increases; and

196 (G) Demonstrates to the satisfaction of the commission
197 or council that base appropriation increases have not kept
198 pace with recognized nationwide inflationary benchmarks.

199 (3) This section does not require equal increases among
200 governing boards nor does it require any level of increase
201 by a governing board.

202 (4) The commission and council shall report to the
203 Legislative Oversight Commission on Education
204 Accountability regarding the basis for approving or denying
205 each request as determined using the criteria established in
206 this subsection.

§18B-10-1c. Definitions.

1 For the purposes of this article, the following words
2 have the meanings specified unless the context clearly
3 indicates a different meaning:

4 (a) “Auxiliary capital fees” means charges levied on
5 students to support debt service, capital projects and campus
6 maintenance and renewal for the auxiliary facilities of the
7 institutions;

8 (b) “Auxiliary fees” means charges levied on all
9 students to support auxiliary enterprises or optional charges
10 levied only on students using the auxiliary service.
11 Auxiliary fees include sales and service revenue from
12 entities that exist predominately to furnish goods or services
13 to students, faculty or staff such as residence halls, faculty

14 and staff housing, food services, intercollegiate athletics,
15 student unions, bookstores, parking and other service
16 centers;

17 (c) "Full-time graduate student" means a graduate
18 student who is enrolled for nine or more credit hours in a
19 regular term;

20 (d) "Full-time undergraduate student" means an
21 undergraduate student who is enrolled for twelve or more
22 credit hours in a regular term;

23 (e) "Required educational and general capital fees"
24 means:

25 (1) Charges levied on all students to support debt service
26 of systemwide bond issues; and

27 (2) Charges levied on all students to support debt
28 service, capital projects and campus maintenance and
29 renewal for an institution's educational and general
30 educational facilities; and

31 (f) "Tuition and required educational and general fees"
32 means:

33 (1) Charges levied on all students of that class or
34 category to support educational and general program
35 services; and

36 (2) Optional charges levied for education and general
37 services collected only from students using the service or
38 from students for whom the services are made available.

**§18B-10-8. Collection; disposition and use of capital and
auxiliary capital fees; creation of special capital and
auxiliary capital improvements funds; revenue bonds.**

1 (a) This section and any rules adopted by the
2 commission, council or both, in accordance with this section
3 and article three-a, chapter twenty-nine-a of this code,

4 govern the collection, disposition and use of the capital and
5 auxiliary capital fees authorized by section one of this
6 article. The statutory provisions governing collection and
7 disposition of capital funds in place prior to the enactment
8 of this section remain in effect.

9 (b) *Fees for full-time students.* — The governing boards
10 shall fix capital and auxiliary capital fees for full-time
11 students at each state institution of higher education per
12 semester. For institutions under its jurisdiction, a governing
13 board may fix the fees at higher rates for students who are
14 not residents of this state.

15 (c) *Fees for part-time students.* — For all part-time
16 students and for all summer school students, the governing
17 boards shall impose and collect the fees in proportion to, but
18 not exceeding, the fees paid by full-time students. Refunds
19 of the fees may be made in the same manner as any other
20 fee collected at state institutions of higher education.

21 (d) There is continued in the State Treasury a special
22 capital improvements fund and special auxiliary capital
23 improvements fund for each state institution of higher
24 education and the commission into which shall be paid all
25 proceeds, respectively, of the following:

26 (1) The capital and auxiliary capital fees collected from
27 students at all state institutions of higher education pursuant
28 to this section; and

29 (2) The fees collected from the students pursuant to
30 section one of this article. The fees shall be expended by the
31 commission and governing boards for the payment of the
32 principal of or interest on any revenue bonds issued by the
33 board of regents or the succeeding governing boards for
34 which the fees were pledged prior to the enactment of this
35 section.

36 (e) The governing boards may make expenditures from
37 any of the special capital improvements funds or special
38 auxiliary capital improvement funds established in this

39 section to finance or fund on a cash basis, in whole or in
40 part, in combination with any federal, state or other grants
41 or contributions, for any one or more of the following
42 projects:

43 (1) The acquisition of land or any rights or interest in
44 land;

45 (2) The construction or acquisition of new buildings;

46 (3) The renovation or construction of additions to
47 existing buildings;

48 (4) The acquisition of furnishings and equipment for the
49 buildings; and

50 (5) The construction or acquisition of any other capital
51 improvements or capital education facilities at the state
52 institutions of higher education, including any roads,
53 utilities or other properties, real or personal, or for other
54 purposes necessary, appurtenant or incidental to the
55 construction, acquisition, financing and placing in operation
56 of the buildings, capital improvements or capital education
57 facilities, including student unions, dormitories, housing
58 facilities, food service facilities, motor vehicle parking
59 facilities and athletic facilities.

60 (f) The commission, when singly or jointly requested by
61 the council or governing boards, periodically may issue
62 revenue bonds of the state as provided in this section to
63 finance all or part of the purposes and pledge all or any part
64 of the moneys in the special funds for the payment of the
65 principal of and interest on the revenue bonds, and for
66 reserves for the revenue bonds. Any pledge of the special
67 funds for the revenue bonds shall be a prior and superior
68 charge on the special funds over the use of any of the
69 moneys in the funds to pay for the cost of any of the
70 purposes on a cash basis. Any expenditures from the special
71 funds, other than for the retirement of revenue bonds, may
72 be made by the commission or governing boards only to

73 meet the cost of a predetermined capital improvements
74 program for one or more of the state institutions of higher
75 education, in the order of priority agreed upon by the
76 governing board or boards and the commission and for
77 which the aggregate revenue collections projected are
78 presented to the Governor for inclusion in the annual budget
79 bill, and are approved by the Legislature for expenditure.
80 Any expenditure made pursuant to subsection (e) of this
81 section shall be part of the ten-year campus development
82 plan approved by the governing board pursuant to section
83 three, article nineteen of this chapter.

84 (g) The revenue bonds periodically may be authorized
85 and issued by the commission or governing boards to
86 finance, in whole or in part, the purposes provided in this
87 section in an aggregate principal amount not exceeding the
88 amount which the commission determines can be paid as to
89 both principal and interest and reasonable margins for a
90 reserve therefor from the moneys in the special funds.

91 (h) The issuance of the revenue bonds by schools other
92 than the exempted schools shall be authorized by a
93 resolution adopted by the governing board receiving the
94 proceeds and the commission, and the revenue bonds shall
95 bear the date or dates; mature at such time or times not
96 exceeding forty years from their respective dates; be in such
97 form either coupon or registered, with such exchangeability
98 and interchangeability privileges; be payable in such
99 medium of payment and at such place or places, within or
100 without the state; be subject to such terms of prior
101 redemption at such prices not exceeding one hundred five
102 per centum of the principal amount thereof; and have the
103 other terms and provisions determined by the governing
104 board receiving the proceeds and by the commission. The
105 revenue bonds issued by schools other than the exempted
106 schools shall be signed by the Governor and by the
107 chancellor of the commission or the chair of the governing
108 boards authorizing the issuance of the revenue bonds, under
109 the Great Seal of the state, attested by the Secretary of State,

110 and the coupons attached to the revenue bonds shall bear the
111 facsimile signature of the chancellor of the commission or
112 the chair of the appropriate governing boards. The revenue
113 bonds shall be sold in the manner the commission or
114 governing board determines is in the best interests of the
115 state.

116 (i) The issuance of the revenue bonds by exempted
117 schools shall be authorized by a resolution adopted by the
118 governing board receiving the proceeds, and the revenue
119 bonds shall bear the date or dates; mature at such time or
120 times not exceeding one hundred years from their respective
121 dates; be in such form either coupon or registered, with such
122 exchangeability and interchangeability privileges; be
123 payable in such medium of payment and at such place or
124 places, within or without the state; be subject to such terms
125 of prior redemption at such prices not exceeding one
126 hundred five per centum of the principal amount thereof;
127 and have the other terms and provisions determined by the
128 governing board receiving the proceeds. The revenue bonds
129 shall be signed by the Governor and the chair of the
130 governing boards authorizing the issuance of the revenue
131 bonds, under the Great Seal of the state, attested by the
132 Secretary of State, and the coupons attached to the revenue
133 bonds shall bear the facsimile signature of the chair of the
134 appropriate governing boards. The revenue bonds shall be
135 sold in the manner the governing board determines is in the
136 best interests of the state.

137 (j) The commission or governing boards may enter into
138 trust agreements with banks or trust companies, within or
139 without the state, and in the trust agreements or the
140 resolutions authorizing the issuance of the bonds may enter
141 into valid and legally binding covenants with the holders of
142 the revenue bonds as to the custody, safeguarding and
143 disposition of the proceeds of the revenue bonds, the
144 moneys in the special funds, sinking funds, reserve funds or
145 any other moneys or funds; as to the rank and priority, if
146 any, of different issues of revenue bonds by the commission

147 or governing boards under this section; as to the
148 maintenance or revision of the amounts of the fees; as to the
149 extent to which swap agreements, as defined in subsection
150 (h), section two, article two-g, chapter thirteen of this code
151 shall be used in connection with the revenue bonds,
152 including such provisions as payment, term, security,
153 default and remedy provisions as the commission considers
154 necessary or desirable, if any, under which the fees may be
155 reduced; and as to any other matters or provisions which are
156 considered necessary and advisable by the commission or
157 governing boards in the best interests of the state and to
158 enhance the marketability of the revenue bonds.

159 (k) After the issuance of any revenue bonds, the fees at
160 the state institutions of higher education pledged to the
161 payment of the revenue bonds may not be reduced as long
162 as any of the revenue bonds are outstanding and unpaid
163 except under the terms, provisions and conditions contained
164 in the resolution, trust agreement or other proceedings under
165 which the revenue bonds were issued. The revenue bonds
166 are and constitute negotiable instruments under the Uniform
167 Commercial Code of this state; together with the interest
168 thereon, be exempt from all taxation by the State of West
169 Virginia, or by any county, school district, municipality or
170 political subdivision thereof; and the revenue bonds may not
171 be considered to be obligations or debts of the state and the
172 credit or taxing power of the state may not be pledged
173 therefor, but the revenue bonds shall be payable only from
174 the revenue pledged therefor as provided in this section.

175 (l) Additional revenue bonds may be issued by the
176 commission or governing boards pursuant to this section
177 and financed by additional revenues or funds dedicated
178 from other sources. The special revenue fund in the State
179 Treasury known as the Community and Technical College
180 Capital Improvement Fund into which shall be deposited the
181 amounts specified in subsection (j), section eighteen, article
182 twenty-two, chapter twenty-nine of this code is continued.
183 All amounts deposited in the fund shall be pledged to the

184 repayment of the principal, interest and redemption
185 premium, if any, on any revenue bonds or refunding revenue
186 bonds authorized by the commission for community and
187 technical college capital improvements or used by the
188 council on a cash basis as provided under subdivision (4),
189 subsection (j), section eighteen, article twenty-two, chapter
190 twenty-nine of this code for community and technical
191 college capital improvements or capital projects.

192 (m) Funding of systemwide and campus-specific
193 revenue bonds under any other section of this code is
194 continued and authorized pursuant to the terms of this
195 section. Revenues of any state institution of higher
196 education pledged to the repayment of any revenue bonds
197 issued pursuant to this code shall remain pledged.

198 (n) Any revenue bonds for state institutions of higher
199 education proposed to be issued under this section or other
200 sections of this code first must be approved by the Governor
201 and:

202 (1) Approved by the governing board for revenue bonds
203 issued by the exempted schools;

204 (2) Confirmed by the commission, for revenue bonds
205 issued by institutions under the jurisdiction of the
206 commission, or

207 (3) Approved by the council and the commission, for
208 revenue bonds issued by institutions under the jurisdiction
209 of the council.

210 (o) Revenue bonds issued pursuant to this code may be
211 issued by the commission or governing boards, either singly
212 or jointly.

213 (p) Fees pledged for repayment of revenue bonds
214 issued under this section or article twelve-b, chapter
215 eighteen prior to or after the effective date of this section
216 shall be transferred to the commission in a manner
217 prescribed by the commission. The commission may

218 transfer funds from the accounts of institutions pledged
219 for the repayment of revenue bonds issued prior to the
220 effective date of this section or issued subsequently by
221 the commission upon the request of institutions, if an
222 institution fails to transfer the pledged revenues to the
223 commission in a timely manner.

224 (q) Effective July 1, 2004, the capital and auxiliary
225 capital fees authorized by this section and section one of this
226 article are in lieu of any other fees set out in this code for
227 capital and auxiliary capital projects to benefit public higher
228 education institutions. Notwithstanding any other
229 provisions of this code to the contrary, in the event any
230 capital, tuition, registration or auxiliary fees are pledged to
231 the payment of any revenue bonds issued pursuant to any
232 general bond resolutions of the commission, any of its
233 predecessors or any institution, adopted prior to the
234 effective date of this section, the fees shall remain in effect
235 in amounts not less than the amounts in effect as of that date,
236 until the revenue bonds payable from any of the fees have
237 been paid or the pledge of the fees is otherwise legally
238 discharged.

§18B-10-16. Disposition of funds in State Treasury.

1 Except as may be provided for in any bond resolution in
2 effect, funds in the State Treasury heretofore collected from
3 any of the sources defined in the foregoing sections shall
4 remain in the State Treasury for use by the institution where
5 collected. Any interest revenue generated by a special
6 student fee account shall only be expended at or for the
7 institution where such fee was collected. Exempted schools
8 may transfer and deposit all fees and funds collected under
9 this article into a single special revenue account: *Provided,*
10 That if the governing board of an exempted school does
11 transfer and deposit all such fees and funds into a single
12 special revenue account, the governing board shall account
13 for each classification of fees and funds separately in their
14 internal accounting system.

ARTICLE 19. CAPITAL PROJECTS AND FACILITIES NEEDS.**§18B-19-1. Legislative findings and intent.**

1 (a) The Legislature makes the following findings:

2 (1) State institutions of higher education vary widely in
3 the conditions of their facilities infrastructure.

4 (2) State institutions of higher education vary widely in
5 their ability to incur debt for capital improvements. It is
6 nearly impossible for community and technical colleges and
7 some smaller baccalaureate institutions to fund significant
8 capital improvements in the absence of state funding.

9 (3) A student enrolled at a community and technical
10 college that previously was administratively linked to
11 another state institution of higher education pays
12 substantially higher tuition and mandatory fees than a
13 student enrolled at a freestanding community and technical
14 college. This cost discrepancy is due in large part to the
15 significantly higher capital fees charged to these students to
16 pay debt service for capital improvements.

17 (4) The substantial amount of capital fees that students
18 must pay at the institution level contributes significantly to
19 the poor grade the state receives in the category of
20 "Affordability" in *Measuring Up: The National Report*
21 *Card on Higher Education*.

22 (5) It is beneficial for the state to provide additional
23 ongoing capital funding to reduce the obligation of students
24 and parents to bear the cost of higher education capital
25 improvements and facilities maintenance.

26 (6) West Virginia is one of only a few states that does
27 not address higher education capital improvements and
28 facilities maintenance needs through a statewide plan.

29 (7) State funding for capital improvements should align
30 with state and system higher education goals, objectives and
31 priorities as set forth in article one-d of this chapter.

32 (8) State capital funding should focus primarily on
33 educational and general capital improvements, not auxiliary
34 capital improvements.

35 (9) Renovations of existing buildings sometimes
36 deserve greater consideration for state funding than new
37 construction. However, new construction may deserve
38 greater consideration than renovation when a state or system
39 goal, objective or priority is implicated, as well as when
40 renovation would be financially inefficient.

41 (10) As the Legislature increases funding for new
42 educational and general capital improvements and major
43 renovations, and supplants existing educational and general
44 debt, institutions should target funds for maintenance and
45 deferred maintenance needs.

46 (11) If community and technical colleges are to keep the
47 cost of education affordable, they cannot be expected to
48 fund maintenance obligations entirely from student capital
49 fees.

50 (12) The commission and council should scrutinize
51 carefully all requests from institutions to incur additional
52 debt in order to determine their effect on institution debt
53 capacity and the impact that incurring additional debt will
54 have on students.

55 (13) State institutions of higher education ultimately
56 should target adequate state capital contributions and capital
57 fees to address maintenance and deferred maintenance
58 needs.

59 (14) Until institutions are able to generate sufficient
60 revenue to address maintenance and deferred maintenance
61 needs, the Legislature should provide periodic funding to
62 assist institutions in addressing these needs. Funding

63 priority should be given to projects that address building
64 code requirements and critical maintenance needs.

65 (15) In supporting future high priority capital needs, the
66 Legislature, commission and council should not reward
67 institutions with state funding if they neglect to address
68 facilities maintenance needs or do not prudently manage
69 their capital resources.

70 (16) Once an institution's capital development plan has
71 been approved by the governing board and confirmed by the
72 commission or approved by the council, as appropriate,
73 project priorities should not change significantly from year
74 to year.

75 (17) Commission and council staff should participate in
76 managing capital projects at smaller institutions if the
77 smaller institution lacks the expertise necessary to plan,
78 design and complete projects at or under budget.

79 (b) The intent of the Legislature relating to this article
80 includes, but is not limited to, the following:

81 (1) Dedicated state funding sources shall be designated
82 to finance construction and renovation of educational and
83 general facilities at state institutions of higher education
84 from time to time;

85 (2) Capital project lists submitted by institutions to the
86 commission or council, as appropriate, and capital project lists
87 submitted by the commission and council to the state budget
88 office, Legislative Oversight Commission on Education
89 Accountability, and Joint Committee on Government and
90 Finance for consideration for state funding shall be reasonable
91 requests that align with state and system goals, objectives and
92 priorities and ones which reasonably could be funded if
93 approved;

94 (3) As the Legislature increases its responsibility for
95 financing new educational and general facilities and major
96 renovations, the commission, council and institutions shall

97 ensure that sufficient capital revenues are available for
98 maintenance and that the facilities are maintained
99 adequately;

100 (4) Ongoing state funding shall be dedicated to
101 supplement capital fees available for maintenance at
102 community and technical colleges; and

103 (5) Once a system capital plan is in place, institutions
104 shall set aside adequate funding annually to ensure that
105 ongoing facilities maintenance needs are met.

§18B-19-3. System capital development planning.

1 (a) By December 31, 2017, the commission and council,
2 jointly or separately, shall develop a system capital
3 development oversight policy for approval by the Legislative
4 Oversight Commission on Education Accountability. At a
5 minimum the initial oversight policy shall include the
6 following:

7 (1) System goals for capital development;

8 (2) An explanation of how system capital development
9 goals align with state goals, objectives and priorities
10 established in articles one and one-d of this chapter and with
11 system master plans;

12 (3) A description of how the commission and council
13 will prioritize their recommendations for capital projects for
14 state funding based on their ability to further state goals,
15 objectives and priorities and system capital development
16 goals;

17 (4) A building renewal formula to calculate a dollar
18 benchmark that shall be collected annually and invested in
19 facilities to minimize deferred maintenance and to provide
20 the commission and council objective information to
21 determine if the investments in maintenance are occurring;

22 (5) A process for governing boards to follow in
23 developing and submitting campus development plans to
24 the commission or council, as appropriate, for approval by
25 the council or for confirmation by the commission, as
26 appropriate; and

27 (6) A process for governing boards to follow to ensure
28 that sufficient revenue is generated for and applied toward
29 facilities maintenance.

30 (b) The system capital development plan shall be
31 developed in consultation with governing boards and
32 appropriate institution staff. Before approving the capital
33 development plan, the commission and council shall afford
34 interested parties an opportunity to comment on the plan
35 through a notice-and-comment period of at least thirty days.

36 (c) The commission and council shall update its system
37 capital development plan at least once in each ten-year
38 period.

§18B-19-4. Campus development plans.

1 (a) Each governing board shall update its current
2 campus development plan and submit the updated plan to
3 the commission or council, as appropriate, for approval by
4 the council or confirmation by the commission, as
5 appropriate, except that confirmation is not required by the
6 commission for the exempted schools. A campus
7 development plan shall be adopted by each governing board
8 for a ten-year period and shall align with criteria specified
9 in the following sources:

10 (1) The system capital development oversight policy;

11 (2) The institution's approved master plan and compact;
12 and

13 (3) The current campus development plan objectives.

14 (b) Campus development plans are intended to be
15 aspirational; however, an institution's plan shall be
16 appropriate to its size, mission, and enrollment and to the
17 fiscal constraints within which the institution operates. At a
18 minimum the campus development plan shall include the
19 following:

20 (1) The governing board's development strategy;

21 (2) An assessment of the general condition and
22 suitability of buildings and facilities, including deferred
23 maintenance, life-safety and building code issues, ADA
24 requirements and energy efficiency;

25 (3) An assessment of the impact of projected enrollment
26 and demographic changes on building and facility needs;

27 (4) A comprehensive list of major deferred maintenance
28 projects, individually exceeding \$75,000 in cost, that need
29 to be addressed for each campus by building or facility
30 including an estimated cost for each;

31 (5) An analysis as to all buildings and facilities as to the
32 need for renovations, additions, demolition or any
33 combination thereof;

34 (6) A list of major site improvements that are needed,
35 including vehicular and pedestrian circulation, parking and
36 landscaping;

37 (7) An analysis of telecommunications, utilities and
38 other infrastructure improvements that are needed;

39 (8) A delineation of clear property acquisition
40 boundaries that are reasonably appropriate for campus
41 expansion;

42 (9) A list of proposed new facilities and building sites;

43 (10) A list of capital projects in priority order;

44 (11) Estimates of the timing, phasing and projected
45 costs associated with individual projects;

46 (12) If an institution has multiple campuses in close
47 proximity, a delineation of how the campuses should
48 interact and support each other to minimize duplication of
49 facilities, improve efficiency and be aesthetically
50 compatible;

51 (13) A statement of the impact of the plan upon the local
52 community and the input afforded local and regional
53 government entities and the public with respect to its
54 implementation; and

55 (14) Any other requirement established by the
56 commission and council in the rules required by section
57 seventeen of this article.

58 (c) Campus development plans shall incorporate all
59 current and proposed facilities, including educational and
60 general and auxiliary facilities.

61 (d) Not later than the next regularly scheduled meeting
62 of the commission or council, as applicable, following the
63 fifth anniversary date after the commission confirms or
64 council approves, as appropriate, the development plan of a
65 governing board the governing board shall report on the
66 progress made in the first five years to implement the
67 campus development plan for each campus under its
68 jurisdiction. In addition, the governing board shall report on
69 its plans to implement the remaining five-year period of its
70 campus development plan.

71 (e) Each governing board shall update its campus
72 development plan at least once during each ten-year period
73 and any update is subject to the confirmation of the
74 commission or approved by the council, as appropriate.

75 (f) Except for the governing boards of the exempted
76 schools, a governing board may not implement a campus
77 development plan or plan update that has not been

78 confirmed by the commission or approved by the council,
79 as appropriate.

§18B-19-5. Capital appropriation requests.

1 (a) The commission and council each shall submit a
2 prioritized capital appropriation request annually to the state
3 budget office as required by article two, chapter eleven-b of
4 this code consisting of major capital projects and
5 maintenance projects.

6 (b) The commission and council each shall develop a
7 process for governing boards to follow in submitting a list
8 of major educational and general capital projects so that a
9 prioritized major capital project list, prepared by the
10 commission or council, as appropriate, may be submitted to
11 the state budget office by the applicable deadline.

12 (1) The governing board's major capital project list shall
13 include the following items:

14 (A) Projects identified in the governing board's campus
15 development plan or plans. A project may not be included
16 which is not contained in the plan confirmed by the
17 commission or approved by the council, as appropriate,
18 except when extraordinary circumstances otherwise
19 warrant;

20 (B) A current estimate of each project's estimated cost
21 accounting for inflation since completion of the campus
22 development plan. The size and scope of the project may not
23 change unless the campus development plan has been
24 updated and approved by the council or confirmed by the
25 commission, as appropriate, as provided in section three of
26 this article; and

27 (C) Any additional information required to be provided
28 by the commission, council or state budget office.

29 (2) The commission and council each shall rank the
30 major capital projects submitted by the governing boards

31 according to priority consistent with the criteria outlined in
32 the system capital development plan. The council and
33 commission may not submit to the state budget office a
34 request for an institution which the commission or council
35 determines reasonably could not secure funding through the
36 appropriation process during the following fiscal year.

37 (c) The commission and council each shall develop a
38 process for governing boards to follow in submitting a list
39 of major maintenance projects so that a prioritized
40 maintenance project list, prepared by the commission or
41 council, as appropriate, may be submitted to the state budget
42 office by the applicable deadline.

43 (1) Annually, the commission and council, as
44 appropriate, shall provide each governing board a
45 recommended building renewal calculation that identifies
46 the funds that should be collected and invested in its
47 buildings and facilities during the next fiscal year to
48 maintain them and minimize deferred maintenance.

49 (2) As soon as it receives the building renewal
50 calculation, each governing board shall make realistic
51 revenue estimates of the funds available for maintenance
52 projects from educational and general capital fees, from
53 auxiliary and auxiliary capital fees and from any other
54 revenue that may be used for maintenance projects, as well
55 as any anticipated reserves. The governing boards then shall
56 identify and submit proposed major maintenance projects,
57 consistent with its campus development plan or plans, to be
58 funded from these revenues.

59 (3) The commission and council each shall report to the
60 Legislative Oversight Commission on Education
61 Accountability on the revenue available to governing boards
62 for educational and general and auxiliary maintenance
63 projects, as well as any shortfalls based on building renewal
64 formula calculation, and major maintenance projects that
65 institutions propose to undertake during the upcoming fiscal
66 year.

67 (4) The commission shall work with institutions under
68 its jurisdiction to ensure that adequate funds are generated
69 to fund maintenance and build adequate reserves from
70 educational and general and auxiliary capital fees and other
71 revenue consistent with the building renewal formula. The
72 Legislature recognizes that it may take several years for this
73 to be accomplished fully.

74 (5) The council shall work with the Legislature and
75 institutions under its jurisdiction to ensure that a
76 combination of appropriated and nonappropriated revenue
77 is available to fund maintenance and build adequate
78 reserves at community and technical colleges consistent
79 with the building renewal formula.

§18B-19-6. Capital project financing.

1 (a) The commission and governing boards, jointly or
2 singly, may issue revenue bonds for capital project
3 financing in accordance with section eight, article ten of this
4 chapter.

5 (b) A governing board may seek funding for and
6 initiate construction or renovation work for major projects
7 only if contained in a campus development plan approved
8 by the council or confirmed by the Commission: *Provided*,
9 That this subsection (b) shall not apply to the governing
10 boards of the exempted schools.

11 (c) A governing board may fund capital improvements
12 on a cash basis, through bonding or through notes or another
13 financing method that is approved by the commission and
14 by the council, if appropriate: *Provided*, That the exempted
15 schools shall not be required to get the approval of the
16 commission.

17 (1) If the cost of an improvement project for any
18 institution under the jurisdiction of the council, exceeds \$1
19 million, the governing board first shall obtain the approval
20 of the council, as appropriate. If the cost of an improvement
21 project at an institution under the jurisdiction of the

22 commission, other than the exempted schools, exceeds \$3
23 million, the governing board shall first obtain the approval
24 of the commission.

25 (2) Prior to approving bonding or any alternative
26 financing method for any institution other than the
27 exempted schools, the commission, and council if
28 appropriate, shall evaluate the following issues:

29 (A) The institution's debt capacity and ability to meet
30 the debt service payments for the full term of the financing;

31 (B) The institution's capacity to generate revenue
32 sufficient to complete the project;

33 (C) The institution's ability to fund ongoing operations
34 and maintenance;

35 (D) The impact of the financing arrangement on
36 students; and

37 (E) Any other factor considered appropriate.

38 (d) A governing board shall notify the Joint Committee
39 on Government and Finance at least thirty days before
40 beginning construction or renovation work on any capital
41 project in excess of \$1 million.

42 (e) The commission may pledge all or part of the fees of
43 any or all state institutions of higher education as part of a
44 system bond issue.

45 (f) Any fee or revenue source pledged prior to the
46 effective date of this section for payment of any outstanding
47 debt remains in effect until the debt is fully repaid or
48 refunded.

§18B-19-7. Capital project management.

1 (a) The commission, council and governing boards, as
2 responsibility is otherwise assigned herein, shall ensure that
3 capital funds are spent appropriately and that capital

4 projects are managed effectively. Project management shall
5 be conducted in all respects according to sound business
6 practices and applicable laws, and rules.

7 (b) The commission shall employ a sufficient number of
8 competent facilities staff experienced in capital project
9 development and management that is suitable for the
10 number, size and complexity of the capital projects being
11 managed. By December 31, 2011, and continuing thereafter,
12 at least one employee shall be Leadership in Energy and
13 Environmental Design (LEED) certified.

14 (c) A governing board under the jurisdiction of the
15 commission is exempt from the provisions of subsections
16 (e) and (f) of this section seven of this article, and its capital
17 projects management shall be governed by the provisions of
18 subsection (d) of this section regardless of the rolling five
19 year construction expenditures, if it meets each of the
20 following criteria:

21 (1) Employs at least one Leadership in Energy and
22 Environmental Design (LEED) certified administrator; and

23 (2) Employs at least one Certified Facilities Manager
24 (CFM) as credentialed by the International Facility
25 Management Association or employs at least one Project
26 Management Professional (PMP) as certified by the Project
27 Management Institute.

28 (d) An institution that has entered into construction
29 contracts averaging more than \$50 million over the most
30 recent rolling five-year period is responsible for capital
31 project management at that institution if it meets the
32 following additional conditions:

33 (1) The governing board shall employ a facilities staff
34 experienced in capital project development and
35 management that is suitable for the number, size and
36 complexity of the capital projects being managed and, by
37 December 31, 2011, and continuing thereafter, at least one

38 of these employees shall be Leadership in Energy and
39 Environmental Design (LEED) certified;

40 (2) The governing board shall promulgate and adopt a
41 capital project management rule in accordance with section
42 six, article one of this chapter. The capital project
43 management rule shall include at least the following items:

44 (A) Delineation of the governing board's
45 responsibilities with respect to capital project management
46 and the responsibilities delegated to the institution's
47 president;

48 (B) A requirement for the use of standard contract
49 documents for architectural, engineering, construction,
50 construction management and design-build services as
51 appropriate to a particular project;

52 (C) The governing board's requirements for the
53 following procedures:

54 (i) Monitoring and approving project designs to ensure
55 conformance with the state and system goals, objectives and
56 priorities and the governing board's master plan, compact
57 and campus development plan;

58 (ii) Approving project budgets, including a reasonable
59 contingency reserve for unknown or unexpected expenses
60 and for bidding;

61 (iii) Approving architectural, engineering and
62 construction contracts exceeding an amount to be
63 determined by the governing board;

64 (iv) Approving contract modifications and construction
65 change orders; and

66 (v) Providing a method for project closeout and final
67 acceptance of the project by the governing board.

68 (3) The institutional capital project management rule
69 shall be filed with the commission no later than one hundred
70 eighty days following the effective date of the rule required
71 of the commission and council in section seventeen of this
72 article.

73 (4) The commission may review or audit projects
74 greater than \$5 million periodically to ascertain that
75 appropriate capital project management practices are being
76 employed.

77 (e) For institutions that have entered into construction
78 contracts averaging at least \$20 million, but not more than
79 \$50 million, over the most recent rolling five-year period:

80 (1) The governing board, with assistance as requested
81 from the commission, shall manage all capital projects if the
82 governing board meets the following conditions:

83 (A) Employs at least one individual experienced in
84 capital project development and management; and

85 (B) Promulgates and adopts a capital project
86 management rule in accordance with section six, article one
87 of this chapter that is approved by the commission. The
88 capital project management rule may be amended at the
89 discretion of the governing board, but amendments shall be
90 submitted to the commission for review and approval before
91 becoming effective.

92 (2) The capital project management rule of the
93 governing board shall include at least the following items:

94 (A) Delineation of the governing board's
95 responsibilities with respect to capital project management
96 and the responsibilities delegated to the institution's
97 president;

98 (B) A requirement for the use of the state's standard
99 contract documents for architectural, engineering,

100 construction, construction management and design-build
101 services as appropriate to a particular project; and

102 (C) The governing board's requirements for the
103 following procedures:

104 (i) Monitoring and approving project designs to ensure
105 conformance with the state and system goals, objectives and
106 priorities and the governing board's master plan, compact
107 and campus development plan;

108 (ii) Approving project budgets, including a reasonable
109 contingency reserve for unknown or unexpected expenses
110 and for bidding;

111 (iii) Approving architectural, engineering, construction
112 and other capital contracts exceeding an amount to be
113 determined by the governing board;

114 (iv) Approving contract modifications and construction
115 change orders; and

116 (v) Providing a method for project closeout and final
117 acceptance of the project by the governing board.

118 (3) If an institution does not meet the provisions of this
119 subsection, the commission shall manage all capital projects
120 exceeding \$1 million.

121 (4) The commission staff shall review and audit
122 periodically all projects greater than \$1 million to ascertain
123 that appropriate project management practices are being
124 employed. If serious deficiencies are identified and not
125 addressed sufficiently within ninety days, commission staff
126 may assume management of all projects.

127 (f) For institutions that have entered into construction
128 contracts averaging less than \$20 million over the most
129 recent rolling five-year period and for all community and
130 technical colleges, the commission and council shall
131 manage capital projects exceeding \$1 million. In the rule

132 required by section seventeen of this article, the commission
133 and council, as appropriate, shall adopt procedures to afford
134 participation by the governing boards and staff in the
135 planning, development and execution of capital projects.

§18B-19-9. Higher education facilities information system.

1 (a) The commission and council jointly shall develop
2 and maintain a higher education facilities information
3 system, except for the exempt schools. The higher education
4 facilities information system shall serve as a vehicle for
5 carrying out the following functions:

6 (1) Acquisition of statewide data;

7 (2) Analysis of space use and classification based on
8 nationally recognized standards and measurements to
9 facilitate comparisons among post-secondary education
10 institutions within the state and in the region and nation; and

11 (3) Other purposes as determined by the commission
12 and council consistent with facilitating policy analysis
13 without burdening or interfering unnecessarily with the
14 governance responsibilities which are placed upon the
15 governing boards.

16 (b) At a minimum the higher education facilities
17 information system shall serve the following purposes:

18 (1) Develop and maintain a statewide inventory of
19 higher education facilities, including those acquired by
20 long-term lease, lease-purchase or other arrangement
21 whereby the institution has long-term beneficial use. The
22 inventory shall include, but is not limited to, the institution
23 and campus location of the facility, the construction date,
24 the original cost, square footage, floor plans, type of
25 construction, ownership status, the purposes for which it is
26 used, the current replacement cost and any other data the
27 commission and council consider appropriate, consistent
28 with the provisions of the foregoing subsection (a);

29 (2) Develop and maintain an inventory of all rooms
30 within each facility, which includes, but is not limited to,
31 the room number, the square footage, room usage, number
32 of student stations and any other data the commission and
33 council consider appropriate, consistent with the provisions
34 of the foregoing subsection (a);

35 (3) Provide a vehicle for institutions to submit capital
36 appropriation requests to the commission and council;

37 (4) Provide information on major institutional capital
38 projects, including major maintenance and deferred
39 maintenance projects; and

40 (5) Provide information on facilities needed to calculate
41 the building renewal formula.

42 (c) The commission and council shall establish
43 benchmarks for classroom and class laboratory use
44 including an analysis of utilization for the fall and spring
45 semesters of each academic year. The efficient use of
46 classrooms and class laboratories is a factor in determining
47 whether an institution needs additional classroom and
48 laboratory facilities.

49 (d) Each governing board and any institution under its
50 jurisdiction shall participate and cooperate with the
51 commission and council in all respects in the development
52 and maintenance of the higher education facilities
53 information system.

54 (e) The higher education facilities information system
55 may be used for other purposes set forth by the commission
56 and council in the rules required by section seventeen of this
57 article, consistent with the provisions of the foregoing
58 subsection (a).

**§18B-19-10. Authorization to sell and transfer property; use
of proceeds.**

1 (a) Notwithstanding any other provision of law or this
2 code to the contrary, the commission, council and governing
3 boards each may sell, lease, convey or otherwise dispose of
4 all or part of any real property that it owns, either by contract
5 or at public auction, and shall retain the proceeds of the
6 transaction.

7 The commission, council and governing boards may not
8 sell, convey or otherwise dispose of any real property
9 without first performing the following steps:

10 (1) Providing for property appraisal by two independent
11 licensed appraisers. The property may not be sold for less
12 than the average of the two appraisals;

13 (2) Providing notice to the public in the county in which
14 the real property is located by a Class II legal advertisement
15 pursuant to section two, article three, chapter fifty-nine of
16 this code;

17 (3) Holding a public hearing on the issue in the county
18 in which the real property is located;

19 (4) For real property with a proposed sale price of
20 \$50,000 or greater, ten days prior to the placement of the
21 Class II legal advertisement, providing written notice to the
22 county commission and municipalities in the county in
23 which the real estate property is located and all members of
24 the Legislature, and

25 (5) In the case of the commission, notifying the Joint
26 Committee on Government and Finance.

27 (b) The commission, council or a governing board may
28 not lease real property for an annual amount of greater than
29 \$50,000 without satisfying the obligations of subdivisions
30 (2) to (4) of subsection (a) of this section.

31 (c) The commission, council or a governing board shall
32 deposit the net proceeds from the sale, conveyance or other
33 disposal of real property into a special revenue account in

34 the State Treasury to the credit of the commission, council,
35 or governing board that sold, conveyed or otherwise
36 disposed of the real property.

§18B-19-11. Authorization to lease-purchase.

1 (a) The commission or council may enter into lease-
2 purchase agreements for capital improvements, including
3 equipment, on behalf of, or for the benefit of, a state
4 institution of higher education, the commission or council.

5 (b) After the commission or council, as appropriate, has
6 granted approval for a lease-purchase agreement by a
7 governing board, the board may enter into a lease-purchase
8 agreement for capital improvements, including equipment.

9 (c) The governing boards of the exempted schools may
10 enter into lease-purchase agreements without seeking the
11 approval of the commission. The governing boards, subject
12 to the jurisdiction of the commission, may enter into lease-
13 purchase agreements of less than \$1.5 million, without
14 obtaining approval of the commission.

15 (d) A lease-purchase agreement constitutes a special
16 obligation of the State of West Virginia. The obligation may
17 be met from any funds legally available to the commission,
18 council or the institution and shall be cancelable at the
19 option of the commission, council, or governing board at the
20 end of any fiscal year. The obligation, or any assignment or
21 securitization of the obligation, never constitutes an
22 indebtedness of the State of West Virginia or any
23 department, agency or political subdivision of the state,
24 within the meaning of any constitutional provision or
25 statutory limitation, and may not be a charge against the
26 general credit or taxing powers of the state or any political
27 subdivision of the state. The facts shall be plainly stated in
28 any lease-purchase agreement.

29 (e) A lease-purchase agreement shall prohibit
30 assignment or securitization without consent of the lessee

31 and the approval of the agreement as to form by the
32 Attorney General. Proposals for any agreement shall be
33 requested in accordance with the requirements of this
34 section and rules of the commission and council. In
35 addition, any lease-purchase agreement that exceeds
36 \$100,000 total shall be approved as to form by the Attorney
37 General.

38 (f) The interest component of any lease-purchase
39 obligation is exempt from all taxation of the State of West
40 Virginia, except inheritance, estate and transfer taxes. It is
41 the intent of the Legislature that if the requirements set forth
42 in the Internal Revenue Code of 1986, as amended, and any
43 regulations promulgated pursuant thereto are met, the
44 interest component of any lease-purchase obligation also is
45 exempt from the gross income of the recipient for purposes
46 of federal income taxation and may be designated by the
47 governing board or the president of the institution as a bank-
48 qualified obligation.

§18B-19-13. Real property contracts and agreements.

1 (a) In addition to the requirements otherwise provided
2 in this article, any purchase of real estate, any lease-
3 purchase agreement and any construction of new buildings
4 or other acquisition of buildings, office space or grounds
5 resulting from these transactions, shall be approved by the
6 commission or council, as appropriate, and provided to the
7 Joint Committee on Government and Finance for prior
8 review, if the transaction exceeds \$1 million: *Provided*,
9 That the exempted schools shall not be required to get the
10 approval of the commission.

11 (b) Notwithstanding any provision of this code to the
12 contrary, any acquisition, bequest, donation or construction
13 of new buildings, office space or grounds exceeding \$1
14 million in appraised value or requiring \$1 million in repairs
15 and renovation or lease payments over the lifetime of the
16 lease, made or accepted by an institution's research
17 corporation established by article twelve of this chapter or

18 an affiliated foundation of an institution under the
19 jurisdiction of the council, shall be approved by the council.

20 (c) The commission, council and each governing board
21 shall provide the following to the Joint Committee on
22 Government and Finance:

23 (1) A copy of any contract or agreement to which it is a
24 party for real property if the contract or agreement exceeds
25 \$1 million; and

26 (2) A report setting forth a detailed summary of the
27 terms of the contract or agreement, including the name of
28 the property owner and the agent involved in the sale.

29 (d) The copy and report required by subsection (b) of this
30 section shall be provided at least thirty days before any sale,
31 exchange, transfer, purchase, lease-purchase, lease or rental of
32 real property, refundings of lease-purchases, leases or rental
33 agreements, construction of new buildings, and any other
34 acquisition or lease of buildings, office space or grounds.

35 (e) A contract or agreement that is for the lease
36 purchase, lease or rental of real property, where the costs of
37 real property acquisition and improvements are to be
38 financed, in whole or in part, with bond proceeds, may
39 contain a preliminary schedule of rents and leases for
40 purposes of review by the committee.

41 (f) For renewals of contracts or agreements required by
42 this section to be reported, the commission, council or
43 governing board shall provide a report setting forth a
44 detailed summary of the terms of the contract or agreement,
45 including the name of the property owner.

46 (g) The Joint Committee on Government and Finance
47 shall meet and review any contract, agreement or report
48 within thirty days of receipt.

49 (h) Each governing board shall provide to the
50 commission or council, as appropriate, a copy of any
51 contract or agreement submitted to the Joint Committee on
52 Government and Finance pursuant to this section.

§18B-19-14. Authorization for sale lease-back.

1 (a) Notwithstanding any other provision of this code to
2 the contrary, a governing board may sell any building that
3 is on unencumbered real property to which the board holds
4 title and may lease back the same building if the governing
5 board obtains approval of the council or confirmation by the
6 commission, as appropriate, before incurring any
7 obligation: *Provided*, That the exempted schools shall not
8 be required to obtain such approval or confirmation of the
9 commission. The board shall deposit the net proceeds of the
10 transaction into a special revenue account in the State
11 Treasury to be appropriated by the Legislature for the use of
12 the institution at which the real property is located. Prior to
13 such action, the board shall take the following steps:

14 (1) Provide for the property to be appraised by two
15 licensed appraisers. The board may not sell the property for
16 less than the average of the two appraisals;

17 (2) Providing notice to the public in the county in which
18 the real property is located by a Class II legal advertisement
19 pursuant to section two, article three, chapter fifty-nine of
20 this code;

21 (3) Holding a public hearing on the issue in the county
22 in which the real property is located;

23 (4) For real property with a proposed sale price of
24 \$50,000 or greater, ten days prior to the placement of the
25 Class II legal advertisement, providing written notice to the
26 county commission and municipalities in the county in
27 which the real estate property is located and all members of
28 the Legislature, and

29 (5) Retain independent financial and legal services to
30 examine fully all aspects of the transaction.

31 (b) The sale may be made only to a special purpose
32 entity that exists primarily for the purpose of supporting the
33 institution at which the building is located.

§18B-19-19. Applicability to certain institutions.

1 The governing boards of the exempted schools each
2 may, without obtaining approval of the commission, take
3 any action described or set forth in this article that otherwise
4 would require the approval or confirmation of the
5 commission. The respective governing board shall provide
6 notice of the action to the commission. If the commission
7 requests additional information relevant to the action from
8 the respective governing board, the governing board shall
9 provide information regarding the action to the commission.

CHAPTER 123

**(Com. Sub. for H. B. 2542 - By Delegates Statler,
Espinosa, Cowles, Blair, Ambler, Shott, Kessinger,
Hamilton, Dean, Ellington and Lewis)**

[Passed March 14, 2017; in effect ninety days from passage.]

[Approved by the Governor on March 23, 2017.]

AN ACT to repeal §18B-7-9, §18B-7-11 and §18B-7-12 of the Code of West Virginia, 1931, as amended; to repeal §18B-9-1, §18B-9-2, §18B-9-3 and §18B-9-4 of said code; to repeal §18B-9A-3 and §18B-9A-8 of said code; to amend and reenact §18B-1B-5 of said code; to amend and reenact §18B-4-1 and §18B-4-2a of said code; to amend and reenact §18B-7-1, §18B-7-2, §18B-7-3, §18B-7-6 and §18B-7-8 of said code; to amend said code by adding thereto a new section, designated §18B-8-7; to amend and reenact §18B-9A-2, §18B-9A-5, §18B-9A-6 and §18B-9A-7 of said code; and to amend said code by adding thereto a new article, designated §18B-9B-1, all relating to public higher education personnel generally; clarifying roles of Higher Education Policy Commission, Council for Community and Technical College Education and state organizations of higher education; eliminating certain human resources review by Higher Education Policy Commission and Council for Community

and Technical College Education; eliminating specific references to the Vice Chancellor for Human Resources; eliminating outdated and redundant reporting requirements; eliminating requirement for Higher Education Policy Commission to create certain positions that report to Vice Chancellor for Human Resources; eliminating certain higher education organization employment ratios and requirements; eliminating higher education organization classified employee salary schedule, outdated associated requirements and definitions; eliminating certain requirements related to exercising flexibility in human resources for higher education organizations; eliminating outline of steps for implementation of classification and compensation system by Higher Education Policy Commission and Council for Community and Technical College Education; providing legislative purposes and intent for higher education personnel; defining terms; providing and revising rules relating to reductions in workforce and hiring preferences; providing for continuing education and professional development; providing for evaluation and reviews of organizations for certain human resource deficiencies, best practices and compliance with state higher education personnel laws; providing for content of certain reports from Higher Education Policy Commission and Council for Community and Technical College Education to Legislative Oversight Commission on Education Accountability; authorizing organizations to adopt rules relating to employment policies and practices for staff and faculty; providing for preemption of Higher Education Policy Commission and Council for Community and Technical Education rules conflicting with a governing board rule on faculty; defining classified and nonclassified employees; clarifying powers and duties of the Compensation Planning and Review Committee; providing that the Higher Education Policy Commission shall develop a model minimum salary schedule using West Virginia Workforce and other relevant data that organizations shall follow except in certain instances; providing that the Higher Education Policy Commission develop classification and compensation rules; providing state organizations of higher education with the

ability to propose and implement approved legislative rules relating to classification and compensation with certain exceptions; and requiring any rule proposed by a state organization of higher education incorporate best human resources practices, address areas of accountability, employee classification and compensation and performance evaluation.

Be it enacted by the Legislature of West Virginia:

That §18B-7-9, §18B-7-11 and §18B-7-12 of the Code of West Virginia, 1931, as amended, be repealed; that §18B-9-1, §18B-9-2, §18B-9-3 and §18B-9-4 of said code, be repealed; that §18B-9A-3 and §18B-9A-8 of said code, be repealed; that §18B-1B-5 of said code be amended and reenacted; that §18B-4-1 and §18B-4-2a of said code be amended and reenacted; that §18B-7-1, §18B-7-2, §18B-7-3, §18B-7-6 and §18B-7-8 of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §18B-8-7; that §18B-9A-2, §18B-9A-5, §18B-9A-6 and §18B-9A-7 of said code be amended and reenacted; and that said code be amended by adding thereto a new article, designated §18B-9B-1, all to read as follows:

ARTICLE 1B. HIGHER EDUCATION POLICY COMMISSION.

§18B-1B-5. Employment of Chancellor for Higher Education; office; powers and duties generally; employment of Vice Chancellors and other staff.

1 (a) The commission, created by section one of this
2 article, shall employ a Chancellor for Higher Education who
3 is the Chief Executive Officer of the Commission and who
4 serves at its will and pleasure.

5 (b) The commission shall set the qualifications for the
6 position of Chancellor and, when a vacancy occurs, shall
7 conduct a thorough nationwide search for qualified
8 candidates. A qualified candidate is one who meets at least
9 the following criteria:

10 (1) Possesses an excellent academic and administrative
11 background;

12 (2) Demonstrates strong communication skills;

13 (3) Has significant experience and an established
14 national reputation as a professional in the field of higher
15 education;

16 (4) Is free of institutional or regional biases; and

17 (5) Holds or retains no other administrative position
18 within a system of higher education while employed as
19 chancellor.

20 (c) The commission shall conduct written performance
21 evaluations of the chancellor annually and may offer the
22 chancellor a contract not to exceed three years. At the end
23 of each contract period, the commission shall review the
24 evaluations and make a determination by vote of its
25 members on continuing employment and compensation
26 level.

27 (d) When filling a vacancy in the position of chancellor,
28 the commission shall enter into an initial employment
29 contract for one year with the candidate selected. At the end
30 of the initial contract period, and each contract period
31 thereafter, the commission shall review the evaluations and
32 make a determination by vote of its members on continuing
33 employment and compensation level for the chancellor.

34 (e) The commission sets the chancellor's salary. The
35 salary may not exceed by more than twenty percent the
36 average annual salary of chief executive officers of state
37 systems of higher education in the states that comprise the
38 membership of the Southern Regional Education Board.

39 (f) The commission may employ a Vice Chancellor for
40 Health Sciences who serves at the will and pleasure of the
41 commission. The Vice Chancellor for Health Sciences shall
42 coordinate the West Virginia University School of
43 Medicine, the Marshall University School of Medicine and
44 the West Virginia School of Osteopathic Medicine and also
45 shall provide assistance to the governing boards on matters

46 related to medical education and health sciences. The Vice
47 Chancellor for Health Sciences shall perform all duties
48 assigned by the chancellor, the commission and state law.
49 In the case of a vacancy in the office of Vice Chancellor of
50 Health Sciences, the duties assigned to this office by law are
51 the responsibility of the chancellor or a designee.

52 (g) The commission shall employ a Vice Chancellor for
53 Administration pursuant to section two, article four of this
54 chapter.

55 (h) The commission may employ a Vice Chancellor for
56 State Colleges who serves at the will and pleasure of the
57 commission. At a minimum, the Vice Chancellor for State
58 Colleges shall perform the following duties:

59 (1) Provide assistance to the commission, the chancellor
60 and the state colleges on matters related to or of interest and
61 concern to these institutions;

62 (2) Advise, assist and consult regularly with the
63 presidents and governing boards of each state college;

64 (3) Serve as an advocate and spokesperson for the state
65 colleges to represent them and to make their interests, views
66 and issues known to the chancellor, the commission and
67 governmental agencies;

68 (4) Perform all duties assigned by the chancellor, the
69 commission and state law.

70 In addition, the Vice Chancellor for State Colleges shall
71 provide staff assistance to the presidents and governing
72 boards to the extent practicable.

73 (i) On behalf of the commission, the chancellor may
74 enter into agreements with any state agency or political
75 subdivision of the state, any state institution of higher
76 education or any other person or entity to enlist staff
77 assistance to implement the powers and duties assigned by
78 the commission or by state law.

79 (j) The chancellor is responsible for the daily operations
80 of the commission and has the following responsibilities
81 relating to the commission and the governing boards under
82 its jurisdiction:

83 (1) To carry out policy and program directives of the
84 commission;

85 (2) To develop and submit annual reports on the
86 implementation plan to achieve the goals and objectives set
87 forth in section one-a, article one and article one-d of this
88 chapter, and in the compacts;

89 (3) To prepare and submit to the commission for its
90 approval the proposed budget of the commission including
91 the offices of the chancellor and the vice chancellors;

92 (4) To assist the governing boards in developing rules,
93 subject to the provisions of section six, article one of this
94 chapter. Nothing in this chapter requires the rules of the
95 governing boards to be filed pursuant to the rule-making
96 procedures provided in article three-a, chapter twenty-nine-
97 a of this code. The commission and the council, either
98 separately or jointly as appropriate, are responsible for
99 ensuring that any policy which is required to be uniform
100 across the institutions is applied in a uniform manner;

101 (5) To consult with institutions on human relations
102 policies and rules;

103 (6) To perform all other duties and responsibilities
104 assigned by the commission or by state law.

105 (k) The chancellor shall be reimbursed for all actual and
106 necessary expenses incurred in the performance of all
107 assigned duties and responsibilities.

108 (l) The chancellor, with the commission, advises the
109 Legislature on matters of higher education in West Virginia.
110 The chancellor shall work closely with the Legislative
111 Oversight Commission on Education Accountability and

112 with the elected leadership of the state to ensure that they
113 are fully informed about higher education issues and that the
114 commission fully understands the goals, objectives and
115 priorities for higher education that the Legislature has
116 established by law.

117 (m) The chancellor may design and develop for
118 consideration by the commission new statewide or region-
119 wide initiatives in accordance with the goals set forth in
120 section one-a, article one and article one-d of this chapter,
121 and the public policy agenda articulated by the commission.
122 In those instances where the initiatives to be proposed have
123 a direct and specific impact or connection to community and
124 technical college education as well as to baccalaureate and
125 graduate education, the Chancellor for Higher Education
126 and the Chancellor for Community and Technical College
127 Education shall design and develop the initiatives jointly for
128 consideration by the commission and the council.

129 (n) To further the goals of cooperation and coordination
130 between the commission and the State Board of Education,
131 the chancellor serves as an ex officio, nonvoting member of
132 the state board. The chancellor shall work closely with
133 members of the State Board of Education and with the State
134 Superintendent of Schools to assure that the following goals
135 are met:

136 (1) Development and implementation of a seamless
137 kindergarten-through-college system of education; and

138 (2) Appropriate coordination of missions and programs.

ARTICLE 4. GENERAL ADMINISTRATION.

§18B-4-1. Employment of chancellors; designation of staff; offices.

1 (a) The council and commission each shall employ a
2 chancellor to assist in the performance of their respective
3 duties and responsibilities subject to the following
4 conditions:

5 (1) Each chancellor serves at the will and pleasure of the
6 hiring body.

7 (2) Neither chancellor may hold or retain any other
8 administrative position within the system of higher
9 education while employed as chancellor.

10 (3) Each chancellor shall carry out the directives of the
11 body by whom employed and shall collaborate with that
12 body in developing policy options.

13 (4) The commission is responsible to the council and the
14 Chancellor for Community and Technical College
15 Education for providing services in areas essential to
16 exercising the powers and duties assigned to the council by
17 law. The commission may not charge the council any fee for
18 the provision of these essential services. The service areas
19 include, but are not limited to, legal services, research,
20 technology, computing, finance and facilities, academic
21 affairs, telecommunications, human resources, student
22 services and any other general areas the council considers to
23 be essential to the exercise of its legal authority. The
24 services are provided under the general supervision of the
25 Vice Chancellor for Administration.

26 (5) For the purpose of developing or evaluating policy
27 options, the chancellors may request the assistance of the
28 presidents and staff employed by the governing boards
29 under their respective jurisdictions.

30 (b) In addition to the staff positions designated in
31 subdivision (4), subsection (a) of this section, and section
32 five, article one-b of this chapter, the Vice Chancellor for
33 Administration, employed pursuant to section two of this
34 article, serves the offices of the chancellors to discharge
35 jointly the duties and responsibilities of the council and
36 commission.

37 (c) Suitable offices for the Vice Chancellor of
38 Administration and other staff shall be provided in
39 Kanawha County.

§18B-4-2a. Development of benefit programs; assistance to organizations.

1 The chancellor or a qualified designee shall:

2 (1) Chair the Job Classification Committee and the
3 Compensation Planning and Review Committee established
4 by sections four and five, article nine-a of this chapter;

5 (2) Assume responsibility for coordinating retirement
6 benefits programs for all employees, including designing
7 these programs, and for supporting each higher education
8 organization in implementing the programs;

9 (3) Assist, as requested by an organization, organizations
10 with classification and/or compensation programs for faculty
11 and/or nonclassified employees, including, as appropriate,
12 design and implementation of the programs; and

13 (4) As requested by organizations, assist with carrying out
14 the following duties related to training and development:

15 (A) Analyzing and determining training needs of
16 organization employees and formulating and developing
17 plans, procedures and programs to meet specific training
18 needs and problems.

19 (B) Developing, constructing, maintaining and revising
20 training manuals and training aids or supervising
21 development of these materials by outside suppliers;

22 (C) Planning, conducting and coordinating management
23 inventories, appraisals, placement, counseling and training;

24 (D) Coordinating participation by all employees in
25 training programs developed internally or provided by
26 outside contractors; and

27 (E) Administering and analyzing annual training and
28 development needs surveys. The survey may coincide with
29 the completion of the annual performance review process.

ARTICLE 7. PERSONNEL GENERALLY.

§18B-7-1. Legislative intent and purpose.

1 (a) The intent of the Legislature in enacting this article
2 and articles eight, nine and nine-a of this chapter is to
3 establish basic human resources policies applicable to
4 public higher education capable of, but not limited to,
5 assisting the governing boards in meeting the following
6 objectives:

7 (1) Implementing contemporary programs and practices
8 to reward and incentivize performance and enhance
9 employee engagement;

10 (2) Providing benefits to the citizens of the State of West
11 Virginia by supporting the public policy agenda as
12 articulated by state policymakers;

13 (3) Assuring fiscal responsibility by making the best use
14 of scarce resources;

15 (4) Promoting fairness, accountability, credibility, and
16 transparency in personnel decision making;

17 (5) Providing for job requirements and performance
18 standards for classified staff positions with annual job
19 performance evaluations for classified staff, and provisions
20 for job performance counseling when appropriate.

21 (6) Reducing or, wherever possible, eliminating
22 arbitrary and capricious decisions affecting employees of
23 higher education organizations as defined in section two,
24 article nine-a of this chapter;

25 (7) Creating stable, self-regulating human resources
26 policies capable of evolving to meet changing needs;

27 (8) Providing for institutional flexibility with
28 meaningful accountability;

29 (9) Adhering to federal and state laws;

30 (10) Adhering to duly promulgated and adopted rules;
31 and

32 (11) Enhancing the sharing of best practices throughout
33 the state higher education system.

34 (12) Providing current, reliable data to governing
35 boards, the commission, the council, the Governor and the
36 Legislature to inform the decision-making process of these
37 policymakers.

38 (b) To accomplish these goals, the Legislature
39 encourages organizations to pursue a human resources
40 strategy which provides monetary and nonmonetary returns
41 to employees in exchange for their time, talents and efforts
42 to meet articulated goals, objectives and priorities of the
43 state, the commission and council, and the organization. The
44 system should maximize the recruitment, motivation and
45 retention of highly qualified employees, promote
46 satisfaction and engagement of employees with their jobs,
47 promote job performance and achieve desired results.

48 (c) It is the intent of the Legislature to establish a human
49 resources strategy that is fair, accountable, credible, and
50 transparent. In recognition of the importance of these
51 qualities, the human resources strategy outlined in this
52 article, together with articles eight and nine-a of this
53 chapter, is designated and may be cited as “FACT for
54 Higher Education”.

55 (d) It is the intent of the Legislature to require each
56 higher education organization to achieve full funding of the
57 minimum salary levels for classified employees established
58 in section six, article nine-a of this chapter.

§18B-7-2. Definitions.

1 For the purposes of this article and articles eight, nine
2 and nine-a of this chapter, the following words have the
3 meanings ascribed to them unless the context clearly
4 indicates a different meaning:

5 (1) “Benefits” means programs that an employer uses to
6 supplement the cash compensation of employees and
7 includes health and welfare plans, retirement plans, pay for
8 time not worked and other employee prerequisites.

9 (2) “Compensation” means cash provided by an
10 employer to an employee for services rendered.

11 (3) “Compensatory time” and “compensatory time off”
12 mean hours during which the employee is not working,
13 which are not counted as hours worked during the
14 applicable work week or other work period for purposes of
15 overtime compensation and for which the employee is
16 compensated at the employee’s regular rate of pay.

17 (4) “Employee classification” or “employee class”
18 means those employees designated as classified employees;
19 nonclassified employees, including presidents, chief
20 executives and administrators and faculty, as these terms are
21 defined in this article and articles eight, nine and nine-a of
22 this chapter.

23 (5) “Full-time” means a regular employee whose
24 employment, if continued, accumulates to a minimum total
25 of one thousand forty hours during a calendar year and
26 extends over at least nine months of a calendar year.

27 (6) “Health and welfare benefit plan” means an
28 arrangement which provides any of the following: Medical,
29 dental, visual, psychiatric or long-term health care, life
30 insurance, accidental death or dismemberment benefits,
31 disability benefits or comparable benefits.

32 (7) “More senior employees” means an employee who
33 has greater longevity with the institution than another

34 employee who is also subject to layoff as part of a reduction
35 in force.

§18B-7-3. Reducing workforce.

1 (a) Definitions for terms used in this section have the
2 meanings ascribed to them in section two, article one of this
3 chapter and section two, article nine of this chapter, except
4 that, unless clearly noted otherwise, this section applies only
5 to a regular employee who is classified and whose
6 employment, if continued, accumulates to a minimum total
7 of one thousand forty hours during a calendar year and
8 extends over at least nine months of a calendar year.

9 (b) All decisions by an organization or its agents
10 concerning reductions in workforce of full-time classified
11 employees shall be made in accordance with this section and
12 pursuant to a rule adopted by the applicable governing board
13 of an organization, after consultation with and providing 30
14 days written notice to the applicable staff council of an
15 organization.

16 (1) For layoffs for reason of lack of funds or work, or
17 abolition of position or material changes in duties or
18 organization, the institution may layoff the incumbent in the
19 position being eliminated. In the case of elimination of some
20 but not all of the positions of the same job title, consideration
21 shall be given to an employee's documented quality of work
22 performance as demonstrated in performance evaluations of
23 record (including, but not limited to, disciplinary records),
24 skills, seniority as measured by years of service, or other
25 factors, as determined by the board.

26 (2) If the organization desires to lay off a more senior
27 employee, the organization may offer to the more senior
28 employee a severance package, the value of which shall not
29 exceed the more senior employee's salary for one year.

§18B-7-6. Continuing education and professional development.

1 (a) Each higher education organization shall establish
2 and operate an employee continuing education and
3 development program under a joint rule or rules
4 promulgated by the governing board. Funds allocated or
5 made available for employee continuing education and
6 development may be used to compensate and pay expenses
7 for any employees pursuing additional academic study or
8 training to equip themselves better for their duties.

9 The rules shall encourage continuing education and staff
10 development and shall require that employees be selected
11 on a nonpartisan basis using fair and meaningful criteria
12 which afford all employees opportunities to enhance their
13 skills and productivity in the workforce of the organization.
14 These rules also may include reasonable provisions for the
15 continuation or return of any employee receiving the
16 benefits of the education or training, or for reimbursement
17 by the state for expenditures incurred on behalf of the
18 employee.

19 (b) Subject to legislative appropriation therefor, the
20 commission and council shall promote and facilitate
21 additional, regular, training and professional development
22 for employees engaged in human resources-related
23 activities at all organizations. The training and professional
24 development:

25 (1) Shall be developed with emphasis on distance
26 learning, in consideration to limiting travel demands on
27 employees; and

28 (2) Shall be in addition to and may not supplant the
29 training and professional development regularly provided to
30 any class of employees by each organization prior to the
31 effective date of this section.

§18B-7-8. Reporting.

1 (a) *Personnel reports.* —

2 (1) Beginning December 1, 2020 and every five years
3 thereafter, the commission and council shall report to the
4 Legislative Oversight Commission on Education Accountability
5 addressing the following issues:

6 (A) Progress made by organizations toward achieving
7 fair compensation of all employees; and

8 (B) Detailed data disaggregated by organization and
9 employee category or classification, comparing funding for
10 salaries of faculty, classified employees and nonclassified
11 employees as a percentage of the average funding for each
12 of these classes or categories of employees among the
13 organization's state, region or national markets, as
14 appropriate, and among similar organizations within the
15 state systems of public higher education.

16 (2) The commission and council shall prepare a human
17 resources report card summarizing the performance of
18 organizations on key human resources measures established
19 by the commission and council. The report card shall be
20 presented to the Legislative Oversight Commission on
21 Education Accountability every five years, beginning
22 December 1, 2020, and shall be made available to the
23 general public. At a minimum, the human resources report
24 card shall contain the following data:

25 (A) Human resources department metrics by
26 organization:

27 (i) Areas of human resources functions outsourced to
28 external entities;

29 (ii) Total expenses per full-time equivalent employee;
30 and

31 (iii) Tuition revenue per full-time equivalent employee.

32 (B) Human resources expense data:

33 (i) Ratio of human resources expenses to operating
34 expenses; and

35 (ii) Total human resources expense per organization
36 employee.

37 (C) Compensation data:

38 (i) Average amount of annual salary increase per full-
39 time equivalent organization employee;

40 (ii) Total amount of organization employee salaries as a
41 percent of operating expenses; and

42 (iii) Total amount of organization employee benefit
43 costs as a percent of cash compensation.

44 (D) System metrics:

45 (i) Comparisons of faculty salaries at each organization
46 to market averages; and

47 (ii) Comparisons of classified and nonclassified
48 employee salaries at each organization to current market
49 averages.

50 (b) *Job classification system report.* —

51 By July 1, 2016, and at least once within each five-year
52 period thereafter, the commission and council jointly shall
53 review the effectiveness of the system for classifying jobs
54 and submit an in-depth report to the Legislative Oversight
55 Commission on Education Accountability. The report shall
56 include, but is not limited to, findings, recommendations
57 and supporting documentation regarding the following job
58 classification issues:

59 (1) The effectiveness of the point factor methodology
60 and a determination of whether it should be maintained; and

61 (2) The status of the job evaluation plan, including the
62 factors used to classify jobs or their relative values, and a
63 determination of whether the plan should be adjusted.

64 (c) It is the responsibility of the head of human resources
65 for each organization to prepare and submit to the president or
66 chief executive officer all human resources data requested by
67 the commission and council. The president or executive officer
68 of each organization shall submit the requested data at times
69 established by the commission and council.

70 (d) In meeting reporting requirements established by
71 this article and articles eight, nine and nine-a of this chapter:

72 (1) The commission and council shall use the most
73 recent data available and, as appropriate, shall benchmark it
74 against best practices and appropriate labor markets; and

75 (2) With the exception of the human resources report
76 card and any other report designated as due no later than a
77 date certain, the commission and council may combine two
78 or more personnel reports if the dates on which they are due
79 to the Legislature fall within a sixty-day period.

ARTICLE 8. HIGHER EDUCATION FULL-TIME FACULTY SALARIES.

§18B-8-7. Authority of Governing Boards relating to faculty.

1 Consistent with this article, and after consulting with
2 and providing 30 days written notice to the faculty senate, a
3 governing board may adopt a rule relating to the faculty.
4 The provisions of any rule adopted by a governing board
5 preempt any conflicting rule adopted by the commission or
6 the council.

ARTICLE 9A. CLASSIFICATION AND COMPENSATION SYSTEM.

§18B-9A-2. Definitions.

1 As used in this article and articles seven, eight and nine
2 of this chapter, the following words have the meanings
3 ascribed to them unless the context clearly indicates a
4 different meaning:

5 (1) “Classification system” means the process by which
6 jobs, job titles, career ladders and assignment to pay grades
7 are determined.

8 (2) “Classified employee” or “employee” means a
9 regular full-time or regular part-time employee of an
10 organization who: (i) does not meet the duties test for
11 exempt status under the provisions of the Fair Labor
12 Standards Act; and (ii) is not otherwise a nonclassified
13 employee designated pursuant to subdivision (11) of this
14 section: *Provided*, That any employee of an organization
15 who was a classified employee as of January 1, 2017, retains
16 that status unless otherwise deemed a nonclassified
17 employee pursuant to the provisions of subparts (A) through
18 (D) of subdivision (11) of this section.

19 (3) “Job” means the total collection of tasks, duties and
20 responsibilities assigned to one or more individuals whose
21 work is of the same nature and level.

22 (4) “Job description” or “position description” means a
23 summary of the most important features of a job, including
24 the general nature and level of the work performed.

25 (5) “Job evaluation” means a systematic way of
26 determining the value/worth of a job in relation to other jobs
27 in an organization by analyzing weighted compensable
28 factors resulting in the assignment of a job title and pay
29 grade to a position described by a position information
30 questionnaire.

31 (6) “Job family” means a group of jobs having the same
32 nature of work, but requiring different levels of skill, effort,
33 responsibility or working conditions.

34 (7) “Job specification” means the generic description of
35 a group of jobs assigned a common job title in the
36 classification system. The job specification contains a brief
37 summary of the purpose of the job; the most common duties
38 and responsibilities performed by positions holding the title;
39 knowledge, skills and abilities necessary to perform the
40 work; and minimum qualifications required for positions
41 assigned the title.

42 (8) “Job title” means the descriptive name for the total
43 collection of tasks, duties and responsibilities assigned to
44 one or more individuals whose positions have the same
45 nature of work performed at the same level.

46 (9) “Job worth hierarchy” means the perceived internal
47 value of jobs in relation to each other within an
48 organization.

49 (10) “Midpoint differential” means the difference in
50 wage rates paid in the midpoints of two adjacent pay grades.
51 A midpoint differential is calculated by taking the
52 difference between the two adjacent midpoints as a
53 percentage of the lower of the midpoints.

54 (11) “Nonclassified employee” means, an employee of
55 an organization who meets one or more of the following
56 criteria:

57 (A) Holds a direct policy-making position at the
58 department or organization level;

59 (B) Reports directly to the president or chief executive
60 officer of the organization;

61 (C) Is in a position considered by the president or
62 designee to be critical to the institution pursuant to policies
63 or decisions adopted by the governing board;

64 (D) Is in an information technology-related position;

65 (E) Is hired after July 1, 2017, and meets the duties test
66 for exempt status under the provisions of the Fair Labor
67 Standards Act at the time of hire or anytime thereafter; or

68 (F) Was in a nonclassified position as of January 1,
69 2017.

70 Unless otherwise established by action of the institution
71 where employed, a nonclassified employee serves at the will
72 and pleasure of the organization, which authority may be
73 delegated by act of the board.

74 (12) “Organization” means the commission, the council,
75 an agency or entity under the respective jurisdiction of the
76 commission or the council or a state institution of higher
77 education as defined in section two, article one of this
78 chapter.

79 (13) “Pay grade” means the level to which a job is
80 assigned within a job worth hierarchy as a result of job
81 evaluation.

82 (14) “Point factor methodology” means a quantitative
83 job evaluation process in which elements of a job are given
84 a factor value and each factor is weighted according to its
85 importance.

86 (15) “Position information questionnaire” or “PIQ”
87 means a tool used to gather specific job information for a
88 specific position held by an individual, and used for the
89 purposes of evaluating the position for determination of job
90 title and pay grade. The PIQ is used to gather information
91 used to assess the compensable factors of knowledge,
92 experience, complexity and problem solving, freedom of
93 action, scope and effect, breadth of responsibility, intra-
94 systems contacts, external contacts, direct supervision of
95 personnel, indirect supervision of personnel and health,
96 safety and physical considerations.

97 (16) "Pay range spread" means the difference in the
98 minimum and maximum rate of pay for a pay grade
99 expressed as a percentage.

**§18B-9A-5. Compensation planning and review committee
established; membership; meetings; powers and duties.**

1 (a) Pursuant to the rule authorized in section seven of
2 this article, the commission and council jointly shall
3 establish and maintain a compensation planning and review
4 committee.

5 (b) Within the guidelines established in this article and
6 articles seven, eight and nine of this chapter, the committee
7 shall manage all aspects of compensation planning and
8 review that the commission and council jointly delegate to
9 it.

10 The rule shall contain the following requirements
11 related to the compensation planning and review committee:

12 (1) A systematic method for appointing committee
13 members who are representative of all the higher education
14 organizations and affected constituent groups, including
15 specifically providing for membership selections to be made
16 from nominations from these higher education
17 organizations and affected constituent groups; and

18 (2) A requirement that an organization may have no
19 more than two members serving on the committee at any
20 time and the combined membership representing various
21 groups or divisions within or affiliated with an organization
22 in total may not constitute a majority of the membership;
23 and

24 (3) A requirement that committee members serve
25 staggered terms. One third of the initial appointments shall
26 be for two years, one third for three years and one third for
27 four years. Thereafter, the term is four years. A member
28 may not serve more than four years consecutively.

29 (c) The committee shall meet at least quarterly and at
30 other times at the call of the chair. A majority of the voting
31 members serving on the committee at a given time
32 constitutes a quorum for the purpose of conducting
33 business.

34 (d) An institution may not have a majority of the
35 committee members, and the combined membership
36 representing various groups or divisions within or affiliated
37 with an organization in total may not constitute a majority
38 of the membership.

39 (e) The Compensation Planning and Review Committee
40 has powers and duties related to classified employee
41 compensation programs which include, but are not limited
42 to, the following:

43 (1) Making annual recommendations for revisions in the
44 system classified compensation plan, based on existing
45 economic, budgetary and fiscal conditions or on market
46 study data.

47 (2) Overseeing the annual internal market review;

48 (3) Meeting at least annually with the Job Classification
49 Committee to discuss benchmark jobs to be included in
50 salary surveys, market “hot jobs” that may require a
51 temporary salary adjustment, results of job family reviews
52 and assessment of current job titles within the classification
53 system for market matches and other issues as the
54 Chancellor or chancellor’s designee, in consultation with
55 the chancellors, determines to be appropriate; and

56 (4) Performing other duties as assigned by the
57 commission and council or as necessary or expedient to
58 maintain an effective classification and compensation
59 system.

60 (f) The commission and council may allow the
61 committee to collapse the three lowest pay grades into a
62 single pay grade and provide for employees to be paid at

63 rates appropriate to the highest of the three lowest pay
64 grades.

§18B-9A-6. Salary structure and salary schedules.

1 (a) The commission and council shall develop and
2 maintain a classified salary schedule and ensure that all
3 organizations under their respective jurisdictions adhere to
4 state and federal laws and duly promulgated and adopted
5 organization rules.

6 (b) The classified salary schedule serves as the basis for
7 the following activities:

8 (1) Evaluating compensation of classified employees in
9 relation to appropriate external markets; and

10 (2) Developing the minimum salary per pay grade to be
11 adopted by the commission and council.

12 (c) The classified salary schedule shall meet the
13 following criteria:

14 (1) Sets forth the number of pay grades to be included
15 in the structure;

16 (2) Includes a midpoint value for each pay grade which
17 represents the average market rate of pay for jobs in that pay
18 grade. The commission and council may choose a midpoint
19 value that is not based exclusively on market salary data;
20 and

21 (3) Includes minimum and maximum pay range values
22 based on an established range spread.

23 (d) The commission and council jointly shall use
24 workforce compensation data provided by Workforce West
25 Virginia and other compensation data as is readily available
26 from national recognized sources, including compensation
27 data of CUPA-HR, to establish the appropriate external market
28 conditions of classified positions. The commission and

29 council, in consultation with the Compensation Planning and
30 Review Committee, may take any combination of the
31 following actions:

32 (1) Adjust the number of pay grades and the point values
33 necessary to validate the result of the classification system
34 and the job worth hierarchy with the market;

35 (2) Adjust the midpoint differentials between pay grades
36 better to reflect market conditions; or

37 (3) Adjust the range spread for any pay grade.

38 (e) The commission and council jointly may perform an
39 annual review of market salary data to determine how
40 salaries have changed in the external market. Based on data
41 collected, the commission and council jointly, in
42 consultation with the Compensation Planning and Review
43 Committee, shall adjust the classified salary schedule if
44 changes are supported by the data.

45 (f) Annually, the commission and council may approve
46 a minimum salary amount that sets forth a compensation
47 level for each pay grade below which no organization
48 employee may be paid, subject to available funds.

49 (1) The minimum salary amount for each pay grade on
50 the classified salary schedule is determined by applying a
51 percentage determined after analysis of the market and
52 existing compensation levels to the annual market salary
53 data. The commission and council may take into
54 consideration other factors they consider appropriate.

55 (2) The salary of an employee working fewer than
56 thirty-seven and one-half hours per week shall be prorated.

57 (g) The organization rule promulgated pursuant to
58 subsection (c), section seven of this article may provide for
59 differential pay for certain employees who work different
60 shifts, weekends or holidays.

§18B-9A-7. Classification and compensation rules required.

1 (a) Notwithstanding any provision of law or rule to the
2 contrary, the commission and council jointly shall design,
3 develop, implement and administer the classified personnel
4 system of classification and compensation pursuant to this
5 article and articles seven, eight and nine of this chapter.

6 (b) *System rule.* —

7 The commission and council shall propose a joint rule
8 or rules for legislative approval in accordance with article
9 three-a, chapter twenty-nine-a of this code to implement the
10 provisions of this article and articles seven, eight and nine
11 of this chapter. The rule shall establish a classified
12 employee classification and compensation system that
13 incorporates best human resources practices.

14 (1) *Organization accountability.* —

15 The commission and council shall propose a joint
16 system rule that provides a procedure for correcting
17 deficiencies identified in the human resources reviews
18 conducted pursuant to section nine, article seven of this
19 chapter. The procedure shall include, but is not limited to,
20 the following components:

21 (A) Specifying a reasonable time for organizations to
22 correct deficiencies uncovered by a review;

23 (B) Applying sanctions when major deficiencies are not
24 corrected within the allotted time:

25 (i) For purposes of this subsection, a major deficiency
26 means an organization has failed to comply with applicable
27 personnel rules of the commission and council.

28 (ii) When a major deficiency is identified, the
29 commission or council, as appropriate, shall notify the
30 governing board of the institution in writing, giving

31 particulars of the deficiency and outlining steps the
32 governing board is required to take to correct the deficiency.

33 (iii) The governing board shall correct the major
34 deficiency within four months or longer provided the length
35 of time is agreed upon by the governing board and the
36 commission or council as applicable, and shall notify the
37 commission or council, as appropriate, when the deficiency
38 has been corrected.

39 (iv) If the governing boards fail to correct the major
40 deficiency or fail to notify the commission or council, as
41 appropriate, that the deficiency has been corrected within
42 the agreed upon period, the commission or council may
43 apply sanctions.

44 Sanctions may include, but are not limited to,
45 prohibiting compensation increases for key administrators
46 who have authority over the areas of major deficiency until
47 the identified deficiencies are corrected.

48 (2) *Classified employee classification and compensation.*
49 — The classified employee classification and compensation
50 system rule shall establish a classification and compensation
51 system to accomplish the following objectives:

52 (A) Allowing for performance and other objective,
53 measurable factors such as technical expertise, education,
54 years of experience in higher education and experience
55 above position requirements to be considered in
56 compensation decisions;

57 (B) Achieving and maintaining appropriate levels of
58 employee dispersion through a pay range;

59 (C) The rule shall provide that the salary of a current
60 employee may not be reduced by a job reclassification, a
61 modification of the market salary schedule or other
62 conditions that the commission and the council consider
63 appropriate and reasonable;

64 (D) Establishing a job worth hierarchy and identifying
65 the factors to be used to classify jobs and their relative
66 values and determining the number of points that are
67 necessary to assign a job to a particular pay grade;

68 (E) Establishing an objective standard to be used in
69 determining when a job description or a position description
70 is up-to-date;

71 (F) Providing a procedure whereby a classified employee
72 or a supervisor who believes that changes in the job duties and
73 responsibilities of the employee justify a position review may
74 request that a review be done at any time;

75 (G) Specifying that the acceptable period that may
76 elapse between the time when an employee files a formal
77 request for a position review and the time when the review
78 is completed may not exceed forty-five days. An
79 organization that fails to complete a review within the
80 specified time shall provide the employee back pay from the
81 date the request for review was received if the review, when
82 completed, produces a reclassification of the position into a
83 job in a higher pay grade;

84 (H) Providing a procedure by which employees may file
85 appeals of job classification decisions for review by the Job
86 Classification Committee prior to filing a formal grievance.
87 The committee shall render a decision within sixty days of
88 the date the appeal is filed with the commission or the
89 council;

90 (I) Providing for recommendations from the
91 Compensation Planning and Review Committee and the Job
92 Classification Committee to be considered by the
93 commission and the council and to be included in the
94 legislative reporting process pursuant to section eight,
95 article seven of this chapter; and

96 (J) Establishing and maintaining the job classification
97 committee mandated in section four of this article.

98 (3) *Performance evaluations.* — The system rule shall
99 provide for developing and implementing a consistent,
100 objective performance evaluation model and shall mandate
101 that training in conducting performance evaluations be
102 provided for all organization personnel who hold
103 supervisory positions.

104 (c) *Organization rules.* —

105 (1) Each organization shall promulgate and adopt a rule
106 or rules in accordance with the provisions of section six,
107 article one of this chapter to implement requirements
108 contained in the classification and compensation system
109 rule or rules of the commission and council. The
110 commission and council shall provide a model personnel
111 rule for the organizations under their jurisdiction and shall
112 provide technical assistance in rulemaking as requested.

113 (2) The initial organization rule shall be adopted not
114 later than six months following the date on which the
115 commission and council receive approval to implement the
116 emergency rule promulgated pursuant to this section.
117 Additionally, each organization shall amend its rule to
118 comply with mandated changes not later than six months
119 after the effective date of any change in statute or rules,
120 unless a different compliance date is specified within the
121 statute or rule containing the requirements or mandate.

122 (3) An organization may not adopt a rule under this
123 section until it has consulted with the appropriate employee
124 class affected by the rule's provisions.

125 (4) If an organization fails to adopt a rule or rules as
126 mandated by this subsection, the commission and council
127 may prohibit it from exercising any flexibility or
128 implementing any discretionary provision relating to human
129 resources contained in statute or in a commission or council
130 rule until the organization's rule requirements have been met.

131 (5) Additional flexibility or areas of operational
132 discretion identified in the system rule or rules may be

133 exercised only by an organization which meets the
134 following requirements:

135 (A) Receives certification from the commission or
136 council, as appropriate, that the organization has achieved
137 full funding of the temporary salary schedule or is making
138 appropriate progress toward achieving full funding pursuant
139 to section three, article nine of this chapter;

140 (B) Promulgates a comprehensive classification and
141 compensation rule as required by this section;

142 (C) Receives approval for the classification and
143 compensation rule from the appropriate chancellor in
144 accordance with this section; and

145 (D) Adopts the rule by vote of the organization's
146 governing board.

ARTICLE 9B. ORGANIZATION PERSONNEL RULES.

§18B-9B-1. Flexibility to adopt personnel rules; emergency rule authorized.

1 (a) West Virginia University; Marshall University;
2 West Virginia School of Osteopathic Medicine; or any other
3 organization that provides notice to the commission or
4 council, as appropriate; may, after consultation with staff
5 council of the applicable organization, file a rule or rules to
6 implement articles seven and eight of this chapter, and upon
7 the adoption any rules promulgated by the commission or
8 council under articles seven and eight of this chapter are
9 inapplicable to the organization.

10 (b) West Virginia University; Marshall University;
11 West Virginia School of Osteopathic Medicine; or any other
12 organization that provides notice to the commission or
13 council, as appropriate, may establish a classification and
14 compensation rule, after consultation with and providing 30
15 days written notice to the staff council of the applicable
16 organization, that incorporates best human resources
17 practices and addresses the areas of organization

18 accountability, employee classification and compensation,
19 performance evaluation, reductions in force, and
20 development of organization policies, and upon the
21 adoption the provisions of article nine-a of this chapter and
22 any rule promulgated by the commission or the council
23 thereto, is inapplicable to the extent it conflicts with the rule
24 promulgated by the organization: *Provided*, That any rule
25 adopted by an organization shall use the definitions of
26 classified and nonclassified employees established in
27 section two of article nine-a of this chapter.

28 (c) Any rule adopted by an organization pursuant to
29 subsection (b) of this section shall address the following:

30 (1) *Employee classification and compensation.* — The
31 rule proposed pursuant to this policy shall establish a
32 classification and compensation system to accomplish the
33 following objectives, including best practices consistent
34 with those objectives:

35 (A) Providing opportunities for employee advancement
36 based on performance and other objective, measurable
37 factors including education, years of experience, technical
38 expertise, and experience above position requirements;

39 (B) Identifying the factors to be used to classify jobs and
40 their relative values or comparable best practice and
41 determining the requirements that are necessary to assign a
42 job to a particular salary level; and

43 (C) Establishing an objective standard to be used in
44 determining when a job description or a position description
45 is up-to-date.

46 (2) *Performance evaluations.* — The rule shall provide
47 for developing and implementing a consistent, objective
48 performance evaluation model and shall mandate that
49 training in conducting performance evaluations be provided
50 for all organization personnel who hold supervisory
51 positions.

52 (3) Management shall meet at least quarterly with
53 representatives of staff council to discuss the
54 implementation and effectiveness of any rule adopted by an
55 organization pursuant to articles seven, eight, nine-a and
56 nine-b of this chapter and may make recommendations to
57 the president or board of Governors of an organization to
58 address any concerns or issues identified by staff council;

59 (4) The rule may provide for differential pay for certain
60 employees who work different shifts, weekends or holidays
61 and for differential treatment for employees; and

62 (5) The rule shall provide for an external review of
63 human resource practices at the organization at least once
64 every five years, relating to compliance with the applicable
65 provisions of article seven, eight, nine-a and nine-b of this
66 chapter, including provisions that the staff council have an
67 opportunity to speak with the external Auditors before the
68 start of the audit and after its completion.



CHAPTER 124

**(H. B. 2706 - By Delegates Espinosa, Statler, Upson,
Dean, Rohrbach, Wilson, Rowan, Harshbarger, R.
Romine, Higginbotham and Kelly)**

[Passed April 4, 2017; in effect ninety days from passage.]
[Approved by the Governor on April 11, 2017.]

AN ACT to amend and reenact §18B-17-2 and §18B-17-3 of the Code of West Virginia, 1931, as amended, all relating to authorizing legislative rules regarding higher education; authorizing legislative rules for the Higher Education Policy Commission regarding the West Virginia Higher Education Grant Program, Providing Real Opportunities for Maximizing

In-state Student Excellence (PROMISE), Research Trust Fund Program, and Annual Reauthorization of Degree-Granting Institutions; and authorizing legislative rules for the Council for Community and Technical College Education regarding the Annual Reauthorization of Degree-Granting Institutions, and Business, Occupational and Trade Schools.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 17. LEGISLATIVE RULES.

§18B-17-2. Authorizing rules of Higher Education Policy Commission.

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

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

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

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

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

21 (f) The legislative rule filed in the State Register on
22 January 4, 2008, relating to the Higher Education Policy
23 Commission (Providing Real Opportunities for Maximizing
24 In-state Student Excellence - PROMISE) is authorized.

25 (g) The legislative rule filed in the State Register on
26 August 25, 2008, relating to the Higher Education Policy
27 Commission (Research Trust Program) is authorized.

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

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

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

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

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

48 (l) The legislative rule filed in the State Register on May
49 20, 2009, relating to the Higher Education Policy
50 Commission (Energy and Water Savings Revolving Loan
51 Fund Program) is authorized.

52 (m) The legislative rule filed in the State Register on
53 January 27, 2010, relating to the Higher Education Policy

54 Commission (Providing Real Opportunities for Maximizing
55 In-state Student Excellence - PROMISE) is authorized.

56 (n) The legislative rule filed in the State Register on
57 December 8, 2010, relating to the Higher Education Policy
58 Commission (Authorization of Degree Granting Institutions)
59 is authorized.

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

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

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

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

74 (r) The legislative rule filed in the State Register on March
75 20, 2013, relating to the Higher Education Policy Commission
76 (Human Resources Administration) is authorized.

77 (s) The legislative rule filed in the State Register on
78 January 24, 2014, relating to the Higher Education Policy
79 Commission (Capital Project Management) is authorized.

80 (t) The legislative rule filed in the State Register on
81 April 4, 2014, relating to the Higher Education Policy
82 Commission (Underwood-Smith Teacher Scholarship
83 Program) is authorized.

84 (u) The legislative rule filed in the State Register on
85 August 4, 2014, relating to the Higher Education Policy
86 Commission (Nursing Scholarship Program) is authorized.

87 (v) The legislative rule filed in the State Register on
88 October 28, 2015, relating to the Higher Education Policy
89 Commission (Underwood-Smith Teacher Scholarship
90 Program) is authorized.

91 (w) The legislative rule filed in the State Register on
92 October 28, 2015, relating to the Higher Education Policy
93 Commission (Nursing Scholarship Program) is authorized.

94 (x) The legislative rule filed in the State Register on
95 December 20, 2016, relating to the Higher Education Policy
96 Commission (West Virginia Higher Education Grant
97 Program) is authorized.

98 (y) The legislative rule filed in the State Register on
99 December 20, 2016, relating to the Higher Education Policy
100 Commission (Providing Real Opportunities for Maximizing
101 In-state Student Excellence - PROMISE) is authorized.

102 (z) The legislative rule filed in the State Register on
103 December 20, 2016, relating to the Higher Education Policy
104 Commission (Research Trust Fund Program) is authorized.

105 (aa) The legislative rule filed in the State Register on
106 December 20, 2016, relating to the Higher Education Policy
107 Commission (Annual Reauthorization of Degree-Granting
108 Institutions) is authorized.

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

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

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

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

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

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

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

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

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

33 (i) The legislative rule filed in the State Register on
34 October 26, 2011, relating to the West Virginia Council for
35 Community and Technical College Education (Tuition and
36 Fees) is authorized.

37 (j) The legislative rule filed in the State Register on
38 October 17, 2012, relating to the West Virginia Council for
39 Community and Technical College Education (Authorization
40 of Degree Granting Institutions) is authorized.

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

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

49 (m) The legislative rule filed in the State Register on
50 August 21, 2012, relating to the West Virginia Council for
51 Community and Technical College Education (West
52 Virginia EDGE Program) is authorized.

53 (n) The legislative rule filed in the State Register on
54 January 28, 2014, relating to the West Virginia Council for
55 Community and Technical College Education (Capital
56 Project Management) is authorized.

57 (o) The legislative rule filed in the State Register on January
58 18, 2017, relating to the West Virginia Council for Community
59 and Technical College Education (Annual Reauthorization of
60 Degree-Granting Institutions) is authorized.

61 (p) The legislative rule filed in the State Register on
62 January 18, 2017, relating to the West Virginia Council for
63 Community and Technical College Education (Business,
64 Occupational and Trade Schools) is authorized.

●

CHAPTER 125

(S. B. 198 - By Senators Takubo, Plymale and Jeffries)

[Passed April 4, 2017; in effect ninety days from passage.]

[Approved by the Governor on April 18, 2017.]

AN ACT to amend and reenact §18C-3-3 of the Code of West Virginia, 1931, as amended, relating to expansion of the Health Sciences Service Program to allow for persons who practice emergency medicine in underserved areas of the state.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. HEALTH PROFESSIONALS STUDENT LOAN PROGRAMS.

§18C-3-3. Health Sciences Service Program; establishment; administration; eligibility.

1 (a) *Legislative findings.* — The Legislature finds that
2 there is a critical need for additional practicing health care
3 professionals in West Virginia. Therefore, there is created a
4 Health Sciences Service Program to be administered by the
5 Vice Chancellor for Health Sciences. The purpose of this
6 program is to provide an incentive for health professional
7 students to complete their training and provide primary care
8 and emergency medical care in underserved areas of West
9 Virginia.

10 (b) *Special account.* — There is continued a special
11 revolving fund account under the Higher Education Policy

12 Commission in the State Treasury formerly known as the
13 Health Sciences Scholarship Fund and hereafter designated
14 the Health Sciences Service Program Fund. The fund shall
15 be used to accomplish the purposes of this section. The fund
16 consists of any of the following:

17 (1) All unexpended health sciences scholarship funds on
18 deposit in the State Treasury on the effective date of this
19 section;

20 (2) Appropriations as may be provided by the
21 Legislature;

22 (3) Repayments, including interest as set by the Vice
23 Chancellor for Health Sciences, collected from program
24 award recipients who fail to practice or teach in West
25 Virginia under the terms of an award agreement or the
26 health sciences scholarship program previously established
27 by this section; and

28 (4) Amounts that may become available from other
29 sources.

30 Balances remaining in the fund at the end of the fiscal
31 year do not expire or revert to the general revenue. All costs
32 associated with the administration of this section shall be
33 paid from the Health Sciences Service Program Fund under
34 the direction of the Vice Chancellor for Health Sciences.

35 (c) *Eligibility requirements.* — Award preference is
36 given to West Virginia residents. An individual is eligible
37 for consideration for a Health Sciences Service Program
38 award if the individual:

39 (1) Either:

40 (A) Is a fourth-year medical student at the Marshall
41 University School of Medicine, West Virginia School of
42 Osteopathic Medicine or West Virginia University School
43 of Medicine who has been accepted in a primary care or

44 emergency medicine internship/residency program in West
45 Virginia; or

46 (B) Is enrolled in an approved education program at a
47 West Virginia institution leading to a degree or certification
48 in the field of nurse practitioner, nurse educator, nurse
49 midwife, physician assistant, dentist, pharmacist, physical
50 therapist, doctoral clinical psychologist, licensed
51 independent clinical social worker or other disciplines
52 identified as shortage fields by the Vice Chancellor for
53 Health Sciences; and

54 (2) Signs an agreement to practice for at least two years
55 in an underserved area of West Virginia or, if pursuing a
56 Master's Degree in nursing, signs an agreement to teach at
57 least two years for a school of nursing located in West
58 Virginia, as may be determined by the Vice Chancellor for
59 Health Sciences, after receiving the master's degree.

60 (d) *Program awards.* — Program awards shall be in an
61 amount set by the Higher Education Policy Commission of
62 at least \$20,000 for medical and dental students and at least
63 \$10,000 for all others and may be awarded by the Vice
64 Chancellor for Health Sciences, with the advice of an
65 advisory panel, from the pool of all applicants with a
66 commitment to practice in an underserved area of West
67 Virginia. This section does not grant or guarantee any
68 applicant any right to a program award.

69 (e) *Repayment provisions.* — A program award
70 recipient who fails to practice in an underserved area of
71 West Virginia within six months of the completion of his or
72 her training, or who fails to complete his or her training or
73 required teaching, is in breach of contract and is liable for
74 repayment of the program award and any accrued interest.
75 The granting or renewal of a license to practice in West
76 Virginia or to reciprocal licensure in another state based
77 upon licensure in West Virginia is contingent upon
78 beginning payment and continuing payment until complete
79 repayment of the award and any accrued interest. A license,

80 renewal or reciprocity may not be granted to any person
81 whose repayment is in arrears. The appropriate regulatory
82 board shall inform all other states where a recipient has
83 reciprocated based upon West Virginia licensure of any
84 refusal to renew licensure in West Virginia as a result of
85 failure to repay the award. This provision shall be explained
86 in bold type in the award contract. Repayment terms, not
87 inconsistent with this section, shall be established by the
88 Vice Chancellor for Health Sciences pursuant to the rule
89 required by this section.

90 (f) *Rule.* — The Higher Education Policy Commission
91 shall promulgate a rule pursuant to article three-a, chapter
92 twenty-nine-a of this code to implement and administer this
93 section.

94 (g) *Definitions.* — As used in this section:

95 (1) “Training” means:

96 (A) The entire degree program or certification program for
97 nurse midwives, nurse practitioners, nurse educators,
98 physician assistants, dentists, pharmacists, physical therapists,
99 doctoral clinical psychologists, licensed independent clinical
100 social workers and other disciplines identified as shortage
101 fields by the Vice Chancellor for Health Sciences; or

102 (B) Completion of a degree program and an approved
103 residency/internship program for students pursuing a degree in
104 medicine or osteopathy, or as otherwise may be designated for
105 such students in the rule required by this section.

106 (2) “Underserved area” means any primary care health
107 professional shortage area located in the state as determined
108 by the Bureau for Public Health or any additional health
109 professional shortage area, including an emergency
110 medicine professional determined by the Vice Chancellor
111 for Health Sciences.

●

CHAPTER 126

**(Com. Sub. for S. B. 634 - By Senators Plymale,
Stollings, Sypolt, Takubo, Prezioso, Beach, Clements
and Maroney)**

[Passed April 3, 2017; in effect ninety days from passage.]
[Approved by the Governor on April 11, 2017.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §9-2-9a, relating to exempting certain contracts between the Department of Health and Human Resources and West Virginia University, Marshall University or West Virginia School of Osteopathic Medicine from state purchasing requirements.

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 §9-2-9a, to read as follows:

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

**§9-2-9a. Agreements between the Secretary and three higher
education institutions.**

1 Any contract, agreement or memorandum of
2 understanding between the secretary and West Virginia
3 University, West Virginia School of Osteopathic Medicine
4 or Marshall University for services is exempt from the
5 provisions of article three, chapter five-a of this code:
6 *Provided*, That any contract entered into under the
7 provisions of subsection five, section six of this article, for
8 the provision of Medicaid services by a risk-bearing entity,

9 is not exempt from the provisions of article three, chapter
10 five-a of this code.

CHAPTER 127

**(Com. Sub. for H. B. 2519 - By Delegates Ellington,
Summers, Rohrbach, Cooper, Hollen, Sobonya, Dean,
Rowan and Longstreth)**

[Passed April 4, 2017; in effect ninety days from passage.]
[Approved by the Governor on April 11, 2017.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §9-5-25, relating to requiring Secretary of the Department of Health and Human Resources contact surrounding states to establish a Medicaid compact; required reporting; and setting forth purpose of the compact.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, be amended by adding thereto a new section, designated §9-5-25, to read as follows:

ARTICLE 5. MISCELLANEOUS PROVISIONS.

§9-5-25. Medicaid program compact.

1 (a) The Secretary of the Department of Health and
2 Human Resources shall contact West Virginia's
3 surrounding states to discuss the creation of a compact. This
4 compact would enable each states' health care providers to
5 be eligible to be paid for services provided to the other
6 states' Medicaid participants.

7 (b) The Secretary shall provide a report on the creation of
8 a Medicaid compact to the Legislative Oversight Commission

9 on Health and Human Resources Accountability before
10 October 31, 2017.

CHAPTER 128

**(Com. Sub. for H. B. 2739 - By Delegates Summers,
Ellington, Howell, Statler and Frich)**

[Passed April 8, 2017; in effect ninety days from passage.]
[Approved by the Governor on April 26, 2017.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §9-5-26, relating to supplemental Medicaid reimbursements for ground emergency medical transportation services providers.

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 §9-5-26, to read as follows:

ARTICLE 5. MISCELLANEOUS PROVISIONS.

§9-5-26. Supplemental Medicaid reimbursement.

1 (a) A ground emergency medical transportation services
2 provider, owned or operated by the state or a city, a county,
3 or city and county, that provides services to Medicaid
4 beneficiaries is eligible for supplemental reimbursement.

5 (b) An eligible provider's supplemental reimbursement
6 shall be calculated and paid as follows:

7 (1) The supplemental reimbursement to an eligible
8 provider shall be equal to the amount of federal financial
9 participation received as a result of the claims submitted.

10 (2) In no instance may the amount certified, when
11 combined with the amount received from all other sources
12 of reimbursement from the Medicaid program, exceed one
13 hundred percent of actual costs, as determined pursuant to
14 the Medicaid State Plan, for ground emergency medical
15 transportation services.

16 (3) The supplemental Medicaid reimbursement shall be
17 distributed exclusively to eligible providers under a
18 payment methodology based on ground emergency medical
19 transportation services provided to Medicaid beneficiaries
20 by eligible providers on a per-transport basis or other
21 federally permissible basis. The Department of Health and
22 Human Resources shall obtain approval from the Centers
23 for Medicare and Medicaid Services for the payment
24 methodology to be used, and may not make any payment
25 pursuant to this section prior to obtaining that approval.

26 (c) No funds may be expended from the state fund,
27 general revenue for any supplemental reimbursement paid
28 under this section.

29 (d) The nonfederal share of the supplemental
30 reimbursement submitted to the federal Centers for
31 Medicare and Medicaid Services for purposes of claiming
32 federal financial participation may be paid only with funds
33 from the governmental entities.

34 (e) Participation in the program by an eligible provider
35 described in this section is voluntary.

36 (f) If an applicable governmental entity elects to seek
37 supplemental reimbursement pursuant to this section on
38 behalf of an eligible provider, the governmental entity shall:

39 (1) Certify, in conformity with the requirements of
40 Section 433.51 of Title 42 of the Code of Federal
41 Regulations, that the claimed expenditures for the ground
42 emergency medical transportation services are eligible for
43 federal financial participation;

44 (2) Provide evidence supporting the certification as
45 specified by the Department of Health and Human
46 Resources;

47 (3) Submit data as specified by the Department of
48 Health and Human Resources to determine the appropriate
49 amounts to claim as expenditures qualifying for federal
50 financial participation; and

51 (4) Keep, maintain, and have readily retrievable, any
52 records specified by the Department of Health and Human
53 Resources to fully disclose reimbursement amounts to
54 which the eligible provider is entitled, and any other records
55 required by the federal Centers for Medicare and Medicaid
56 Services.

57 (g) (1) The Department of Health and Human Resources
58 shall promptly seek any necessary federal approvals for the
59 implementation of this section. The Department of Health
60 and Human Resources may limit the program to those costs
61 that are allowable expenditures under Title XIX of the
62 federal Social Security Act (42 U.S.C. 1396 *et seq.*). If
63 federal approval is not obtained for implementation of this
64 section, this section may not be implemented.

65 (2) The department shall submit claims for federal
66 financial participation for the expenditures for the services
67 that are allowable expenditures under federal law.

68 (3) The Department of Health and Human Resources
69 shall, on an annual basis, submit any necessary materials to
70 the federal government to provide assurances that claims for
71 federal financial participation will include only those
72 expenditures that are allowable under federal law.

73 (4) Notwithstanding the provisions of subdivision (1) of
74 this subsection, the Department of Health and Human
75 Resources shall, prior to seeking federal approval of any
76 supplemental reimbursement pursuant to this section, attempt
77 to maximize the number of qualified group emergency

78 medical transportation service providers eligible to receive
79 the supplemental reimbursement. These emergency medical
80 transportation service providers would include:

81 (A) Any not-for-profit emergency medical transport
82 providers not owned by the state or a city, a county, or a city
83 and county;

84 (B) Any voluntary emergency transportation service
85 providers not owned by the state or a city, a county, or a city
86 and county; and

87 (C) All other emergency medical transportation service
88 providers licensed pursuant to the provisions of article four-
89 c, chapter sixteen of this code.

CHAPTER 129

**(Com. Sub. for H. B. 2318 - By Delegates Shott,
Fleischauer, Hanshaw, Summers, Sobonya, C. Miller,
Kessinger, Canestraro, Longstreth, Pushkin and
Storch)**

[Passed March 17, 2017; in effect ninety days from passage.]
[Approved by the Governor on March 31, 2017.]

AN ACT to repeal §61-2-17 of the Code of West Virginia, 1931, as amended; to amend and reenact §15-9A-2 of said code; to amend and reenact §15-12-2 of said code; to amend and reenact §49-1-201 of said code; to amend said code by adding thereto a new article, designated §61-14-1, §61-14-2, §61-14-3, §61-14-4, §61-14-5, §61-14-6, §61-14-7, §61-14-8 and §61-14-9; and to amend and reenact §62-1D-8 of said code, all relating generally to human trafficking; designating the Division of Justice and Community Services to be the state administrative agency responsible for criminal justice and

juvenile justice systems for the planning and development of state programs and grants relating to human trafficking; adding offenses that require registration under the Sex Offender Registration Act; adding human trafficking within the definition of an abused child; adding under the definition of sexual exploitation an act where a parent, guardian, or custodian knowingly maintains or makes available a child for the purpose of engaging the child in commercial sexual activity; defining terms; creating criminal felony offenses and penalties for human trafficking of an individual; creating criminal felony offenses and penalties for using victim of human trafficking in forced labor; creating criminal felony offenses and penalties for using victim of human trafficking in debt bondage; creating criminal felony offenses and penalties for compelling a victim of human trafficking through coercion to engage in commercial sexual activity; creating a criminal felony offense and penalty for maintaining or making available a minor victim of human trafficking for the purpose of engaging in commercial sexual activity; clarifying that consent of minor and misbelief as to age are not defenses to prosecution for sexual servitude offenses; creating a criminal felony offense and penalty for knowingly patronizing an individual to engage in commercial sexual activity with knowledge that the individual is a victim of sexual servitude; creating a criminal felony offense and penalty for knowingly patronizing a minor to engage in commercial sexual activity with knowledge or having reason to know that the minor is a victim of sexual servitude; clarifying that each victim constitutes a separate offense; limiting ability for parole in circumstances where the court makes a finding of aggravated circumstances; defining aggravated circumstances; providing for restitution to victims and the enforcement of a judgment order for restitution; directing unclaimed restitution to be paid to the Crime Victims Compensation Fund; making victims of certain offenses eligible for compensation under the Crime Victims Compensation Fund; specifying the notification procedure to be followed by a law-enforcement officer upon encountering a child who appears to be a victim; providing for forfeiture of

certain property; providing for debarment from state and local government contracts for persons or entities convicted of certain offenses; providing for immunity for offense of prostitution for minors; defining a minor victim of sex trafficking as an abused child and establishing a child's eligibility for services therefor; providing for expungement of prostitution conviction for victims of trafficking; and authorizing the use of wiretaps to conduct investigations.

Be it enacted by the Legislature of West Virginia:

That §61-2-17 of the Code of West Virginia, 1931, as amended, be repealed; that §15-9A-2 of said code be amended and reenacted; that §15-12-2 of said code be amended and reenacted; that §49-1-201 of said code be amended and reenacted; that said code be amended by adding thereto a new article, designated §61-14-1, §61-14-2, §61-14-3, §61-14-4, §61-14-5, §61-14-6, §61-14-7, §61-14-8 and §61-14-9; and that §62-1D-8 of said code be amended and reenacted, all to read as follows:

CHAPTER 15. PUBLIC SAFETY.

ARTICLE 9A. DIVISION OF JUSTICE AND COMMUNITY SERVICES.

§15-9A-2. Division established; appointment of director.

1 (a) The Division of Justice and Community Services is
2 created. The purpose of the division is to provide executive
3 and administrative support to the Governor's Committee on
4 Crime Delinquency and Correction in the coordination of
5 planning for the criminal justice system, to administer
6 federal and state grant programs assigned to it by the actions
7 of the Governor or Legislature and to perform such other
8 duties as the Legislature may from time to time assign to the
9 division. The division is the designated staffing agency for
10 the Governor's Committee on Crime, Delinquency and
11 Correction, and all of its subcommittees. The division may
12 apply for grants and other funding from federal or state
13 programs, foundations, corporations and organizations
14 which funding is consistent with its responsibilities and the

15 purposes assigned to it or the subcommittees it staffs. The
16 Division of Justice and Community Services is hereby
17 designated as the state administrative agency responsible for
18 criminal justice and juvenile justice systems, and various
19 component agencies of state and local government, for the
20 planning and development of state programs and grants
21 which may be funded by federal, state or other allocations
22 in the areas of community corrections, law-enforcement
23 training and compliance, sexual assault forensic
24 examinations, victim services, human trafficking and
25 juvenile justice.

26 (b) The director of the division shall be named by the
27 Governor to serve at his will and pleasure.

28 (c) The director of the division shall take and subscribe
29 to an oath of office in conformity with article IV, section
30 five of the Constitution of the State of West Virginia.

ARTICLE 12. SEX OFFENDER REGISTRATION ACT.

§15-12-2. Registration.

1 (a) The provisions of this article apply both retroactively
2 and prospectively.

3 (b) Any person who has been convicted of an offense or
4 an attempted offense or has been found not guilty by reason
5 of mental illness, mental retardation or addiction of an
6 offense under any of the following provisions of chapter
7 sixty-one of this code or under a statutory provision of
8 another state, the United States Code or the Uniform Code
9 of Military Justice which requires proof of the same
10 essential elements shall register as set forth in subsection (d)
11 of this section and according to the internal management
12 rules promulgated by the superintendent under authority of
13 section twenty-five, article two of this chapter:

14 (1) Article eight-a;

15 (2) Article eight-b, including the provisions of former
16 section six of said article, relating to the offense of sexual
17 assault of a spouse, which was repealed by an Act of the
18 Legislature during the year 2000 legislative session;

19 (3) Article eight-c;

20 (4) Sections five and six, article eight-d;

21 (5) Section fourteen, article two;

22 (6) Sections six, seven, twelve and thirteen, article eight;

23 (7) Section fourteen-b, article three-c, as it relates to
24 violations of those provisions of chapter sixty-one listed in
25 this subsection; or

26 (8) Sections two, five and six, article fourteen: *Provided*,
27 That as to section two of said article only those violations
28 involving human trafficking for purposes of sexual servitude
29 require registration pursuant to this subdivision.

30 (c) Any person who has been convicted of a criminal
31 offense and the sentencing judge made a written finding that
32 the offense was sexually motivated shall also register as set
33 forth in this article.

34 (d) Persons required to register under the provisions of
35 this article shall register in person at the West Virginia State
36 Police detachment responsible for covering the county of
37 his or her residence, and in doing so, provide or cooperate
38 in providing, at a minimum, the following when registering:

39 (1) The full name of the registrant, including any aliases,
40 nicknames or other names used by the registrant;

41 (2) The address where the registrant intends to reside or
42 resides at the time of registration, the address of any
43 habitable real property owned or leased by the registrant that
44 he or she regularly visits: *Provided*, That a post office box
45 may not be provided in lieu of a physical residential address,

46 the name and address of the registrant's employer or place
47 of occupation at the time of registration, the names and
48 addresses of any anticipated future employers or places of
49 occupation, the name and address of any school or training
50 facility the registrant is attending at the time of registration
51 and the names and addresses of any schools or training
52 facilities the registrant expects to attend;

53 (3) The registrant's Social Security number;

54 (4) A full-face photograph of the registrant at the time
55 of registration;

56 (5) A brief description of the crime or crimes for which
57 the registrant was convicted;

58 (6) Fingerprints and palm prints;

59 (7) Information related to any motor vehicle, trailer or
60 motor home owned or regularly operated by a registrant,
61 including vehicle make, model, color and license plate
62 number: *Provided*, That for the purposes of this article, the
63 term "trailer" shall mean travel trailer, fold-down camping
64 trailer and house trailer as those terms are defined in section
65 one, article one, chapter seventeen-a of this code;

66 (8) Information relating to any Internet accounts the
67 registrant has and the screen names, user names or aliases
68 the registrant uses on the Internet; and

69 (9) Information related to any telephone or electronic
70 paging device numbers that the registrant has or uses,
71 including, but not limited to, residential, work and mobile
72 telephone numbers.

73 (e) (1) On the date that any person convicted or found
74 not guilty by reason of mental illness, mental retardation or
75 addiction of any of the crimes listed in subsection (b) of this
76 section, hereinafter referred to as a "qualifying offense",
77 including those persons who are continuing under some
78 post-conviction supervisory status, are released, granted

79 probation or a suspended sentence, released on parole,
80 probation, home detention, work release, conditional release
81 or any other release from confinement, the Commissioner
82 of Corrections, regional jail administrator, city official or
83 sheriff operating a jail or Secretary of the Department of
84 Health and Human Resources who releases the person and
85 any parole or probation officer who releases the person or
86 supervises the person following the release, shall obtain all
87 information required by subsection (d) of this section prior
88 to the release of the person, inform the person of his or her
89 duty to register and send written notice of the release of the
90 person to the State Police within three business days of
91 receiving the information. The notice must include the
92 information required by said subsection. Any person having
93 a duty to register for a qualifying offense shall register upon
94 conviction, unless that person is confined or incarcerated, in
95 which case he or she shall register within three business
96 days of release, transfer or other change in disposition
97 status. Any person currently registered who is incarcerated
98 for any offense shall re-register within three business days
99 of his or her release.

100 (2) Notwithstanding any provision of this article to the
101 contrary, a court of this State shall, upon presiding over a
102 criminal matter resulting in conviction or a finding of not
103 guilty by reason of mental illness, mental retardation or
104 addiction of a qualifying offense, cause, within seventy-two
105 hours of entry of the commitment or sentencing order, the
106 transmittal to the sex offender registry for inclusion in the
107 registry all information required for registration by a
108 registrant as well as the following nonidentifying
109 information regarding the victim or victims:

110 (A) His or her sex;

111 (B) His or her age at the time of the offense; and

112 (C) The relationship between the victim and the
113 perpetrator.

114 The provisions of this paragraph do not relieve a person
115 required to register pursuant to this section from complying
116 with any provision of this article.

117 (f) For any person determined to be a sexually violent
118 predator, the notice required by subsection (d) of this
119 section must also include:

120 (1) Identifying factors, including physical characteristics;

121 (2) History of the offense; and

122 (3) Documentation of any treatment received for the
123 mental abnormality or personality disorder.

124 (g) At the time the person is convicted or found not
125 guilty by reason of mental illness, mental retardation or
126 addiction in a court of this state of the crimes set forth in
127 subsection (b) of this section, the person shall sign in open
128 court a statement acknowledging that he or she understands
129 the requirements imposed by this article. The court shall
130 inform the person so convicted of the requirements to
131 register imposed by this article and shall further satisfy itself
132 by interrogation of the defendant or his or her counsel that
133 the defendant has received notice of the provisions of this
134 article and that the defendant understands the provisions.
135 The statement, when signed and witnessed, constitutes
136 prima facie evidence that the person had knowledge of the
137 requirements of this article. Upon completion of the
138 statement, the court shall provide a copy to the registry.
139 Persons who have not signed a statement under the
140 provisions of this subsection and who are subject to the
141 registration requirements of this article must be informed of
142 the requirement by the State Police whenever the State
143 Police obtain information that the person is subject to
144 registration requirements.

145 (h) The State Police shall maintain a central registry of
146 all persons who register under this article and shall release
147 information only as provided in this article. The information

148 required to be made public by the State Police by
149 subdivision (2), subsection (b), section five of this article is
150 to be accessible through the Internet. No information
151 relating to telephone or electronic paging device numbers a
152 registrant has or uses may be released through the Internet.

153 (i) For the purpose of this article, “sexually violent
154 offense” means:

155 (1) Sexual assault in the first degree as set forth in
156 section three, article eight-b, chapter sixty-one of this code
157 or of a similar provision in another state, federal or military
158 jurisdiction;

159 (2) Sexual assault in the second degree as set forth in
160 section four, article eight-b, chapter sixty-one of this code
161 or of a similar provision in another state, federal or military
162 jurisdiction;

163 (3) Sexual assault of a spouse as set forth in the former
164 provisions of section six, article eight-b, chapter sixty-one
165 of this code, which was repealed by an Act of the
166 Legislature during the 2000 legislative session, or of a
167 similar provision in another state, federal or military
168 jurisdiction;

169 (4) Sexual abuse in the first degree as set forth in section
170 seven, article eight-b, chapter sixty-one of this code or of a
171 similar provision in another state, federal or military
172 jurisdiction.

173 (j) For purposes of this article, the term “sexually
174 motivated” means that one of the purposes for which a
175 person committed the crime was for any person’s sexual
176 gratification.

177 (k) For purposes of this article, the term “sexually
178 violent predator” means a person who has been convicted or
179 found not guilty by reason of mental illness, mental
180 retardation or addiction of a sexually violent offense and

181 who suffers from a mental abnormality or personality
182 disorder that makes the person likely to engage in predatory
183 sexually violent offenses.

184 (l) For purposes of this article, the term “mental
185 abnormality” means a congenital or acquired condition of a
186 person, that affects the emotional or volitional capacity of
187 the person in a manner that predisposes that person to the
188 commission of criminal sexual acts to a degree that makes
189 the person a menace to the health and safety of other
190 persons.

191 (m) For purposes of this article, the term “predatory act”
192 means an act directed at a stranger or at a person with whom
193 a relationship has been established or promoted for the
194 primary purpose of victimization.

195 (n) For the purposes of this article, the term “business
196 days” means days exclusive of Saturdays, Sundays and legal
197 holidays as defined in section one, article two, chapter two
198 of this code.

CHAPTER 49. CHILD WELFARE.

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.

PART II. DEFINITIONS.

***§49-1-201. Definitions related, but not limited, to child abuse and neglect.**

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

*NOTE: This section was also amended by S. B. 445 (Chapter 24),
which passed subsequent to this act.

7 “Abandonment” means any conduct that demonstrates
8 the settled purpose to forego the duties and parental
9 responsibilities to the child;

10 “Abused child” means a child whose health or welfare
11 is being harmed or threatened by:

12 (A) A parent, guardian or custodian who knowingly or
13 intentionally inflicts, attempts to inflict or knowingly allows
14 another person to inflict, physical injury or mental or
15 emotional injury, upon the child or another child in the
16 home. Physical injury may include an injury to the child as
17 a result of excessive corporal punishment;

18 (B) Sexual abuse or sexual exploitation;

19 (C) The sale or attempted sale of a child by a parent,
20 guardian or custodian in violation of section fourteen-h,
21 article two, chapter sixty-one of this code;

22 (D) Domestic violence as defined in section two
23 hundred two, article twenty-seven, chapter forty-eight of
24 this code; or

25 (E) Human trafficking of a child, or attempting to traffic
26 a child, in violation of section two, article fourteen, chapter
27 sixty-one of this code.

28 “Abusing parent” means a parent, guardian or other
29 custodian, regardless of his or her age, whose conduct has
30 been adjudicated by the court to constitute child abuse or
31 neglect as alleged in the petition charging child abuse or
32 neglect.

33 “Battered parent” for the purposes of part six, article
34 four of this chapter, means a respondent parent, guardian, or
35 other custodian who has been adjudicated by the court to
36 have not condoned the abuse or neglect and has not been
37 able to stop the abuse or neglect of the child or children due
38 to being the victim of domestic violence as defined by
39 section two hundred two, article twenty-seven, chapter

40 forty-eight of this code which was perpetrated by the same
41 person or persons determined to have abused or neglected
42 the child or children.

43 “Child abuse and neglect services” means social
44 services which are directed toward:

45 (A) Protecting and promoting the welfare of children
46 who are abused or neglected;

47 (B) Identifying, preventing and remedying conditions
48 which cause child abuse and neglect;

49 (C) Preventing the unnecessary removal of children
50 from their families by identifying family problems and
51 assisting families in resolving problems which could lead to
52 a removal of children and a breakup of the family;

53 (D) In cases where children have been removed from
54 their families, providing time-limited reunification services
55 to the children and the families so as to reunify those
56 children with their families or some portion thereof;

57 (E) Placing children in suitable adoptive homes when
58 reunifying the children with their families, or some portion
59 thereof, is not possible or appropriate; and

60 (F) Assuring the adequate care of children or juveniles
61 who have been placed in the custody of the department or
62 third parties.

63 “Condition requiring emergency medical treatment”
64 means a condition which, if left untreated for a period of a
65 few hours, may result in permanent physical damage; that
66 condition includes, but is not limited to, profuse or arterial
67 bleeding, dislocation or fracture, unconsciousness and
68 evidence of ingestion of significant amounts of a poisonous
69 substance.

70 “Imminent danger to the physical well-being of the
71 child” means an emergency situation in which the welfare

72 or the life of the child is threatened. These conditions may
73 include an emergency situation when there is reasonable
74 cause to believe that any child in the home is or has been
75 sexually abused or sexually exploited, or reasonable cause
76 to believe that the following conditions threaten the health,
77 life, or safety of any child in the home:

78 (A) Nonaccidental trauma inflicted by a parent,
79 guardian, custodian, sibling or a babysitter or other
80 caretaker;

81 (B) A combination of physical and other signs
82 indicating a pattern of abuse which may be medically
83 diagnosed as battered child syndrome;

84 (C) Nutritional deprivation;

85 (D) Abandonment by the parent, guardian or custodian;

86 (E) Inadequate treatment of serious illness or disease;

87 (F) Substantial emotional injury inflicted by a parent,
88 guardian or custodian;

89 (G) Sale or attempted sale of the child by the parent,
90 guardian or custodian;

91 (H) The parent, guardian or custodian's abuse of alcohol
92 or drugs or other controlled substance as defined in section
93 one hundred one, article one, chapter sixty-a of this code,
94 has impaired his or her parenting skills to a degree as to pose
95 an imminent risk to a child's health or safety; or

96 (I) Any other condition that threatens the health, life, or
97 safety of any child in the home.

98 "Neglected child" means a child:

99 (A) Whose physical or mental health is harmed or
100 threatened by a present refusal, failure or inability of the
101 child's parent, guardian or custodian to supply the child
102 with necessary food, clothing, shelter, supervision, medical

103 care or education, when that refusal, failure or inability is
104 not due primarily to a lack of financial means on the part of
105 the parent, guardian or custodian; or

106 (B) Who is presently without necessary food, clothing,
107 shelter, medical care, education or supervision because of
108 the disappearance or absence of the child's parent or
109 custodian;

110 (C) "Neglected child" does not mean a child whose
111 education is conducted within the provisions of section one,
112 article eight, chapter eighteen of this code.

113 "Petitioner or co-petitioner" means the Department or
114 any reputable person who files a child abuse or neglect
115 petition pursuant to section six hundred one, article four, of
116 this chapter.

117 "Permanency plan" means the part of the case plan
118 which is designed to achieve a permanent home for the child
119 in the least restrictive setting available.

120 "Respondent" means all parents, guardians, and
121 custodians identified in the child abuse and neglect petition
122 who are not petitioners or co-petitioners.

123 "Sexual abuse" means:

124 (A) Sexual intercourse, sexual intrusion, sexual contact,
125 or conduct proscribed by section three, article eight-c,
126 chapter sixty-one, which a parent, guardian or custodian
127 engages in, attempts to engage in, or knowingly procures
128 another person to engage in with a child notwithstanding the
129 fact that for a child who is less than sixteen years of age the
130 child may have willingly participated in that conduct or the
131 child may have suffered no apparent physical injury or
132 mental or emotional injury as a result of that conduct or, for
133 a child sixteen years of age or older the child may have
134 consented to that conduct or the child may have suffered no
135 apparent physical injury or mental or emotional injury as a
136 result of that conduct;

137 (B) Any conduct where a parent, guardian or custodian
138 displays his or her sex organs to a child, or procures another
139 person to display his or her sex organs to a child, for the
140 purpose of gratifying the sexual desire of the parent,
141 guardian or custodian, of the person making that display, or
142 of the child, or for the purpose of affronting or alarming the
143 child; or

144 (C) Any of the offenses proscribed in sections seven,
145 eight or nine of article eight-b, chapter sixty-one of this
146 code.

147 “Sexual assault” means any of the offenses proscribed
148 in sections three, four or five of article eight-b, chapter
149 sixty-one of this code.

150 “Sexual contact” means sexual contact as that term is
151 defined in section one, article eight-b, chapter sixty-one of
152 this code.

153 “Sexual exploitation” means an act where:

154 (A) A parent, custodian or guardian, whether for
155 financial gain or not, persuades, induces, entices or coerces
156 a child to engage in sexually explicit conduct as that term is
157 defined in section one, article eight-c, chapter sixty-one of
158 this code;

159 (B) A parent, guardian or custodian persuades, induces,
160 entices or coerces a child to display his or her sex organs for
161 the sexual gratification of the parent, guardian, custodian or
162 a third person, or to display his or her sex organs under
163 circumstances in which the parent, guardian or custodian
164 knows that the display is likely to be observed by others who
165 would be affronted or alarmed;

166 (C) A parent, guardian or custodian knowingly
167 maintains or makes available a child for the purpose of
168 engaging the child in commercial sexual activity in
169 violation of section five, article fourteen, chapter sixty-one
170 of this code.

171 “Sexual intercourse” means sexual intercourse as that
172 term is defined in section one, article eight-b, chapter sixty-
173 one of this code.

174 “Sexual intrusion” means sexual intrusion as that term
175 is defined in section one, article eight-b, chapter sixty-one
176 of this code.

177 “Serious physical abuse” means bodily injury which
178 creates a substantial risk of death, which causes serious or
179 prolonged disfigurement, prolonged impairment of health or
180 prolonged loss or impairment of the function of any bodily
181 organ

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 14. HUMAN TRAFFICKING.

§61-14-1. Definitions.

1 When used in this article, the following words and terms
2 shall have meaning specified unless the context clearly
3 indicates a different meaning:

4 (1) “Adult” means an individual eighteen years of age
5 or older.

6 (2) “Coercion” means:

7 (A) The use or threat of force against, abduction of,
8 serious harm to or physical restraint of an individual;

9 (B) The use of a plan, pattern or statement with intent to
10 cause an individual to believe that failure to perform an act
11 will result in the use of force against, abduction of, serious
12 harm to, physical restraint of or deportation of an individual;

13 (C) The abuse or threatened abuse of law or legal
14 process;

15 (D) The destruction or taking of, or the threatened
16 destruction or taking of, an individual's identification
17 document or other property; or

18 (E) The use of an individual's physical or mental
19 impairment when the impairment has a substantial adverse
20 effect on the individual's cognitive or volitional function.

21 As used in this article, "coercion" does not include
22 statements or actions made by a duly authorized state or
23 federal law-enforcement officer as part of a lawful law
24 enforcement investigation or undercover action.

25 (3) "Commercial sexual activity" means sexual activity
26 for which anything of value is given to, promised to or
27 received by a person.

28 (4) "Debt bondage" means inducing an individual to
29 provide:

30 (A) Commercial sexual activity in payment toward or
31 satisfaction of a real or purported debt; or

32 (B) Labor or services in payment toward or satisfaction
33 of a real or purported debt if:

34 (i) The reasonable value of the labor or services is not
35 applied toward the liquidation of the debt; or

36 (ii) The length of the labor or services is not limited, and
37 the nature of the labor or services is not defined.

38 (5) "Forced labor" means labor or services that are
39 performed or provided by another person and are obtained
40 or maintained through the following:

41 (A) Threat, either implicit or explicit, deception or
42 fraud, scheme, plan, or pattern or other action intended to
43 cause a person to believe that, if the person did not perform
44 or provide the labor or services, that person or another

45 person would suffer serious bodily harm, physical restraint
46 or deportation;

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

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

50 (D) Destroying, concealing, removing, confiscating or
51 possessing any actual or purported passport or other
52 immigration document, or any other actual or purported
53 government identification document of another person:
54 *Provided, That* “forced labor” does not mean labor or
55 services required to be performed by a person in compliance
56 with a court order or as a required condition of probation,
57 parole, or imprisonment.

58 As applied in this article, forced labor shall not include
59 labor, work or services provided by a minor to the minor’s
60 parent, legal custodian or legal guardian, so long as the legal
61 guardianship or custody of the minor was not obtained for
62 the purpose of compelling the minor to participate in
63 commercial sex acts or sexually explicit performance, or
64 perform forced labor or services; nor shall it include
65 physical restraint of a minor, or the threat of physical
66 restraint to a minor, by his or her parents, legal custodian or
67 legal guardian if conducted in an otherwise lawful manner
68 and for the purpose of discipline, supervision or teaching.

69 (6) “Human trafficking”, “trafficking”, or “traffics”
70 means knowingly recruiting, transporting, transferring,
71 harboring, receiving, providing, obtaining, isolating,
72 maintaining or enticing an individual to engage in debt
73 bondage, forced labor or sexual servitude.

74 (7) “Identification document” means a passport,
75 driver’s license, immigration document, travel document or
76 other government-issued identification document, including
77 a document issued by a foreign government.

78 (8) “Labor or services” means activity having economic
79 value.

80 (9) “Minor” means an individual less than eighteen
81 years of age.

82 (10) “Patronize” means giving, agreeing to give or
83 offering to give anything of value to another person in
84 exchange for commercial sexual activity.

85 (11) “Person” means an individual, estate, business or
86 nonprofit entity, or other legal entity. The term does not
87 include a public corporation or government or governmental
88 subdivision, agency or instrumentality.

89 (12) “Serious harm” means harm, whether physical or
90 nonphysical, including psychological, economic or
91 reputational, to an individual which would compel a
92 reasonable individual of the same background and in the
93 same circumstances to perform or continue to perform labor
94 or services or sexual activity to avoid incurring the harm.

95 (13) “Sexual activity” means sexual contact, sexual
96 intercourse or sexual intrusion, as defined in section one,
97 article eight-b of this chapter, or sexually explicit conduct,
98 as defined in section one, article eight-c of this chapter.

99 (14) “Sexual servitude” means:

100 (A) Maintaining or making available a minor for the
101 purpose of engaging the minor in commercial sexual
102 activity; or

103 (B) Using coercion to compel an adult to engage in
104 commercial sexual activity.

105 (15) “Victim” means an individual who is subjected to
106 human trafficking, regardless of whether a perpetrator is
107 prosecuted or convicted.

§61-14-2. Human trafficking of an individual; penalties.

1 (a) Any person who knowingly and willfully traffics an
2 adult is guilty of a felony and, upon conviction thereof, shall
3 be imprisoned in a state correctional facility for not less than
4 three nor more than fifteen years, fined not more than
5 \$200,000, or both imprisoned and fined.

6 (b) Any person who knowingly and willfully traffics a
7 minor is guilty of a felony and, upon conviction thereof,
8 shall be imprisoned in a state correctional facility for not
9 less than five nor more than twenty years, fined not more
10 than \$300,000, or both imprisoned and fined.

§61-14-3. Use of forced labor; penalties.

1 (a) Any person who knowingly uses an adult in forced
2 labor is guilty of a felony and, upon conviction thereof, shall
3 be imprisoned in a state correctional facility for not less than
4 one nor more than five years, fined not more than \$100,000,
5 or both imprisoned and fined.

6 (b) Any person who knowingly uses a minor in forced
7 labor is guilty of a felony and, upon conviction thereof, shall
8 be imprisoned in a state correctional facility for not less than
9 three nor more than fifteen years, fined not more than
10 \$300,000, or both imprisoned and fined.

§61-14-4. Use of persons in debt bondage; penalties.

1 (a) Any person who knowingly uses an adult in debt
2 bondage is guilty of a felony and, upon conviction thereof,
3 shall be imprisoned in a state correctional facility for not
4 less than one nor more than five years, fined not more than
5 \$100,000, or both imprisoned and fined.

6 (b) Any person who knowingly uses a minor in debt
7 bondage is guilty of a felony and, upon conviction thereof,
8 shall be imprisoned in a state correctional facility for not
9 less than three nor more than fifteen years, fined not more
10 than \$300,000, or both imprisoned and fined.

§61-14-5. Sexual servitude; penalties.

1 (a) Any person who knowingly uses coercion to compel
2 an adult to engage in commercial sexual activity is guilty of
3 a felony and, upon conviction thereof, shall be imprisoned
4 in a state correctional facility for not less than three nor
5 more than fifteen years, fined not more than \$200,000, or
6 both imprisoned and fined.

7 (b) Any person who knowingly maintains or makes
8 available a minor for the purpose of engaging the minor in
9 commercial sexual activity is guilty of a felony and, upon
10 conviction thereof, shall be imprisoned in a state
11 correctional facility for not less than ten nor more than
12 twenty years, fined not more than \$300,000, or both
13 imprisoned and fined.

14 (c) It is not a defense in a prosecution under subsection
15 (b) of this section that the minor consented to engage in
16 commercial sexual activity, or that the defendant believed
17 the minor was an adult.

§61-14-6. Patronizing a victim of sexual servitude; penalties.

1 (a) Any person who knowingly patronizes another in
2 commercial sexual activity and who knows that such person
3 patronized is a victim of sexual servitude, is guilty of a
4 felony and, upon conviction thereof, shall be imprisoned in
5 a state correctional facility for not less than one nor more
6 than five years, fined not more than \$100,000, or both
7 imprisoned and fined.

8 (b) Notwithstanding the provisions of subsection (a) of
9 this section, any person who knowingly patronizes a minor
10 to engage in commercial sexual activity and who knows or
11 has reason to know that said minor is a victim of sexual
12 servitude, is guilty of a felony and, upon conviction thereof,
13 shall be imprisoned in a state correctional facility for not
14 less than three nor more than fifteen years, fined not more
15 than \$300,000, or both imprisoned and fined.

§61-14-7. General provisions and other penalties.

1 (a) *Separate violations.* — For purposes of this article,
2 each adult or minor victim constitutes a separate offense.

3 (b) *Aggravating circumstance.* —

4 (1) Notwithstanding any provision of this code to the
5 contrary, if an individual is convicted of an offense under
6 this article and the trier of fact makes a finding that the
7 offense involved an aggravating circumstance, the
8 individual shall not be eligible for parole before serving
9 three years in a state correctional facility.

10 (2) For purposes of this subsection, “aggravating
11 circumstance” means the individual recruited, enticed or
12 obtained the victim of the offense from a shelter or facility
13 that serves runaway youths, children in foster care, the
14 homeless or victims of human trafficking, domestic
15 violence or sexual assault.

16 (c) *Restitution.* —

17 (1) The court shall order a person convicted of an
18 offense under this article to pay restitution to the victim of
19 the offense.

20 (2) A judgment order for restitution may be enforced by
21 the state or a victim named in the order to receive the
22 restitution in the same manner as a judgment in a civil action
23 in accordance with section four, article eleven-a of this
24 chapter, including filing a lien against the person, firm or
25 corporation against whom restitution is ordered.

26 (3) The court shall order restitution under subdivision
27 (1) of this subsection even if the victim is unavailable to
28 accept payment of restitution.

29 (4) If the victim does not claim restitution ordered under
30 subdivision (1) of this subsection within five years of the
31 entry of the order, the restitution shall be paid to the Crime
32 Victims Compensation Fund created under section four,
33 article two-a, chapter fourteen of this code.

34 (d) *Eligibility for Compensation Fund.* —
35 Notwithstanding the definition of victim in section three,
36 article two-a, chapter fourteen of this code, a victim of any
37 offense under this article is a victim for all purposes of
38 article two-a, chapter fourteen of this code: *Provided,* That
39 for purposes of subsection (b), section fourteen, article two-
40 a, chapter fourteen of this code, if otherwise qualified, a
41 victim of any offense under this article may not be denied
42 eligibility solely for the failure to report to law enforcement
43 within the designated time frame.

44 (e) *Law Enforcement Notification.* — Should a law-
45 enforcement officer encounter a child who reasonably
46 appears to be a victim of an offense under this article, the
47 officer shall notify the Department of Health and Human
48 Resources. If available, the Department of Health and
49 Human Resources may notify the Domestic Violence
50 Program serving the area where the child is found.

51 (f) *Forfeiture; Debarment.* —

52 (1) The following are declared to be contraband and no
53 person shall have a property interest in them:

54 (A) All property which is directly or indirectly used or
55 intended for use in any manner to facilitate a violation of
56 this article; and

57 (B) Any property constituting or derived from gross
58 profits or other proceeds obtained from a violation of this
59 article.

60 (2) In any action under this section, the court may enter
61 such restraining orders or take other appropriate action,
62 including acceptance of performance bonds, in connection
63 with any interest that is subject to forfeiture.

64 (3) Forfeiture actions under this section shall use the
65 procedure set forth in article seven, chapter sixty-a of this
66 code.

67 (4) Any person or business entity convicted of a
68 violation of this article shall be debarred from state or local
69 government contracts.

§61-14-8. Immunity for minor victim of sex trafficking.

1 (a) In a prosecution or a juvenile prosecution for an
2 offense of prostitution in violation of subsection (b), section
3 five, article eight of this chapter, a minor shall not be held
4 criminally liable if the Court determines that the minor is a
5 victim of an offense under this article: *Provided*, That
6 subject to proof, a minor so charged shall be rebuttably
7 presumed to be a victim under the provisions of this article.

8 (b) This section does not apply in a prosecution or a
9 juvenile proceeding for any of the other offenses under
10 subsection (b), section five, article eight of this chapter,
11 including specifically soliciting, inducing, enticing or
12 procuring another to commit an act or offense of
13 prostitution, unless it is determined by the court that the
14 minor was coerced into the criminal behavior.

15 (c) A minor who, under subsection (a) or (b) of this
16 section, is not subject to criminal liability or adjudication as
17 a juvenile delinquent is presumed to be an abused child, as
18 defined in section two-hundred-one, article one, chapter
19 forty-nine of this code, and may be eligible for services
20 under chapter forty-nine of this code including, but not
21 limited to, appropriate child welfare services.

§61-14-9. Petition to vacate and expunge conviction of sex trafficking victim.

1 (a) Notwithstanding the age and criminal history
2 limitations set forth in section twenty-six, article eleven of
3 this chapter, an individual convicted of prostitution in
4 violation of subsection (b), section five, article eight of this
5 chapter as a direct result of being a victim of trafficking,
6 may apply by petition to the circuit court in the county of
7 conviction to vacate the conviction and expunge the record
8 of conviction. The court may grant the petition upon a

9 finding that the individual's participation in the offense was
10 a direct result of being a victim of trafficking.

11 (b) A victim of trafficking seeking relief under this
12 section is not required to complete any type of rehabilitation
13 in order to obtain expungement.

14 (c) A petition filed under subsection (a) of this section,
15 any hearing conducted on the petition, and any relief
16 granted are subject to the procedural requirements of section
17 twenty-six, article eleven of this chapter: *Provided*, That the
18 age or criminal history limitations in that section are
19 inapplicable to victims of human trafficking.

CHAPTER 62. CRIMINAL PROCEDURE.

ARTICLE 1D. WIRETAPPING AND ELECTRONIC SURVEILLANCE ACT.

§62-1D-8. County prosecuting attorney or duly appointed special prosecutor may apply for order authorizing interception.

1 The prosecuting attorney of any county or duly
2 appointed special prosecutor may apply to one of the
3 designated circuit judges referred to in section seven of this
4 article and such judge, in accordance with the provisions of
5 this article, may grant an order authorizing the interception
6 of wire, oral or electronic communications by an officer of
7 the investigative or law-enforcement agency when the
8 prosecuting attorney or special prosecutor has shown
9 reasonable cause to believe the interception would provide
10 evidence of the commission of: (i) Kidnapping or abduction
11 as defined and prohibited by the provisions of sections
12 fourteen and fourteen-a, article two, chapter sixty-one of
13 this code and including threats to kidnap or demand ransom
14 as defined and prohibited by the provisions of section
15 fourteen-c of said article two; (ii) of any offense included
16 and prohibited by section eleven, article four, chapter
17 twenty-five of said code, sections eight, nine and ten, article
18 five, chapter sixty-one of said code or section one, article

19 eight, chapter sixty-two of said code to the extent that any
20 of said sections provide for offenses punishable as a felony;
21 (iii) dealing, transferring or trafficking in any controlled
22 substance or substances in the felonious violation of chapter
23 sixty-a of this code; (iv) of any offense included and
24 prohibited by article fourteen, chapter sixty-one of this
25 code; or (v) any aider or abettor to any of the foregoing
26 offenses or any conspiracy to commit any of the foregoing
27 offenses if any aider, abettor or conspirator is a party to the
28 communication to be intercepted.

CHAPTER 130

(Com. Sub. for H. B. 2486 - By Delegate Westfall)

[Passed March 31, 2017; in effect ninety days from passage.]
[Approved by the Governor on April 10, 2017.]

AN ACT to amend and reenact §33-6F-1 of the Code of West Virginia, 1931, as amended, relating to medical records and medical billing records obtained by insurers in connection with insurance claims or civil litigation; providing that such records shall be confidentially maintained by insurers in accordance with state and federal law, including the provisions of Title 114, Series 57 of the Code of State Rules; prohibiting additional restrictions or conditions on medical records and medical billing records obtained by insurers in connection with insurance claims or civil litigation that contradict or are inconsistent with any applicable policy of insurance or the performance of insurance functions permitted or authorized by state and federal law; requiring the State Insurance Commissioner to review the provisions of Title 114, Series 57 of the Code of State Rules and to propose new rules or modify existing rules to the extent deemed necessary; requiring the State Insurance Commissioner to propose any such new rules or modification to existing rules by December

31, 2017; and setting forth areas to be addressed in any new rules or modified existing rules in the provisions of Title 114, Series 57 of the Code of State Rules.

Be it enacted by the Legislature of West Virginia:

That §33-6F-1 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 6F. DISCLOSURE OF NONPUBLIC PERSONAL INFORMATION.

§33-6F-1. Privacy; rules.

1 (a) No person shall disclose any nonpublic personal
2 information contrary to the provisions of Title V of the
3 Gramm-Leach-Bliley Act, Pub. L. 106-102 (1999).

4 (b) On or before July 1, 2001, the commissioner shall
5 propose rules for legislative approval in accordance with
6 article twenty, chapter twenty-nine-a of this code necessary
7 to carry out the provisions of Title V of the Gramm-Leach-
8 Bliley Act, Pub. L. 106-102 (1999) and this article.

9 (c) Medical records and medical billing records
10 obtained by insurers in connection with insurance claims or
11 civil litigation shall be confidentially maintained by insurers
12 in accordance with state and federal law, including the
13 provisions of Title 114, Series 57 of the Code of State Rules,
14 and no additional restrictions or conditions may be imposed
15 that contradict or are inconsistent with any applicable policy
16 of insurance or the performance of insurance functions
17 permitted or authorized by state and federal law. The
18 Insurance Commissioner shall review the provisions of Title
19 114, Series 57 of the Code of State Rules and, to the extent
20 determined necessary, shall propose new rules or modify
21 existing rules by December 31, 2017 to address:

22 (1) The circumstances under which an insurance
23 company may disclose medical records and medical billing
24 records to other persons or entities;

25 (2) The circumstances under which personal identifying
26 information of a person must be redacted before that
27 person's medical records or medical billing records may be
28 disclosed to other persons or entities;

29 (3) The steps an insurance company is required to
30 undertake before medical records or medical billing records
31 are disclosed to other persons or entities to assure that any
32 person or entity to which an insurance company is
33 disclosing a person's medical records or medical billing
34 records will be using such records only for purposes
35 permitted by law; and

36 (4) The implementation of the requirement that the
37 insurance company has processes or procedures in place to
38 prevent the unauthorized access by its own employees to a
39 person's confidential medical records or medical billing
40 records.

CHAPTER 131

**(H. B. 2300 - By Delegates Kelly, Ellington, Summers,
Criss, Wagner, Ward, Atkinson and Rohrbach)**

[Passed March 21, 2017; in effect ninety days from passage.]

[Approved by the Governor on March 30, 2017.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §33-15-4o; to amend said code by adding thereto a new section, designated §33-16-3aa; to amend said code by adding thereto a new section, designated §33-24-7p; to amend said code by adding thereto a new section, designated §33-25-8m; and to amend said code by adding thereto a new section, designated §33-25A-8o, all relating to regulating step therapy protocols in health benefit plans which provide prescription drug benefits;

providing for an exception from the protocols; setting out criteria for the exception; providing for an effective date; and setting out exclusions.

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 §33-15-4o; that said code be amended by adding thereto a new section, designated §33-16-3aa; that said code be amended by adding thereto a new section, designated §33-24-7p; that said code be amended by adding thereto a new section, designated §33-25-8m; and that said code be amended by adding thereto a new section, designated §33-25A-8o, all to read as follows:

ARTICLE 15. ACCIDENT AND SICKNESS INSURANCE.

§33-15-4o. Step therapy.

1 (a) As used in this article:

2 (1) “Health benefit plan” means a policy, contract,
3 certificate or agreement entered into, offered or issued by a
4 health plan issuer to provide, deliver, arrange for, pay for,
5 or reimburse any of the costs of health care services.

6 (2) “Health plan issuer” or “issuer” means an entity
7 required to be licensed under this chapter that contracts, or
8 offers to contract to provide, deliver, arrange for, pay for, or
9 reimburse any of the costs of health care services under a
10 health benefit plan, including accident and sickness insurers,
11 nonprofit hospital service corporations, medical service
12 corporations and dental service organizations, prepaid
13 limited health service organizations, health maintenance
14 organizations, preferred provider organizations, provider
15 sponsored network, and any pharmacy benefit manager that
16 administers a fully-funded or self-funded plan.

17 (3) “Step therapy protocol” means a protocol or
18 program that establishes the specific sequence in which
19 prescription drugs for a specified medical condition, and

20 medically appropriate for a particular patient, are covered
21 by a health plan issuer or health benefit plan.

22 (4) “Step therapy override determination” means a
23 determination as to whether a step therapy protocol should
24 apply in a particular situation, or whether the step therapy
25 protocol should be overridden in favor of immediate
26 coverage of the health care provider’s selected prescription
27 drug. This determination is based on a review of the
28 patient’s or prescriber’s request for an override, along with
29 supporting rationale and documentation.

30 (5) “Utilization review organization” means an entity
31 that conducts utilization review, other than a health plan
32 issuer performing utilization review for its own health
33 benefit plan.

34 (b) A health benefit plan that includes prescription drug
35 benefits, and which utilizes step therapy protocols, and
36 which is issued for delivery, delivered, renewed, or
37 otherwise contracted in this state on or after January 1, 2018,
38 shall comply with the provisions of this article.

39 (c) Step therapy protocol exceptions include:

40 (1) When coverage of a prescription drug for the
41 treatment of any medical condition is restricted for use by
42 health plan issuer or utilization review organization through
43 the use of a step therapy protocol, the patient and
44 prescribing practitioner shall have access to a clear and
45 convenient process to request a step therapy exception
46 determination. The process shall be made easily accessible
47 on the health plan issuer’s or utilization review
48 organization’s website. The health plan issuer or utilization
49 review organization must provide a prescription drug for
50 treatment of the medical condition at least until the step
51 therapy exception determination is made.

52 (2) A step therapy override determination request shall
53 be expeditiously granted if:

54 (A) The required prescription drug is contraindicated or
55 will likely cause an adverse reaction by or physical or
56 mental harm to the patient.

57 (B) The required prescription drug is expected to be
58 ineffective based on the known relevant physical or mental
59 characteristics of the patient and the known characteristics
60 of the prescription drug regimen.

61 (C) The patient has tried the required prescription drug
62 while under their current or a previous health insurance or
63 health benefit plan, or another prescription drug in the same
64 pharmacologic class or with the same mechanism of action
65 and such prescription drug was discontinued due to a lack
66 of efficacy or effectiveness, diminished effect, or an adverse
67 event.

68 (D) The required prescription drug is not in the best
69 interest of the patient, based upon medical appropriateness.

70 (E) The patient is stable on a prescription drug selected
71 by their health care provider for the medical condition under
72 consideration.

73 (3) Upon the granting of a step therapy override
74 determination, the health plan issuer or utilization review
75 organization shall authorize coverage for the prescription
76 drug prescribed by the patient's treating healthcare
77 provider, provided such prescription drug is a covered
78 prescription drug under such policy or contract.

79 (4) This section shall not be construed to prevent:

80 (A) A health plan issuer or utilization review
81 organization from requiring a patient to try an AB-Rated
82 generic equivalent prior to providing coverage for the
83 equivalent branded prescription drug.

84 (B) A health care provider from prescribing a
85 prescription drug that is determined to be medically
86 appropriate.

**ARTICLE 16. GROUP ACCIDENT AND SICKNESS
INSURANCE.****§33-16-3aa. Step therapy.**

1 (a) As used in this article:

2 (1) “Health benefit plan” means a policy, contract,
3 certificate or agreement entered into, offered or issued by a
4 health plan issuer to provide, deliver, arrange for, pay for,
5 or reimburse any of the costs of health care services.

6 (2) “Health plan issuer” or “issuer” means an entity
7 required to be licensed under this chapter that contracts, or
8 offers to contract to provide, deliver, arrange for, pay for, or
9 reimburse any of the costs of health care services under a
10 health benefit plan, including accident and sickness insurers,
11 nonprofit hospital service corporations, medical service
12 corporations and dental service organizations, prepaid
13 limited health service organizations, health maintenance
14 organizations, preferred provider organizations, provider
15 sponsored network, and any pharmacy benefit manager that
16 administers a fully-funded or self-funded plan.

17 (3) “Step therapy protocol” means a protocol or
18 program that establishes the specific sequence in which
19 prescription drugs for a specified medical condition, and
20 medically appropriate for a particular patient, are covered
21 by a health plan issuer or health benefit plan.

22 (4) “Step therapy override determination” means a
23 determination as to whether a step therapy protocol should
24 apply in a particular situation, or whether the step therapy
25 protocol should be overridden in favor of immediate
26 coverage of the health care provider’s selected prescription
27 drug. This determination is based on a review of the
28 patient’s or prescriber’s request for an override, along with
29 supporting rationale and documentation.

30 (5) “Utilization review organization” means an entity
31 that conducts utilization review, other than a health plan

32 issuer performing utilization review for its own health
33 benefit plan.

34 (b) A health benefit plan that includes prescription drug
35 benefits, and which utilizes step therapy protocols, and
36 which is issued for delivery, delivered, renewed, or
37 otherwise contracted in this state on or after January 1, 2018,
38 shall comply with the provisions of this article.

39 (c) Step therapy protocol exceptions include:

40 (1) When coverage of a prescription drug for the
41 treatment of any medical condition is restricted for use by
42 health plan issuer or utilization review organization through
43 the use of a step therapy protocol, the patient and
44 prescribing practitioner shall have access to a clear and
45 convenient process to request a step therapy exception
46 determination. The process shall be made easily accessible
47 on the health plan issuer's or utilization review
48 organization's website. The health plan issuer or utilization
49 review organization must provide a prescription drug for
50 treatment of the medical condition at least until the step
51 therapy exception determination is made.

52 (2) A step therapy override determination request shall
53 be expeditiously granted if:

54 (A) The required prescription drug is contraindicated or
55 will likely cause an adverse reaction by or physical or
56 mental harm to the patient.

57 (B) The required prescription drug is expected to be
58 ineffective based on the known relevant physical or mental
59 characteristics of the patient and the known characteristics
60 of the prescription drug regimen.

61 (C) The patient has tried the required prescription drug
62 while under their current or a previous health insurance or
63 health benefit plan, or another prescription drug in the same
64 pharmacologic class or with the same mechanism of action
65 and such prescription drug was discontinued due to a lack

66 of efficacy or effectiveness, diminished effect, or an adverse
67 event.

68 (D) The required prescription drug is not in the best
69 interest of the patient, based upon medical appropriateness.

70 (E) The patient is stable on a prescription drug selected
71 by their health care provider for the medical condition under
72 consideration.

73 (3) Upon the granting of a step therapy override
74 determination, the health plan issuer or utilization review
75 organization shall authorize coverage for the prescription
76 drug prescribed by the patient's treating healthcare
77 provider, provided such prescription drug is a covered
78 prescription drug under such policy or contract.

79 (4) This section shall not be construed to prevent:

80 (A) A health plan issuer or utilization review
81 organization from requiring a patient to try an AB-Rated
82 generic equivalent prior to providing coverage for the
83 equivalent branded prescription drug.

84 (B) A health care provider from prescribing a
85 prescription drug that is determined to be medically
86 appropriate.

**ARTICLE 24. HOSPITAL SERVICE CORPORATIONS,
MEDICAL SERVICE CORPORATIONS, DENTAL
SERVICE CORPORATIONS AND HEALTH SERVICE
CORPORATIONS.**

§33-24-7p. Step therapy.

1 (a) As used in this article:

2 (1) "Health benefit plan" means a policy, contract,
3 certificate or agreement entered into, offered or issued by a
4 health plan issuer to provide, deliver, arrange for, pay for,
5 or reimburse any of the costs of health care services.

6 (2) “Health plan issuer” or “issuer” means an entity
7 required to be licensed under this chapter that contracts, or
8 offers to contract to provide, deliver, arrange for, pay for, or
9 reimburse any of the costs of health care services under a
10 health benefit plan, including accident and sickness insurers,
11 nonprofit hospital service corporations, medical service
12 corporations and dental service organizations, prepaid
13 limited health service organizations, health maintenance
14 organizations, preferred provider organizations, provider
15 sponsored network, and any pharmacy benefit manager that
16 administers a fully-funded or self-funded plan.

17 (3) “Step therapy protocol” means a protocol or
18 program that establishes the specific sequence in which
19 prescription drugs for a specified medical condition, and
20 medically appropriate for a particular patient, are covered
21 by a health plan issuer or health benefit plan.

22 (4) “Step therapy override determination” means a
23 determination as to whether a step therapy protocol should
24 apply in a particular situation, or whether the step therapy
25 protocol should be overridden in favor of immediate
26 coverage of the health care provider’s selected prescription
27 drug. This determination is based on a review of the
28 patient’s or prescriber’s request for an override, along with
29 supporting rationale and documentation.

30 (5) “Utilization review organization” means an entity
31 that conducts utilization review, other than a health plan
32 issuer performing utilization review for its own health
33 benefit plan.

34 (b) A health benefit plan that includes prescription drug
35 benefits, and which utilizes step therapy protocols, and
36 which is issued for delivery, delivered, renewed, or
37 otherwise contracted in this state on or after January 1, 2018,
38 shall comply with the provisions of this article.

39 (c) Step therapy protocol exceptions include:

40 (1) When coverage of a prescription drug for the
41 treatment of any medical condition is restricted for use by
42 health plan issuer or utilization review organization through
43 the use of a step therapy protocol, the patient and
44 prescribing practitioner shall have access to a clear and
45 convenient process to request a step therapy exception
46 determination. The process shall be made easily accessible
47 on the health plan issuer's or utilization review
48 organization's website. The health plan issuer or utilization
49 review organization must provide a prescription drug for
50 treatment of the medical condition at least until the step
51 therapy exception determination is made.

52 (2) A step therapy override determination request shall
53 be expeditiously granted if:

54 (A) The required prescription drug is contraindicated or
55 will likely cause an adverse reaction by or physical or
56 mental harm to the patient.

57 (B) The required prescription drug is expected to be
58 ineffective based on the known relevant physical or mental
59 characteristics of the patient and the known characteristics
60 of the prescription drug regimen.

61 (C) The patient has tried the required prescription drug
62 while under their current or a previous health insurance or
63 health benefit plan, or another prescription drug in the same
64 pharmacologic class or with the same mechanism of action
65 and such prescription drug was discontinued due to a lack
66 of efficacy or effectiveness, diminished effect, or an adverse
67 event.

68 (D) The required prescription drug is not in the best
69 interest of the patient, based upon medical appropriateness.

70 (E) The patient is stable on a prescription drug selected
71 by their health care provider for the medical condition under
72 consideration.

73 (3) Upon the granting of a step therapy override
74 determination, the health plan issuer or utilization review
75 organization shall authorize coverage for the prescription
76 drug prescribed by the patient's treating healthcare
77 provider, provided such prescription drug is a covered
78 prescription drug under such policy or contract.

79 (4) This section shall not be construed to prevent:

80 (A) A health plan issuer or utilization review
81 organization from requiring a patient to try an AB-Rated
82 generic equivalent prior to providing coverage for the
83 equivalent branded prescription drug.

84 (B) A health care provider from prescribing a
85 prescription drug that is determined to be medically
86 appropriate.

ARTICLE 25. HEALTH CARE CORPORATIONS.

§33-25-8m. Step therapy.

1 (a) As used in this article:

2 (1) "Health benefit plan" means a policy, contract,
3 certificate or agreement entered into, offered or issued by a
4 health plan issuer to provide, deliver, arrange for, pay for,
5 or reimburse any of the costs of health care services.

6 (2) "Health plan issuer" or "issuer" means an entity
7 required to be licensed under this chapter that contracts, or
8 offers to contract to provide, deliver, arrange for, pay for, or
9 reimburse any of the costs of health care services under a
10 health benefit plan, including accident and sickness insurers,
11 nonprofit hospital service corporations, medical service
12 corporations and dental service organizations, prepaid
13 limited health service organizations, health maintenance
14 organizations, preferred provider organizations, provider
15 sponsored network, and any pharmacy benefit manager that
16 administers a fully-funded or self-funded plan.

17 (3) “Step therapy protocol” means a protocol or
18 program that establishes the specific sequence in which
19 prescription drugs for a specified medical condition, and
20 medically appropriate for a particular patient, are covered
21 by a health plan issuer or health benefit plan.

22 (4) “Step therapy override determination” means a
23 determination as to whether a step therapy protocol should
24 apply in a particular situation, or whether the step therapy
25 protocol should be overridden in favor of immediate
26 coverage of the health care provider’s selected prescription
27 drug. This determination is based on a review of the
28 patient’s or prescriber’s request for an override, along with
29 supporting rationale and documentation.

30 (5) “Utilization review organization” means an entity
31 that conducts utilization review, other than a health plan
32 issuer performing utilization review for its own health
33 benefit plan.

34 (b) A health benefit plan that includes prescription drug
35 benefits, and which utilizes step therapy protocols, and
36 which is issued for delivery, delivered, renewed, or
37 otherwise contracted in this state on or after January 1, 2018,
38 shall comply with the provisions of this article.

39 (c) Step therapy protocol exceptions include:

40 (1) When coverage of a prescription drug for the
41 treatment of any medical condition is restricted for use by
42 health plan issuer or utilization review organization through
43 the use of a step therapy protocol, the patient and
44 prescribing practitioner shall have access to a clear and
45 convenient process to request a step therapy exception
46 determination. The process shall be made easily accessible
47 on the health plan issuer’s or utilization review
48 organization’s website. The health plan issuer or utilization
49 review organization must provide a prescription drug for
50 treatment of the medical condition at least until the step
51 therapy exception determination is made.

52 (2) A step therapy override determination request shall
53 be expeditiously granted if:

54 (A) The required prescription drug is contraindicated or
55 will likely cause an adverse reaction by or physical or
56 mental harm to the patient.

57 (B) The required prescription drug is expected to be
58 ineffective based on the known relevant physical or mental
59 characteristics of the patient and the known characteristics
60 of the prescription drug regimen.

61 (C) The patient has tried the required prescription drug
62 while under their current or a previous health insurance or
63 health benefit plan, or another prescription drug in the same
64 pharmacologic class or with the same mechanism of action
65 and such prescription drug was discontinued due to a lack
66 of efficacy or effectiveness, diminished effect, or an adverse
67 event.

68 (D) The required prescription drug is not in the best
69 interest of the patient, based upon medical appropriateness.

70 (E) The patient is stable on a prescription drug selected
71 by their health care provider for the medical condition under
72 consideration.

73 (3) Upon the granting of a step therapy override
74 determination, the health plan issuer or utilization review
75 organization shall authorize coverage for the prescription
76 drug prescribed by the patient's treating healthcare
77 provider, provided such prescription drug is a covered
78 prescription drug under such policy or contract.

79 (4) This section shall not be construed to prevent:

80 (A) A health plan issuer or utilization review
81 organization from requiring a patient to try an AB-Rated
82 generic equivalent prior to providing coverage for the
83 equivalent branded prescription drug.

84 (B) A health care provider from prescribing a
85 prescription drug that is determined to be medically
86 appropriate.

ARTICLE 25A. HEALTH MAINTENANCE ORGANIZATION ACT.

§33-25A-80. Step therapy.

1 (a) As used in this article:

2 (1) “Health benefit plan” means a policy, contract,
3 certificate or agreement entered into, offered or issued by a
4 health plan issuer to provide, deliver, arrange for, pay for,
5 or reimburse any of the costs of health care services.

6 (2) “Health plan issuer” or “issuer” means an entity
7 required to be licensed under this chapter that contracts, or
8 offers to contract to provide, deliver, arrange for, pay for, or
9 reimburse any of the costs of health care services under a
10 health benefit plan, including accident and sickness insurers,
11 nonprofit hospital service corporations, medical service
12 corporations and dental service organizations, prepaid
13 limited health service organizations, health maintenance
14 organizations, preferred provider organizations, provider
15 sponsored network, and any pharmacy benefit manager that
16 administers a fully-funded or self-funded plan.

17 (3) “Step therapy protocol” means a protocol or
18 program that establishes the specific sequence in which
19 prescription drugs for a specified medical condition, and
20 medically appropriate for a particular patient, are covered
21 by a health plan issuer or health benefit plan.

22 (4) “Step therapy override determination” means a
23 determination as to whether a step therapy protocol should
24 apply in a particular situation, or whether the step therapy
25 protocol should be overridden in favor of immediate
26 coverage of the health care provider’s selected prescription
27 drug. This determination is based on a review of the
28 patient’s or prescriber’s request for an override, along with
29 supporting rationale and documentation.

30 (5) "Utilization review organization" means an entity
31 that conducts utilization review, other than a health plan
32 issuer performing utilization review for its own health
33 benefit plan.

34 (b) A health benefit plan that includes prescription drug
35 benefits, and which utilizes step therapy protocols, and
36 which is issued for delivery, delivered, renewed, or
37 otherwise contracted in this state on or after January 1, 2018,
38 shall comply with the provisions of this article.

39 (c) Step therapy protocol exceptions include:

40 (1) When coverage of a prescription drug for the
41 treatment of any medical condition is restricted for use by
42 health plan issuer or utilization review organization through
43 the use of a step therapy protocol, the patient and
44 prescribing practitioner shall have access to a clear and
45 convenient process to request a step therapy exception
46 determination. The process shall be made easily accessible
47 on the health plan issuer's or utilization review
48 organization's website. The health plan issuer or utilization
49 review organization must provide a prescription drug for
50 treatment of the medical condition at least until the step
51 therapy exception determination is made.

52 (2) A step therapy override determination request shall
53 be expeditiously granted if:

54 (A) The required prescription drug is contraindicated or
55 will likely cause an adverse reaction by or physical or
56 mental harm to the patient.

57 (B) The required prescription drug is expected to be
58 ineffective based on the known relevant physical or mental
59 characteristics of the patient and the known characteristics
60 of the prescription drug regimen.

61 (C) The patient has tried the required prescription drug
62 while under their current or a previous health insurance or health
63 benefit plan, or another prescription drug in the same
64 pharmacologic class or with the same mechanism of action and

65 such prescription drug was discontinued due to a lack of efficacy
66 or effectiveness, diminished effect, or an adverse event.

67 (D) The required prescription drug is not in the best
68 interest of the patient, based upon medical appropriateness.

69 (E) The patient is stable on a prescription drug selected
70 by their health care provider for the medical condition under
71 consideration.

72 (3) Upon the granting of a step therapy override
73 determination, the health plan issuer or utilization review
74 organization shall authorize coverage for the prescription
75 drug prescribed by the patient's treating healthcare
76 provider, provided such prescription drug is a covered
77 prescription drug under such policy or contract.

78 (4) This section shall not be construed to prevent:

79 (A) A health plan issuer or utilization review
80 organization from requiring a patient to try an AB-Rated
81 generic equivalent prior to providing coverage for the
82 equivalent branded prescription drug.

83 (B) A health care provider from prescribing a prescription
84 drug that is determined to be medically appropriate.

CHAPTER 132

**(Com. Sub. for H. B. 2683 - By Delegates Westfall,
White, Hamrick, Hartman and Frich)**

[Passed April 8, 2017; in effect ninety days from passage.]
[Approved by the Governor on April 24, 2017.]

AN ACT to amend and reenact §33-26-2, §33-26-3, §33-26-4,
§33-26-5, §33-26-8, §33-26-9, §33-26-10, §33-26-11, §33-
26-12, §33-26-13, §33-26-14 and §33-26-18 of the Code of
West Virginia, 1931, as amended, all relating to West Virginia

Insurance Guaranty Association Act; modifying the purpose, scope and construction of act; adding and amending definitions; clarifying and adding powers, duties and rights of association; limiting amount payable for covered claims for deliberate intention, including workers' compensation claims; limiting amount for covered claim for return of unearned premium; limiting amount association must pay for the obligation of the insolvent insurer; setting time limits for filing claims; specifying when obligation of insurer to defend an insured ceases; subject to limitations, giving association rights, duties and obligations of the insolvent insurer; allowing association to determine order of claims payment; prohibiting payment of dividends during period of deferment; hiring of legal counsel for the defense of covered claims; notification of claimants; setting forth the association's right to review and contest settlements, releases, compromises, waivers and judgments; specifying when association is not bound by a settlement, release, compromise or waiver; requiring association to establish procedures for requesting financial information from insurers and claimants; setting forth actions association may take where insured or claimant refuses to provide requested financial information; allowing association to intervene as a party as a matter of right before any court; requiring rules of association be subject to legislative approval; requiring notice of claims be filed with the association; setting forth the persons from whom the association may recover all amounts paid by the association on behalf of that person; requiring association and associations in other states be recognized as claimants in the liquidation of an insolvent insurer; requiring person having a claim to exhaust all coverage under the policy; setting forth what constitutes a claim relating to exhaustion of coverage; requiring association be reimbursed for any deductible claim if paid; requiring board of directors to make recommendations to commissioner regarding solvency; allowing board of directors to compile reports on insolvencies; and providing that reports and recommendations of board are not subject to disclosure under the Freedom of Information Act.

Be it enacted by the Legislature of West Virginia:

That §33-26-2, §33-26-3, §33-26-4, §33-26-5, §33-26-8, §33-26-9, §33-26-10, §33-26-11, §33-26-12, §33-26-13, §33-26-14 and §33-26-18 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 26. WEST VIRGINIA GUARANTY ASSOCIATION ACT.

§33-26-2. Purpose.

1 The purpose of this article is to provide a mechanism for
2 the payment of covered claims under certain insurance
3 policies to avoid excessive delay in payment and to the
4 extent provided in this article, minimize financial loss to
5 claimants or policyholders because of the insolvency of an
6 insurer, and to permit and to provide an association to assess
7 the cost of this protection among insurers.

§33-26-3. Scope.

1 This article applies to all kinds of direct insurance, but
2 is not applicable to the following:

3 (1) Life, annuity, health or disability insurance;

4 (2) Mortgage guaranty, financial guaranty or other
5 forms of insurance offering protection against investment
6 risks;

7 (3) Fidelity or surety bonds, or any other bonding
8 obligations;

9 (4) Credit insurance, vendors' single interest insurance
10 or collateral protection insurance or any similar insurance
11 protecting the interests of a creditor arising out of a creditor-
12 debtor transaction;

13 (5) Insurance of warranties or service contracts
14 including insurance that provides for the repair, replacement
15 or service of goods or property, indemnification for repair,

16 replacement or service for the operational or structural
17 failure of the goods or property due to a defect in materials,
18 workmanship or normal wear and tear, or provides
19 reimbursement for the liability incurred by the issuer of
20 agreements or service contracts that provide such benefits;

21 (6) Title insurance;

22 (7) Ocean marine insurance;

23 (8) Any transaction or combination of transactions
24 between a person, including affiliates of such person, and an
25 insurer, including affiliates of the insurer, which involves
26 the transfer of investment or credit risk unaccompanied by
27 transfer of insurance risk; or

28 (9) Any insurance provided by or guaranteed by a
29 government entity or agency.

§33-26-4. Construction.

1 This article shall be construed to effect the purpose
2 under section two of this article which constitutes an aid and
3 guide to interpretation.

§33-26-5. Definitions.

1 As used in this article:

2 (1) "Account" means any one of the three accounts
3 created by section six of this article.

4 (2) "Affiliate" means a person who directly or
5 indirectly, through one or more intermediaries, controls, is
6 controlled by or is under common control with another
7 person on December 31 of the year immediately preceding
8 the date the insurer becomes an insolvent insurer.

9 (3) "Affiliate of the insolvent insurer" means a person who
10 directly or indirectly, through one or more intermediaries,
11 controls, is controlled by or is under common control with an

12 insolvent insurer on December 31 of the year prior to the date
13 the insurer becomes an insolvent insurer.

14 (4) “Association” means the West Virginia Insurance
15 Guaranty Association created under section six of this
16 article.

17 (5) “Association similar to the association” means any
18 guaranty association, security fund or other insolvency
19 mechanism that affords protection similar to that of the
20 association. The term shall also include any property and
21 casualty insolvency mechanism that obtains assessments or
22 other contributions from insurers on a preinsolvency basis.

23 (6) “Claimant” means any insured making a first party
24 claim or any person instituting a liability claim, provided
25 that no person who is an affiliate of the insolvent insurer
26 may be a claimant.

27 (7) “Commissioner” means the Insurance Commissioner
28 of West Virginia.

29 (8) “Control” means the possession, direct or indirect,
30 of the power to direct or cause the direction of the
31 management and policies of a person, whether through the
32 ownership of voting securities, by contract other than a
33 commercial contract for goods or nonmanagement services,
34 or otherwise, unless the power is the result of an official
35 position with or corporate office held by the person. Control
36 shall be presumed to exist if a person, directly or indirectly,
37 owns, controls, holds with the power to vote, or holds
38 proxies representing, ten percent or more of the voting
39 securities of any other person. This presumption may be
40 rebutted by a showing that control does not exist in fact.

41 (9) (A) “Covered claim” means an unpaid claim,
42 including one for unearned premiums, submitted by a
43 claimant, which arises out of and is within the coverage and
44 is subject to the applicable limits of an insurance policy to
45 which this article applies issued by an insurer, if the insurer

46 becomes an insolvent insurer after the effective date of this
47 article and:

48 (i) The claimant or insured is a resident of this state at
49 the time of the insured event: *Provided*, That for entities
50 other than an individual, the residence of a claimant, insured
51 or policyholder is the state in which its principal place of
52 business is located at the time of the insured event; or

53 (ii) The claim is a first party claim for damage to
54 property with a permanent location in this state.

55 (B) “Covered claim” does not include:

56 (i) Any amount awarded as punitive or exemplary
57 damages;

58 (ii) Any amount sought as a return of premium under
59 any retrospective rating plan;

60 (iii) Any amount due any reinsurer, insurer, insurance
61 pool, underwriting association, health maintenance
62 organization, hospital plan corporation, professional health
63 service corporation or self-insurer as subrogation recoveries,
64 reinsurance recoveries, contribution, indemnification or
65 otherwise. No such claim for any amount due any reinsurer,
66 insurer, insurance pool, underwriting association, health
67 maintenance organization, hospital plan corporation or self-
68 insurer may be asserted against a person insured under a policy
69 issued by an insolvent insurer other than to the extent such
70 claim exceeds the association obligation limitations set forth in
71 section eight of this article;

72 (iv) Any first party claim by an insured whose net worth
73 exceeds \$25 million on December 31 of the year next
74 preceding the date the insurer becomes an insolvent insurer:
75 *Provided*, That an insured’s net worth on that date shall be
76 considered to include the aggregate net worth of the insured
77 and all of its subsidiaries and affiliates as calculated on a
78 consolidated basis: *Provided, however*, That this exclusion
79 does not apply to any claim for benefits under a workers’

80 compensation insurance policy required by chapter twenty-
81 three of this code;

82 (v) Any third party claim relating to a policy of an
83 insured whose net worth exceeds \$25 million on December
84 31 of the year next preceding the date the insurer becomes
85 an insolvent insurer: *Provided*, That an insured's net worth
86 on that date shall be considered to include the aggregate net
87 worth of the insured and all of its subsidiaries and affiliates
88 as calculated on a consolidated basis: *Provided, however*,
89 That this exclusion does not apply to:

90 (I) Third party claims against the insured where the insured
91 has applied for or consented to the appointment of a receiver,
92 trustee or liquidator for all or a substantial part of its assets,
93 filed a voluntary petition in bankruptcy, filed a petition or an
94 answer seeking a reorganization or arrangement with creditors
95 or to take advantage of any insolvency law, or if an order,
96 judgment or decree is entered by a court of competent
97 jurisdiction, on the application of a creditor, adjudicating the
98 insured bankrupt or insolvent or approving a petition seeking
99 reorganization of the insured or of all or substantial part of its
100 assets; or

101 (II) Any claim for benefits under a workers'
102 compensation insurance policy required by chapter twenty-
103 three of this code;

104 (vi) Any claim that would otherwise be a covered claim
105 but is an obligation to, or on behalf of a, person who has a
106 net worth greater than that allowed by the insurance
107 guaranty association law of the state of residence of the
108 claimant at the time specified by that law and which
109 association has denied coverage to that claimant on that
110 basis: *Provided*, That this exclusion does not apply to any
111 claim for benefits under a workers' compensation insurance
112 policy required by chapter twenty-three of this code;

113 (vii) Any first party claims by an insured which is an
114 affiliate of the insolvent insurer;

115 (viii) Any fee or other amount relating to goods or
116 services sought by, or on behalf of, any attorney or other
117 provider of goods or services retained by the insolvent
118 insurer or an insured prior to the date it was determined to
119 be insolvent;

120 (ix) Any fee or other amount sought by, or on behalf of,
121 any attorney or other provider of goods or services retained
122 by any insured or claimant in connection with the assertion
123 or prosecution of any claim, covered or otherwise, against
124 the association; or

125 (x) Any claims for interest.

126 (10) “Insolvent insurer” means an insurer licensed to
127 transact insurance in this state, either at the time the policy
128 was issued or when the insured event occurred, and against
129 whom a final order of liquidation has been entered with a
130 finding of insolvency by a court of competent jurisdiction
131 in the insurer’s state of domicile.

132 (11) “Member insurer” means any person who: writes
133 any kind of insurance to which this article applies under
134 section three of this article, including farmers’ mutual fire
135 insurance companies and the exchange of reciprocal or
136 interinsurance contracts; and is licensed to transact
137 insurance in this state. An insurer shall cease to be a
138 member insurer effective on the day following the
139 termination or expiration of its license to transact the kinds
140 of insurance to which this article applies, however the
141 insurer shall remain liable as a member insurer for any and
142 all obligations, including obligations for assessments levied
143 prior to the termination or expiration of the insurer’s license
144 and assessments levied after the termination or expiration,
145 which relate to any insurer which became an insolvent
146 insurer prior to the termination or expiration of the insurer’s
147 license.

148 (12) “Net direct written premiums” means direct gross
149 premiums written in this state on insurance policies to which

150 this article applies, less return premiums on the policies and
151 dividends paid or credited to policyholders on such direct
152 business. “Net direct written premiums” does not include
153 premiums on contracts between insurers or reinsurers.

154 (13) “Person” means any individual or legal entity,
155 including governmental entities.

156 (14) “Receiver” means receiver, liquidator, rehabilitator
157 or conservator as the context may require.

158 (15) “Self-insurer” means a person that covers its
159 liability through a qualified individual or group self-
160 insurance program or any other formal program created for
161 the specific purpose of covering liabilities typically covered
162 by insurance.

§33-26-8. Powers and duties of the association.

1 (a) The association shall:

2 (1) Be obligated to pay covered claims existing prior to
3 the final order of liquidation, that arise within thirty days
4 after the final order of liquidation or before the policy
5 expiration date if the expiration date is less than thirty days
6 after the final order of liquidation, or that arise before the
7 insured replaces the policy or causes its cancellation, if the
8 insured does so within thirty days of the final order of
9 liquidation. This obligation shall be satisfied by paying to
10 the claimant an amount as follows:

11 (A) The full amount of a covered claim for benefits
12 under a workers’ compensation insurance policy: *Provided*,
13 That any covered claim for deliberate intention, including
14 any action pursuant to section two, article four, chapter
15 twenty-three of this code, may not exceed \$300,000 per
16 claim.

17 (B) An amount not exceeding \$10,000 per policy for a
18 covered claim for the return of unearned premium.

19 (C) An amount not exceeding \$300,000 per claim for all
20 other covered claims: *Provided*, That for purposes of this
21 limitation, all claims of any kind whatsoever arising out of,
22 or related to, bodily injury or death to any one person
23 constitutes a single claim, regardless of the number of
24 claims made, or the number of claimants.

25 In no event may the association be obligated to pay a
26 claimant an amount in excess of the obligation of the
27 insolvent insurer under the policy or coverage from which
28 the claim arises. Notwithstanding any other provisions of
29 this article, a covered claim may not include a claim filed
30 with the association after the earlier of: (i) Twenty-five
31 months after the date of the final order of liquidation; or (ii)
32 the final date set by the court for the filing of claims against
33 the liquidator or receiver of an insolvent insurer.

34 Any obligation of the association to defend an insured
35 on a covered claim shall cease upon the association's: (i)
36 Payment, either by settlement releasing the insured or on a
37 judgment, of an amount equal to the lesser of the
38 association's covered claim obligation limit or the
39 applicable policy limit; or (ii) tender of such amount.

40 (2) Be considered the insurer only to the extent of its
41 obligation on the covered claims and to that extent, subject
42 to the limitations provided in this article, have all rights,
43 duties and obligations of the insolvent insurer as if the
44 insurer had not become insolvent, including, but not limited
45 to, the right to pursue and retain salvage and subrogation
46 recoverable on paid covered claim obligations. The
47 association may not be considered the insolvent insurer for
48 any purpose relating to the issue of whether the association
49 is amenable to the personal jurisdiction of the courts of any
50 state.

51 (3) Allocate claims paid and expenses incurred among
52 the three accounts separately, and assess member insurers
53 separately for each account amounts necessary to pay the
54 obligations of the association under subdivision (1) of this

55 subsection subsequent to an insolvency, the expenses of
56 handling covered claims subsequent to an insolvency, the
57 cost of preparing any reports specified in section thirteen of
58 this article and other expenses authorized by this article. The
59 assessments of each member insurer shall be in the
60 proportion that the net direct written premiums of the
61 member insurer for the calendar year prior to the assessment
62 on the kinds of insurance in the account bears to the net
63 direct written premiums of all member insurers for the
64 calendar year prior to the assessment on the kinds of
65 insurance in the account: *Provided*, That farmers mutual
66 insurance companies that do not issue workers'
67 compensation insurance policies may not be assessed to pay
68 for the obligations of the association payable from the
69 workers' compensation insurance account. Each member
70 insurer shall be notified of the assessment not later than
71 thirty days before it is due. No member insurer may be
72 assessed in any one year on any account an amount greater
73 than two percent of that member insurer's net direct written
74 premiums for the calendar year preceding the assessment on
75 the kinds of insurance in the account. If the maximum
76 assessment, together with the other assets of the association
77 in any account, does not provide in any one year in any
78 account an amount sufficient to make all necessary
79 payments from that account, the funds available shall be
80 prorated and the unpaid portion shall be paid as soon after
81 that as funds become available. The association shall pay
82 claims in any order that it deems reasonable, including the
83 payment of claims as they are received from the claimant or
84 in groups or categories of claims. The association may
85 exempt or defer, in whole or in part, the assessment of any
86 member insurer, if the assessment would cause the member
87 insurer's financial statement to reflect the amounts of
88 capital or surplus less than the minimum amounts required
89 for a certificate of authority by any jurisdiction in which the
90 member insurer is authorized to transact insurance:
91 *Provided, however*, That during the period of deferment, no
92 dividends may be paid to shareholders or policyholders.
93 Deferred assessments shall be paid when the payment does

94 not reduce capital or surplus below required minimums. The
95 payments shall be refunded to those companies receiving
96 larger assessments by virtue of the deferment, or at the
97 election of any such company, credited against future
98 assessments.

99 (4) Investigate claims brought against the association
100 and adjust, compromise, settle, and pay covered claims to
101 the extent of the association's obligation and deny all other
102 claims. The association may appoint and direct legal
103 counsel retained under liability insurance policies for the
104 defense of covered claims.

105 (5) Notify claimants in this state as determined necessary
106 by the commissioner and upon the commissioner's request, to
107 the extent records are available to the association.

108 (6) (A) Have the right to review and contest as set forth
109 in this subsection settlements, releases, compromises,
110 waivers and judgments to which the insolvent insurer or its
111 insureds were parties prior to the entry of the final order of
112 liquidation. In an action to enforce settlements, releases and
113 judgments to which the insolvent insurer or its insureds
114 were parties prior to the entry of the final order of
115 liquidation, the association may assert the following
116 defenses, in addition to the defenses available to the insurer:

117 (i) The association is not bound by a settlement, release,
118 compromise or waiver executed by an insured or the insurer,
119 or any judgment entered against an insured or the insurer by
120 consent or through a failure to exhaust all appeals, if the
121 settlement, release, compromise, waiver or judgment was:

122 (I) Executed or entered within one hundred twenty days
123 prior to the entry of a final order of liquidation and the
124 insured or the insurer did not use reasonable care in entering
125 into the settlement, release, compromise, waiver or
126 judgment, or did not pursue all reasonable appeals of an
127 adverse judgment; or

128 (II) Executed by or taken against an insured or the
129 insurer based on default, fraud, collusion or the insurer's
130 failure to defend.

131 (ii) If a court of competent jurisdiction finds that the
132 association is not bound by a settlement, release,
133 compromise, waiver or judgment for the reasons described
134 in subparagraph (i), paragraph (A), subdivision (6) of this
135 subsection, the settlement, release, compromise, waiver or
136 judgment shall be set aside and the association may defend
137 any covered claim on the merits. The settlement, release,
138 compromise, waiver or judgment may not be considered as
139 evidence of liability or damages in connection with any
140 claim brought against the association or any other party
141 under this article.

142 (iii) The association may assert any statutory defenses
143 or other defenses or rights of offset against any settlement,
144 release, compromise or waiver executed by an insured or the
145 insurer, or any judgment taken against the insured or the
146 insurer.

147 (B) As to any covered claims arising from a judgment
148 under any decision, verdict or finding based on the default
149 of the insolvent insurer or its failure to defend, the
150 association, either on its own behalf or on behalf of an
151 insured may apply to have the judgment, order, decision,
152 verdict or finding set aside by the same court or
153 administrator that entered the judgment, order, decision,
154 verdict or finding and may defend the claim on the merits.

155 (7) Handle claims through its employees or through one
156 or more insurers or other persons designated as servicing
157 facilities. Designation of a servicing facility is subject to the
158 approval of the commissioner, but the designation may be
159 declined by a member insurer.

160 (8) Reimburse each servicing facility for obligations of
161 the association paid by the facility and for expenses incurred
162 by the facility while handling claims on behalf of the

163 association and shall pay the other expenses of the
164 association authorized by this article.

165 (9) Establish procedures for requesting financial
166 information from insureds and claimants on a confidential
167 basis for purposes of applying sections of this article
168 concerning the net worth of first and third-party claimants,
169 subject to that information being shared with any other
170 association similar to the association and the liquidator for
171 the insolvent company on the same confidential basis. If the
172 insured or claimant refuses to provide the requested
173 financial information and an auditor's certification of the
174 same where requested and available, the association may
175 consider the net worth of the insured or claimant to be in
176 excess of \$25 million at the relevant time.

177 (b) The association may:

178 (1) Employ or retain persons that are necessary to
179 handle claims and perform other duties of the association.

180 (2) Borrow funds necessary to effect the purposes of this
181 article in accord with the plan of operation.

182 (3) Sue or be sued, and the power to sue includes the
183 power and right to intervene as a party as a matter of right
184 before any court in this state that has jurisdiction over an
185 insolvent insurer as defined by this article.

186 (4) Negotiate and become a party to contracts that are
187 necessary to carry out the purpose of this article.

188 (5) Perform other acts that are necessary or proper to
189 effectuate the purpose of this article.

190 (6) Refund to the member insurers in proportion to the
191 contribution of each member insurer to an account that
192 amount by which the assets of the account exceed the
193 liabilities, if, at the end of any calendar year, the board of
194 directors finds that the assets of the association in any

195 account exceed the liabilities of that account as estimated by
196 the board of directors for the coming year.

§33-26-9. Plan of operation.

1 (a) The association shall:

2 (1) Submit to the commissioner a plan of operation and
3 any amendments thereto necessary or suitable to assure the
4 fair, reasonable and equitable administration of the
5 association. The plan of operation and any amendments
6 thereto become effective upon approval in writing by the
7 commissioner.

8 (2) If the association fails to submit a suitable plan of
9 operation within ninety days following the effective date of
10 this article or if at any time thereafter the association fails to
11 submit suitable amendments to the plan, the commissioner
12 shall, after notice and hearing, adopt rules for legislative
13 approval as are necessary or advisable to effectuate the
14 provisions of this article. The rules shall continue in force
15 until modified by the commissioner or superseded by a plan
16 submitted by the association and approved by the
17 commissioner. All such rules shall be proposed in
18 accordance with chapter twenty-nine-a of this code.

19 (b) All member insurers shall comply with the plan of
20 operation.

21 (c) The plan of operation shall:

22 (1) Establish the procedures whereby all the powers and
23 duties of the association under section eight of this article
24 will be performed.

25 (2) Establish procedures for handling assets of the
26 association.

27 (3) Establish the amount and method of reimbursing
28 members of the board of directors under section seven of
29 this article.

30 (4) Establish procedures by which claims may be filed
31 with the association and establish acceptable forms of proof
32 of covered claims.

33 (5) Establish regular places and times for meetings of
34 the board of directors.

35 (6) Establish procedures for records to be kept of all
36 financial transactions of the association, its agents and the
37 board of directors.

38 (7) Provide that any member insurer aggrieved by a final
39 action or decision of the association may appeal to the
40 commissioner within thirty days after the action or decision.

41 (8) Establish the procedures whereby selections for the
42 board of directors will be submitted to the commissioner.

43 (9) Contain additional provisions necessary or proper
44 for the execution of the powers and duties of the association.

45 (d) The plan of operation may provide that any or all
46 powers and duties of the association, except those under
47 subdivision (3), subsection (a), and subdivision (2),
48 subsection (b), section eight of this article are delegated to
49 a corporation, association or other organization which
50 performs or will perform functions similar to those of this
51 association, or its equivalent, in two or more states. Such a
52 corporation, association or organization shall be reimbursed
53 as a servicing facility would be reimbursed and shall be paid
54 for its performance of any other functions of the association.
55 A delegation under this subsection may take effect only with
56 the approval of both the board of directors and the
57 commissioner, and may be made only to a corporation,
58 association or organization which extends protection not
59 substantially less favorable and effective than that provided
60 by this article.

§33-26-10. Duties and powers of the commissioner.

1 (a) The commissioner shall:

2 (1) Notify the association of the existence of an
3 insolvent insurer not later than three business days after he
4 or she receives notice of the determination of the
5 insolvency.

6 (2) Upon request of the board of directors, provide the
7 association a statement of the net direct written premiums
8 of each member insurer.

9 (b) The commissioner may:

10 (1) Require that the association notify the insureds of
11 the insolvent insurer and any other interested parties of the
12 determination of insolvency and of their rights under this
13 article. The notification shall be by mail at their last known
14 address, where available, but if sufficient information for
15 notification by mail is not available, notice by publication
16 in a newspaper of general circulation is sufficient.

17 (2) Suspend or revoke, after notice and hearing, the
18 certificate of authority to transact insurance in this state of
19 any member insurer which fails to pay an assessment when
20 due or fails to comply with the plan of operation. As an
21 alternative, the commissioner may levy a fine on any
22 member insurer which fails to pay an assessment when due.
23 The fine may not exceed five percent of the unpaid
24 assessment per month, except that no fine may be less than
25 \$100 per month.

26 (3) Revoke the designation of any servicing facility if
27 he or she finds that claims are being handled
28 unsatisfactorily.

29 (c) Any final order of the commissioner under this
30 article is subject to judicial review as provided by section
31 fourteen, article two of this chapter.

§33-26-11. Effect of paid claims.

1 (a) Any person recovering under this article is
2 considered to have assigned the person's rights under the

3 policy to the association to the extent of the person's
4 recovery from the association. Every insured or claimant
5 seeking the protection of this article shall cooperate with the
6 association to the same extent as that person would have
7 been required to cooperate with the insolvent insurer. The
8 association has no cause of action against the insured of the
9 insolvent insurer for any sums it has paid out except such
10 causes of action as the insolvent insurer would have had if
11 the sums had been paid by the insolvent insurer and except
12 as provided in subsection (b) of this section. In the case of
13 an insolvent insurer operating on a plan whereby insurance
14 policies with assessment liability have been issued to
15 insureds, payments of claims by the association may not
16 operate to reduce the liability of the insureds to the receiver,
17 liquidator or statutory successor for unpaid assessments.

18 (b) The association may recover from the following
19 persons all amounts paid by the association on behalf of the
20 person, whether for indemnity or defense or otherwise:

21 (1) Any insured whose net worth on December 31 of the
22 year immediately preceding the date the insurer becomes an
23 insolvent insurer exceeds \$25 million: *Provided*, That an
24 insured's net worth on such date shall be considered to
25 include the aggregate net worth of the insured and all of its
26 subsidiaries and affiliates as calculated on a consolidated
27 basis: *Provided, however*, That this provision may not apply
28 to any claim for benefits under a workers' compensation
29 insurance policy required by chapter twenty-three of this
30 code; and

31 (2) Any person who is an affiliate of the insolvent
32 insurer.

33 (c) The association and any association similar to the
34 association in another state shall be recognized as claimants
35 in the liquidation of an insolvent insurer for any amounts
36 paid by them on covered claims obligations as determined
37 under this article or similar laws in other states and shall
38 receive dividends and any other distributions at the priority

39 set forth in section nineteen-a, article ten of this chapter. The
40 receiver, liquidator or statutory successor of an insolvent
41 insurer shall be bound by determinations of covered claim
42 eligibility under this article and by settlements of claims
43 made by the association or a similar organization in another
44 state. The court having jurisdiction shall grant such claims
45 priority equal to that to which the claimant would have been
46 entitled, in the absence of this article, against the assets of
47 the insolvent insurer. The expenses of the association or
48 similar organization in handling claims shall be accorded
49 the same priority as the receiver's expenses.

50 (d) The association shall periodically file with the
51 receiver or the liquidator of the insolvent insurer statements
52 of the covered claims paid by the association and estimates
53 of anticipated claims against the association which shall
54 preserve the rights of the association against the assets of
55 the insolvent insurer.

§33-26-12. Exhaustion of other coverage; deductible reimbursement.

1 (a) Any person having a claim under an insurance
2 policy, whether or not it is a policy issued by a member
3 insurer, and the claim under such other policy arises from
4 the same facts, injury, or loss that gave rise to the covered
5 claim against the association, shall first exhaust all coverage
6 provided by any such policy. Any amount payable on a
7 covered claim under this article shall be reduced by the full
8 applicable limits stated in such other insurance policy and
9 the association shall receive a full credit for such stated
10 limits or, where there are no applicable stated limits, the
11 claim shall be reduced by the total recovery.
12 Notwithstanding the foregoing, no person may be required
13 to exhaust any right under the policy of an insolvent insurer.

14 (1) A claim under a policy providing liability coverage to
15 a person who may be jointly and severally liable with or a joint
16 tortfeasor with the person covered under the policy of the
17 insolvent insurer that gives rise to the covered claim is

18 considered to be a claim arising from the same facts, injury or
19 loss that gave rise to the covered claim against the association.

20 (2) A claim under an insurance policy shall also include,
21 for purposes of this section:

22 (A) A claim against a health maintenance organization,
23 a hospital plan corporation or a professional health service
24 corporation; and

25 (B) Any amount payable by or on behalf of a self-
26 insurer.

27 (3) To the extent that the association's obligation is
28 reduced by the application of this section, the liability of the
29 person insured by the insolvent insurer's policy for the
30 claim shall be reduced in the same amount.

31 (b) Any person having a claim which may be recovered
32 under more than one Insurance Guaranty Association or its
33 equivalent shall seek recovery first from the association of
34 the place of residence of the insured except that if it is a first
35 party claim for damage to property with a permanent
36 location, he or she shall seek recovery first from the
37 association of the location of the property, and if it is a
38 workers' compensation claim, the person shall seek
39 recovery first from the association of the residence of the
40 claimant. Any recovery under this article shall be reduced
41 by the amount of the recovery from any other insurance
42 guaranty association or its equivalent.

43 (c) To the extent the association pays any deductible claim
44 for which the insurer would have been entitled to
45 reimbursement from the insured, the association is entitled to
46 the full amount of the reimbursement and available collateral
47 as provided under this subsection to the extent necessary to
48 reimburse the association. Reimbursements paid to the
49 association pursuant to this subsection may not be treated as
50 distributions or as early access payments. To the extent that the
51 association pays a deductible claim that is not reimbursed

52 either from collateral or by insured payments, or incurred
53 expenses in connection with large deductible policies that are
54 not reimbursed under this subsection, the association has an
55 exclusive cause of action against the insured, including the
56 right to enforce against the insured the rights of the insurer with
57 respect to any obligation of the insured to reimburse the insurer
58 for deductibles or pay claims within a deductible. Further, the
59 fund is vested with a first lien in any collateral provided by the
60 insured to the insolvent insurer to secure the insured's
61 performance, to the extent of claims paid by the association,
62 which lien can be perfected by notice to the liquidator. Nothing
63 in this subsection limits any rights of the association that may
64 otherwise exist under applicable law to obtain reimbursement
65 from insureds for claims payments made by the association
66 under policies of the insurer or for the association's related
67 expenses.

§33-26-13. Prevention of insolvencies.

1 To aid in the detection and prevention of insurer
2 insolvencies:

3 (1) The board of directors may, upon majority vote, make
4 recommendations to the commissioner on matters generally
5 related to improving or enhancing regulation for solvency.

6 (2) At the conclusion of any domestic insurer
7 insolvency in which the association was obligated to pay
8 covered claims, the board of directors may, upon majority
9 vote, prepare a report on the history and causes of the
10 insolvency, based on the information available to the
11 association and submit the report to the commissioner.

12 (3) Reports and recommendations provided under this
13 section may not be considered public documents subject to
14 disclosure under chapter twenty-nine-b of this code.

§33-26-14. Examination of association; financial report.

1 The association shall be subject to examination and
2 regulation by the commissioner. The board of directors shall
3 submit, not later than April 30 of each year, a financial
4 report for the preceding calendar year, in a form approved
5 by the commissioner.

§33-26-18. Stay of proceedings; reopening of default judgments.

1 (a) All proceedings in which the insolvent insurer is a
2 party or obligated to defend a party in any court in this state
3 shall, subject to waiver by the association in specific cases
4 involving covered claims, be stayed for six months and such
5 additional time as may be determined by the court from the
6 date the insolvency is determined to permit proper defense
7 by the association of all pending causes of action.

8 (b) The liquidator, receiver or statutory successor of an
9 insolvent insurer covered by this article shall permit access
10 by the association, or its authorized representative to such
11 of the insolvent insurer's records that are necessary for the
12 association in carrying out its functions under this article
13 with regard to covered claims. In addition, the liquidator,
14 receiver or statutory successor shall provide the association
15 or its representative with copies of such records upon the
16 request by the association and at the expense of the
17 association.

18 (c) As to any covered claims arising from a judgment
19 under any order, decision, verdict or finding based on the
20 default of the insolvent insurer or its wrongful failure to
21 defend an insured, the association either on its own behalf
22 or on behalf of such insured may apply to have such
23 judgment, order, decision, verdict or finding set aside by the
24 same court or administrator that made such judgment, order,
25 decision, verdict or finding and shall be permitted to defend
26 against such claim on the merits.

CHAPTER 133

**(Com. Sub. for H. B. 2619 - By Delegates Westfall, C.
Romine, White and Frich)**

[Passed April 7, 2017; in effect January 1, 2018.]

[Approved by the Governor on April 26, 2017.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §33-40B-1, §33-40B-2, §33-40B-3, §33-40B-4, §33-40B-5, §33-40B-6, §33-40B-7, §33-40B-8, §33-40B-9, §33-40B-10 and §33-40B-11, all relating to insurer risk management and solvency assessment; setting forth the purpose and scope of the article; defining terms; setting forth the requirement that insurers must maintain a risk management framework to assist the insurer with identifying, assessing, monitoring, managing and reporting on its material and relevant risks; setting forth and providing requirements for the own risk and assessment summary report; providing exemptions to the summary report requirements; providing confidentiality requirements related to the summary report; providing sanctions for failing to submit the summary report; providing for severability; and providing the effective date of this article.

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 33-40B-1, §33-40B-2, §33-40B-3, §33-40B-4, §33-40B-5, §33-40B-6, §33-40B-7, §33-40B-8, §33-40B-9, §33-40B-10 and §33-40B-11, all to read as follows:

**ARTICLE 40B. RISK MANAGEMENT AND OWN RISK
AND SOLVENCY ASSESSMENT ACT.**

§33-40B-1. Purpose and Scope.

1 (a) The purpose of this article is to provide requirements
2 for maintaining a risk management framework and
3 completing an own risk and solvency assessment (ORSA)
4 and provide guidance and instructions for filing an ORSA
5 summary report with the Insurance Commissioner of this
6 state.

7 (b) The requirements of this article apply to all insurers
8 domiciled in this state unless exempt pursuant to section six
9 of this article.

10 (c) The Legislature finds and declares that the ORSA
11 summary report shall contain confidential and sensitive
12 information related to an insurer or insurance group's
13 identification of risks material and relevant to the insurer or
14 insurance group filing the report. This information shall
15 include proprietary and trade-secret information that has the
16 potential for harm and competitive disadvantage to the
17 insurer or insurance group if the information is made public.
18 It is the intent of this Legislature that the ORSA summary
19 report shall be a confidential document filed with the
20 commissioner, that the ORSA summary report may be
21 shared only as stated herein and to assist the commissioner
22 in the performance of his or her duties, and that in no event
23 shall the ORSA summary report be subject to public
24 disclosure.

§33-40B-2. Definitions.

1 (a) "Commissioner" means the Insurance
2 Commissioner of the State of West Virginia, his or her
3 deputies or the insurance department, as appropriate.

4 (b) "Insurance group" means, for the purpose of
5 conducting an ORSA, those insurers and affiliates included
6 within an insurance holding company system as defined in
7 article twenty-seven of this chapter.

8 (c) "Insurer" has the same meaning as set forth in
9 section two, article one of this chapter, except that it does
10 not include agencies, authorities or instrumentalities of the

11 United States, its possessions and territories, the
12 Commonwealth of Puerto Rico, the District of Columbia or
13 a state or political subdivision of a state.

14 (d) “NAIC” means the National Association of
15 Insurance Commissioners.

16 (e) “Own risk and solvency assessment” or “ORSA”
17 means a confidential internal assessment, appropriate to the
18 nature, scale and complexity of an insurer or insurance
19 group, conducted by that insurer or insurance group of the
20 material and relevant risks associated with the insurer or
21 insurance group’s current business plan and the sufficiency
22 of capital resources to support those risks.

23 (f) “ORSA Guidance Manual” means the Own Risk and
24 Solvency Assessment Guidance Manual developed and
25 adopted by the NAIC and as amended from time to time. A
26 change in the ORSA Guidance Manual shall be effective on
27 the January 1 following the calendar year in which the
28 changes have been adopted by the NAIC.

29 (g) “ORSA summary report” means a confidential high-
30 level summary of an insurer or insurance group’s ORSA.

§33-40B-3. Risk Management Framework.

1 An insurer shall maintain a risk management framework
2 to assist the insurer with identifying, assessing, monitoring,
3 managing and reporting on its material and relevant risks.
4 This requirement may be satisfied if the insurance group of
5 which the insurer is a member maintains a risk management
6 framework applicable to the operations of the insurer.

§33-40B-4. ORSA Requirement.

1 Subject to section six of this article, an insurer, or the
2 insurance group of which the insurer is a member, shall
3 regularly conduct an ORSA consistent with a process
4 comparable to the ORSA Guidance Manual. The ORSA
5 shall be conducted no less than annually but also at any time

6 when there are significant changes to the risk profile of the
7 insurer or the insurance group of which the insurer is a
8 member.

§33-40B-5. ORSA Summary Report.

1 (a) Upon the commissioner's request, and no more than
2 once each year, an insurer shall submit to the commissioner
3 an ORSA summary report or any combination of reports
4 that together contain the information described in the ORSA
5 Guidance Manual, applicable to the insurer and/or, the
6 insurance group of which it is a member. Notwithstanding
7 any request from the commissioner, if the insurer is a
8 member of an insurance group, the insurer shall submit the
9 report(s) required by this subsection if the commissioner is
10 the lead state commissioner of the insurance group as
11 determined by the procedures within the Financial Analysis
12 Handbook adopted by the NAIC.

13 (b) The report(s) shall include a signature of the insurer
14 or insurance group's chief risk officer or other executive
15 having responsibility for the oversight of the insurer's
16 enterprise risk management process attesting to the best of
17 his or her belief and knowledge that the insurer applies the
18 enterprise risk management process described in the ORSA
19 summary report and that a copy of the report has been
20 provided to the insurer's board of directors or the
21 appropriate committee thereof.

22 (c) An insurer may comply with subsection (a) of this
23 section by providing the most recent and substantially
24 similar report(s) provided by the insurer or another member
25 of an insurance group of which the insurer is a member to
26 the commissioner of another state or to a supervisor or
27 regulator of a foreign jurisdiction, if that report provides
28 information that is comparable to the information described
29 in the ORSA Guidance Manual. Any report in a language
30 other than English must be accompanied by a translation of
31 that report into the English language.

§33-40B-6. Exemption.

1 (a) An insurer is exempt from the requirements of this
2 article, if:

3 (1) The insurer has annual direct written and unaffiliated
4 assumed premium, including international direct and
5 assumed premium but excluding premiums reinsured with
6 the Federal Crop Insurance Corporation and Federal Flood
7 Program, less than \$500 million; and

8 (2) The insurance group of which the insurer is a
9 member has annual direct written and unaffiliated assumed
10 premium including international direct and assumed
11 premium, but excluding premiums reinsured with the
12 Federal Crop Insurance Corporation and Federal Flood
13 Program, less than \$1 billion.

14 (b) If an insurer qualifies for exemption pursuant to
15 subdivision (1), subsection (a) of this section, but the
16 insurance group of which the insurer is a member does not
17 qualify for exemption pursuant to subdivision (2),
18 subsection (a) of this section, then the ORSA summary
19 report that may be required pursuant to section five shall
20 include every insurer within the insurance group. This
21 requirement may be satisfied by the submission of more
22 than one ORSA summary report for any combination of
23 insurers provided any combination of reports includes every
24 insurer within the insurance group.

25 (c) If an insurer does not qualify for exemption pursuant
26 to subdivision (1), subsection (a) of this section, but the
27 insurance group of which it is a member qualifies for
28 exemption pursuant to subdivision (2), subsection (a) of this
29 section, then the only ORSA summary report that may be
30 required pursuant to section five of this article is the report
31 applicable to that insurer.

32 (d) An insurer that does not qualify for exemption
33 pursuant to subsection (a) of this section may apply to the
34 commissioner for a waiver from the requirements of this

35 article based upon unique circumstances. In deciding
36 whether to grant the insurer's request for waiver, the
37 commissioner may consider the type and volume of
38 business written, ownership and organizational structure,
39 and any other factor the commissioner considers relevant to
40 the insurer or insurance group of which the insurer is a
41 member. If the insurer is part of an insurance group with
42 insurers domiciled in more than one state, the commissioner
43 shall coordinate with the lead state commissioner and with
44 the other domiciliary commissioners in considering whether
45 to grant the insurer's request for a waiver.

46 (e) Notwithstanding the exemptions stated in this
47 section:

48 (1) The commissioner may require that an insurer
49 maintain a risk management framework, conduct an ORSA
50 and file an ORSA summary report based on unique
51 circumstances including, but not limited to, the type and
52 volume of business written, ownership and organizational
53 structure, federal agency requests, and international
54 supervisor requests; and

55 (2) The commissioner may require that an insurer
56 maintain a risk management framework, conduct an ORSA
57 and file an ORSA summary report if the insurer has risk-
58 based capital for company action level event as set forth in
59 section three, article forty of this chapter, meets one or more
60 of the standards of an insurer considered to be in hazardous
61 financial condition as defined in section three-a, article
62 thirty-four of this chapter, or otherwise exhibits qualities of
63 a troubled insurer as determined by the commissioner.

64 (f) If an insurer that qualifies for an exemption pursuant
65 to subsection (a) of this section subsequently no longer
66 qualifies for that exemption due to changes in premium as
67 reflected in the insurer's most recent annual statement or in
68 the most recent annual statements of the insurers within the
69 insurance group of which the insurer is a member, the

70 insurer has one year following the year the threshold is
71 exceeded to comply with the requirements of this article.

§33-40B-7. Contents of ORSA Summary Report.

1 (a) The ORSA summary report shall be prepared
2 consistent with the ORSA Guidance Manual, subject to the
3 requirements of subsection (b) of this section.
4 Documentation and supporting information shall be
5 maintained and made available upon examination or upon
6 request of the commissioner.

7 (b) The review of the ORSA summary report, and any
8 additional requests for information, shall be made using
9 similar procedures currently used in the analysis and
10 examination of multistate or global insurers and insurance
11 groups.

§33-40B-8. Confidentiality.

1 (a) Documents, materials or other information,
2 including the ORSA summary report, in the possession of
3 or control of the Insurance Commissioner that are obtained
4 by, created by or disclosed to the commissioner or any other
5 person under this article, is recognized by this state as being
6 proprietary and to contain trade secrets. All such
7 documents, materials or other information shall be
8 confidential by law and privileged, shall not be subject to
9 article one, chapter twenty-nine-b of this code, shall not be
10 subject to subpoena and shall not be subject to discovery or
11 admissible in evidence in any private civil action. However,
12 the commissioner may use the documents, materials or other
13 information in the furtherance of any regulatory or legal
14 action brought as a part of the commissioner's official
15 duties. The commissioner shall not otherwise make the
16 documents, materials or other information public without
17 the prior written consent of the insurer.

18 (b) Neither the commissioner nor any person who
19 received documents, materials or other ORSA-related
20 information, through examination or otherwise, while

21 acting under the authority of the commissioner or with
22 whom the documents, materials or other information are
23 shared pursuant to this article shall be permitted or required
24 to testify in any private civil action concerning any
25 confidential documents, materials, or information subject to
26 subsection (a) of this section.

27 (c) In order to assist in the performance of the
28 commissioner's regulatory duties, the commissioner:

29 (1) May, upon request, share documents, materials or
30 other ORSA-related information, including the confidential
31 and privileged documents, materials or information subject
32 to subsection (a) of this section, including proprietary and
33 trade-secret documents and materials with other state,
34 federal and international financial regulatory agencies,
35 including members of any supervisory college as defined in
36 section six-a, article twenty-seven of this chapter, with the
37 NAIC and with any third-party consultants designated by
38 the commissioner: *Provided*, That the recipient agrees in
39 writing to maintain the confidentiality and privileged status
40 of the ORSA-related documents, materials or other
41 information and has verified in writing the legal authority to
42 maintain confidentiality;

43 (2) May receive documents, materials or other ORSA-
44 related information, including otherwise confidential and
45 privileged documents, materials or information, including
46 proprietary and trade-secret information or documents, from
47 regulatory officials of other foreign or domestic
48 jurisdictions, including members of any supervisory college
49 as defined in section six-a, article twenty-seven of this
50 chapter, and from the NAIC, and shall maintain as
51 confidential or privileged any documents, materials or
52 information received with notice or the understanding that
53 it is confidential or privileged under the laws of the
54 jurisdiction that is the source of the document, material or
55 information;

56 (3) Shall enter into a written agreement with the NAIC
57 or a third-party consultant governing sharing and use of
58 information provided pursuant to this article, consistent
59 with this subsection that shall:

60 (A) Specify procedures and protocols regarding the
61 confidentiality and security of information shared with the
62 NAIC or a third-party consultant pursuant to this article,
63 including procedures and protocols for sharing by the NAIC
64 with other state regulators from states in which the
65 insurance group has domiciled insurers. The agreement
66 shall provide that the recipient agrees in writing to maintain
67 the confidentiality and privileged status of the ORSA-
68 related documents, materials or other information and has
69 verified in writing the legal authority to maintain
70 confidentiality;

71 (B) Specify that ownership of information shared with
72 the NAIC or a third-party consultant pursuant to this article
73 remains with the commissioner and the NAIC's or a third-
74 party consultant's use of the information is subject to the
75 direction of the commissioner;

76 (C) Prohibit the NAIC or third-party consultant from
77 storing the information shared pursuant to this article in a
78 permanent database after the underlying analysis is
79 completed;

80 (D) Require prompt notice to be given to an insurer
81 whose confidential information in the possession of the
82 NAIC or a third-party consultant pursuant to this article is
83 subject to a request or subpoena to the NAIC or a third-party
84 consultant for disclosure or production;

85 (E) Require the NAIC or a third-party consultant to
86 consent to intervention by an insurer in any judicial or
87 administrative action in which the NAIC or a third-party
88 consultant may be required to disclose confidential
89 information about the insurer shared with the NAIC or a
90 third-party consultant pursuant to this article; and

91 (F) If there is an agreement involving a third-party
92 consultant, provide for the insurer's written consent.

93 (d) The sharing of information and documents by the
94 commissioner pursuant to this article shall not constitute a
95 delegation of regulatory authority or rulemaking, and the
96 commissioner is solely responsible for the administration,
97 execution and enforcement of the provisions of this article.

98 (e) No waiver of any applicable privilege or claim of
99 confidentiality in the documents, proprietary and trade-
100 secret materials or other ORSA-related information shall
101 occur as a result of disclosure of such ORSA-related
102 information or documents to the commissioner under this
103 section or as a result of sharing as authorized in this article.

104 (f) Documents, materials or other information in the
105 possession or control of the NAIC or a third-party
106 consultant pursuant to this article shall be confidential by
107 law and privileged, shall not be subject to article one,
108 chapter twenty-nine-b of this code, shall not be subject to
109 subpoena and shall not be subject to discovery or admissible
110 in evidence in any private civil action.

§33-40B-9. Sanctions.

1 Any insurer failing, without just cause, to timely file the
2 ORSA summary report as required in this article shall, after
3 notice and hearing, pay a penalty of \$2,500 for each day's
4 delay, to be recovered by the commissioner and the penalty
5 so recovered shall be paid into the General Revenue Fund
6 of this state. The maximum penalty under this section is
7 \$75,000. The commissioner may reduce the penalty if the
8 insurer demonstrates to the commissioner that the
9 imposition of the penalty would constitute a financial
10 hardship to the insurer.

§33-40B-10. Severability.

1 The provisions of this article are severable and
2 accordingly, if any part of this article is adjudged to be

3 unconstitutional or invalid, that determination does not
4 affect the continuing validity of the remaining provisions of
5 this article.

§33-40B-11. Effective Date.

1 The requirements of this article shall become effective
2 on January 1, 2018. The first filing of the ORSA summary
3 report shall be in 2018 pursuant to section five of this article.

CHAPTER 134

**(Com. Sub. for S. B. 522 - By Senators Gaunch,
Ferns, Blair, Stollings and Takubo)**

[Passed April 4, 2017; in effect ninety days from passage.]
[Approved by the Governor on April 20, 2017.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §33-51-1, §33-51-2, §33-51-3, §33-51-4, §33-51-5, §33-51-6, §33-51-7 and §33-51-8, all relating to pharmacy audits; defining terms; setting forth procedures and requirements for pharmacy audits; stating applicable review process for final audit report; setting forth limitations concerning applicability of provisions of the article; requiring registration for certain pharmacy benefits managers and auditing entities; imposing registration fee; imposing application requirements; and providing rule-making authority to the Insurance Commissioner.

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 §33-51-1, §33-51-2, §33-51-3, §33-51-4, §33-51-5, §33-51-6, §33-51-7 and §33-51-8, all to read as follows:

ARTICLE 51. PHARMACY AUDIT INTEGRITY ACT.**§33-51-1. Short title.**

1 This article may be cited and known as the Pharmacy
2 Audit Integrity Act.

§33-51-2. Scope.

1 This article covers any audit of the records of a
2 pharmacy conducted by a managed care company, third-
3 party payer, pharmacy benefits manager or an entity that
4 represents a covered entity.

§33-51-3. Definitions.

1 For purposes of this article:

2 “Auditing entity” means a person or company that
3 performs a pharmacy audit, including a covered entity,
4 pharmacy benefits manager, managed care organization or
5 third-party administrator.

6 “Business day” means any day of the week excluding
7 Saturday, Sunday and any legal holiday as set forth in
8 section one, article two, chapter two of this code.

9 “Claim level information” means data submitted by a
10 pharmacy or required by a payer or claims processor to
11 adjudicate a claim.

12 “Covered entity” means a contract holder or policy
13 holder providing pharmacy benefits to a covered individual
14 under a health insurance policy pursuant to a contract
15 administered by a pharmacy benefits manager.

16 “Covered individual” means a member, participant,
17 enrollee or beneficiary of a covered entity who is provided
18 health coverage by a covered entity, including a dependent
19 or other person provided health coverage through the policy
20 or contract of a covered individual.

21 “Extrapolation” means the practice of inferring a
22 frequency of dollar amount of overpayments, underpayments,
23 nonvalid claims or other errors on any portion of claims
24 submitted, based on the frequency of dollar amount of
25 overpayments, underpayments, nonvalid claims or other errors
26 actually measured in a sample of claims.

27 “Health care provider” has the same meaning as defined
28 in section two, article forty-one of this chapter.

29 “Health insurance policy” means a policy, subscriber
30 contract, certificate or plan that provides prescription drug
31 coverage. The term includes both comprehensive and
32 limited benefit health insurance policies.

33 “Insurance commissioner” or “commissioner” has the
34 same meaning as defined in section five, article one of this
35 chapter.

36 “Network” means a pharmacy or group of pharmacies
37 that agree to provide prescription services to covered
38 individuals on behalf of a covered entity or group of covered
39 entities in exchange for payment for its services by a
40 pharmacy benefits manager or pharmacy services
41 administration organization. The term includes a pharmacy
42 that generally dispenses outpatient prescriptions to covered
43 individuals or dispenses particular types of prescriptions,
44 provides pharmacy services to particular types of covered
45 individuals or dispenses prescriptions in particular health
46 care settings, including networks of specialty, institutional
47 or long-term care facilities.

48 “Nonproprietary drug” means a drug containing any
49 quantity of any controlled substance or any drug which is
50 required by any applicable federal or state law to be
51 dispensed only by prescription.

52 “Pharmacist” means an individual licensed by the West
53 Virginia Board of Pharmacy to engage in the practice of
54 pharmacy.

55 “Pharmacy” means any place within this state where
56 drugs are dispensed and pharmacist care is provided.

57 “Pharmacy audit” means an audit, conducted on-site by
58 or on behalf of an auditing entity of any records of a
59 pharmacy for prescription or nonproprietary drugs
60 dispensed by a pharmacy to a covered individual.

61 “Pharmacy benefits management” means the
62 performance of any of the following:

63 (1) The procurement of prescription drugs at a
64 negotiated contracted rate for dispensation within the State
65 of West Virginia to covered individuals;

66 (2) The administration or management of prescription
67 drug benefits provided by a covered entity for the benefit of
68 covered individuals;

69 (3) The administration of pharmacy benefits, including:

70 (A) Operating a mail-service pharmacy;

71 (B) Claims processing;

72 (C) Managing a retail pharmacy network;

73 (D) Paying claims to a pharmacy for prescription drugs
74 dispensed to covered individuals via retail or mail-order
75 pharmacy;

76 (E) Developing and managing a clinical formulary
77 including utilization management and quality assurance
78 programs;

79 (F) Rebate contracting administration; and

80 (G) Managing a patient compliance, therapeutic
81 intervention and generic substitution program.

82 “Pharmacy benefits manager” means a person, business
83 or other entity that performs pharmacy benefits
84 management for covered entities;

85 “Pharmacy record” means any record stored
86 electronically or as a hard copy by a pharmacy that relates
87 to the provision of prescription or nonproprietary drugs or
88 pharmacy services or other component of pharmacist care
89 that is included in the practice of pharmacy.

90 “Pharmacy services administration organization” means
91 any entity that contracts with a pharmacy to assist with
92 third-party payer interactions and that may provide a variety
93 of other administrative services, including contracting with
94 pharmacy benefits managers on behalf of pharmacies and
95 managing pharmacies’ claims payments from third-party
96 payers.

§33-51-4. Procedures for conducting pharmacy audits.

1 (a) An entity conducting a pharmacy audit under this
2 article shall conform to the following rules:

3 (1) Except as otherwise provided by federal or state law,
4 an auditing entity conducting a pharmacy audit may have
5 access to a pharmacy’s previous audit report only if the
6 report was prepared by that auditing entity.

7 (2) Information collected during a pharmacy audit shall
8 be confidential by law, except that the auditing entity
9 conducting the pharmacy audit may share the information
10 with the pharmacy benefits manager and with the covered
11 entity for which a pharmacy audit is being conducted and
12 with any regulatory agencies and law-enforcement agencies
13 as required by law.

14 (3) The auditing entity conducting a pharmacy audit
15 may not compensate an employee or contractor with which
16 an auditing entity contracts to conduct a pharmacy audit
17 solely based on the amount claimed or the actual amount
18 recouped by the pharmacy being audited.

19 (4) The auditing entity shall provide the pharmacy being
20 audited with at least fourteen calendar days' prior written
21 notice before conducting a pharmacy audit unless both
22 parties agree otherwise. If a delay of the audit is requested
23 by the pharmacy, the pharmacy shall provide notice to the
24 pharmacy benefits manager within seventy-two hours of
25 receiving notice of the audit.

26 (5) The auditing entity may not initiate or schedule a
27 pharmacy audit without the express consent of the
28 pharmacy during the first five business days of any month
29 for any pharmacy that averages in excess of six hundred
30 prescriptions filled per week.

31 (6) The auditing entity shall accept paper or electronic
32 signature logs that document the delivery of prescription or
33 nonproprietary drugs and pharmacist services to a health
34 plan beneficiary or the beneficiary's caregiver or guardian.

35 (7) Prior to leaving the pharmacy after the on-site
36 portion of the pharmacy audit, the auditing entity shall
37 provide to the representative of the pharmacy a complete list
38 of pharmacy records reviewed.

39 (8) A pharmacy audit that involves clinical judgment
40 shall be conducted by, or in consultation with, a pharmacist.

41 (9) A pharmacy audit may not cover:

42 (A) A period of more than twenty-four months after the
43 date a claim was submitted by the pharmacy to the
44 pharmacy benefits manager or covered entity unless a
45 longer period is required by law; or

46 (B) More than two hundred fifty prescriptions:
47 *Provided*, That a refill does not constitute a separate
48 prescription for the purposes of this subparagraph.

49 (10) The auditing entity may not use extrapolation to
50 calculate penalties or amounts to be charged back or

51 recouped unless otherwise required by federal requirements
52 or federal plans.

53 (11) The auditing entity may not include dispensing fees
54 in the calculation of overpayments unless a prescription is
55 considered a misfill. As used in this subdivision, "misfill"
56 means a prescription that was not dispensed, a prescription
57 error, a prescription where the prescriber denied the
58 authorization request or a prescription where an extra
59 dispensing fee was charged.

60 (12) A pharmacy may do any of the following when a
61 pharmacy audit is performed:

62 (A) A pharmacy may use authentic and verifiable
63 statements or records, including, but not limited to,
64 medication administration records of a nursing home,
65 assisted living facility, hospital or health care provider with
66 prescriptive authority, to validate the pharmacy record and
67 delivery; and

68 (B) A pharmacy may use any valid prescription,
69 including but not limited to medication administration
70 records, facsimiles, electronic prescriptions, electronically
71 stored images of prescriptions, electronically created
72 annotations or documented telephone calls from the
73 prescribing health care provider or practitioner's agent, to
74 validate claims in connection with prescriptions or changes
75 in prescriptions or refills of prescription or nonproprietary
76 drugs. Documentation of an oral prescription order that has
77 been verified by the prescribing health care provider shall
78 meet the provisions of this subparagraph for the initial audit
79 review.

80 (b) An auditing entity shall provide the pharmacy with
81 a written report of the pharmacy audit and comply with the
82 following requirements:

83 (1) A preliminary pharmacy audit report must be
84 delivered to the pharmacy or its corporate parent within

85 sixty calendar days after the completion of the pharmacy
86 audit. The preliminary report shall include contact
87 information for the auditing entity that conducted the
88 pharmacy audit and an appropriate and accessible point of
89 contact, including telephone number, facsimile number, e-
90 mail address and auditing firm name and address so that
91 audit results, procedures and any discrepancies can be
92 reviewed. The preliminary pharmacy audit report shall
93 include, but not be limited to, claim level information for
94 any discrepancy found and total dollar amounts of claims
95 subject to recovery.

96 (2) A pharmacy shall be allowed at least thirty calendar
97 days following receipt of the preliminary audit report to
98 respond to the findings of the preliminary report.

99 (3) A final pharmacy audit report shall be delivered to
100 the pharmacy or its corporate parent no later than ninety
101 calendar days after completion of the pharmacy audit. The
102 final pharmacy audit report shall include any response
103 provided to the auditing entity by the pharmacy or corporate
104 parent and shall consider and address such responses.

105 (4) The final audit report may be delivered
106 electronically.

107 (5) A pharmacy may not be subject to a charge-back or
108 recoupment for a clerical or recordkeeping error in a
109 required document or record, including a typographical or
110 computer error, unless the error resulted in overpayment to
111 the pharmacy.

112 (6) An auditing entity conducting a pharmacy audit or
113 person acting on behalf of the entity may not charge-back,
114 recoup or collect penalties from a pharmacy until the time
115 to file an appeal of a final pharmacy audit report has passed
116 or the appeals process has been exhausted, whichever is
117 later.

118 (7) If an identified discrepancy in a pharmacy audit
119 exceeds \$25,000, future payments to the pharmacy in excess
120 of that amount may be withheld pending adjudication of an
121 appeal.

122 (8) No interest shall accrue for any party during the
123 audit period, beginning with the notice of the pharmacy
124 audit and ending with the conclusion of the appeals process.

125 (9) Except for Medicare claims, approval of drug,
126 prescriber or patient eligibility upon adjudication of a claim
127 shall not be reversed unless the pharmacy or pharmacist
128 obtained adjudication by fraud or misrepresentation of
129 claims elements.

§33-51-5. Appeals process.

1 A pharmacy may appeal a final audit report in
2 accordance with the procedures established by the entity
3 conducting the pharmacy audit.

§33-51-6. Limitations.

1 (a) The provisions of this article do not apply to an
2 investigative audit of pharmacy records when:

3 (1) Fraud, waste, abuse or other intentional misconduct
4 is indicated by physical review or review of claims data or
5 statements; or

6 (2) Other investigative methods indicate a pharmacy is
7 or has been engaged in criminal wrongdoing, fraud or other
8 intentional or willful misrepresentation.

9 (b) This article does not supersede any audit
10 requirements established by federal law.

§33-51-7. Pharmacy benefits manager and auditing entity registration.

1 (a) Prior to conducting business in the State of West
2 Virginia, except as provided in subsection (d) of this

3 section, a pharmacy benefits manager or auditing entity
4 shall register with the Insurance Commissioner. The
5 commissioner shall make an application form available on
6 its publicly accessible Internet website that includes a
7 request for the following information:

8 (1) The identity, address and telephone number of the
9 applicant;

10 (2) The name, business address and telephone number
11 of the contact person for the applicant; and

12 (3) When applicable, the federal employer identification
13 number for the applicant.

14 (b) *Term and fee.* —

15 (1) The term of registration shall be two years from the
16 date of issuance.

17 (2) The Insurance Commissioner shall determine the
18 amount of the initial application fee and the renewal
19 application fee for the registration. Such fee shall be
20 submitted by the applicant with an application for
21 registration. An initial application fee shall be
22 nonrefundable. A renewal application fee shall be returned
23 if the renewal of the registration is not granted.

24 (3) The amount of the initial application fees and
25 renewal application fees shall be sufficient to fund the
26 Insurance Commissioner's duties in relation to its
27 responsibilities under this article, but a single fee may not
28 exceed \$1,000.

29 (c) *Registration.* —

30 (1) The Insurance Commissioner shall issue a
31 registration, as appropriate, to an applicant when the
32 Insurance Commissioner determines that the applicant has
33 submitted a completed application and paid the required
34 registration fee.

35 (2) The registration may be in paper or electronic form,
36 shall be nontransferable and shall prominently list the
37 expiration date of the registration.

38 (d) *Duplicate registration.* —

39 (1) A licensed insurer or other entity licensed by the
40 commissioner pursuant to this chapter shall comply with the
41 standards and procedures of this article but shall not be
42 required to separately register as either a pharmacy benefits
43 manager or auditing entity.

44 (2) A pharmacy benefits manager that is registered as a
45 third-party administrator pursuant to article forty-six of this
46 chapter shall comply with the standards and procedures of
47 this article but shall not be required to register separately as
48 an auditing entity.

§33-51-8. Commissioner authorized to propose rules.

1 The Insurance Commissioner may propose rules for
2 legislative approval in accordance with article three, chapter
3 twenty-nine-a of this code that are necessary to effectuate
4 the provisions of this article.

CHAPTER 135

**(Com. Sub. for S. B. 419 - By Senators Carmichael
(Mr. President) and Prezioso)
[By Request of the Executive]**

[Passed April 7, 2017; in effect ninety days from passage.]
[Approved by the Governor on April 25, 2017.]

AN ACT to amend and reenact §21-3-7 of the Code of West
Virginia, 1931, as amended; to amend and reenact §21-3C-11
of said code; to amend and reenact §21-3D-8 of said code; to

amend and reenact §21-5-5c of said code; to amend and reenact §21-9-9 of said code; to amend and reenact §21-10-4 of said code; to amend and reenact §21-11-17 of said code; to amend and reenact §21-14-9 of said code; to amend and reenact §21-15-7 of said code; to amend and reenact §21-16-10 of said code; to amend and reenact §47-1-8, §47-1-20, §47-1-21 and §47-1-22 of said code; and to amend and reenact §47-1A-10 and §47-1A-14 of said code, all relating to creating special revenue funding sources for the Division of Labor to meet its statutory obligations; establishing Steam Boiler Fund; establishing HVAC Fund; establishing Plumbing Work Fund; establishing Psychophysiological Examiners Fund; establishing Bedding and Upholstery Fund; removing requirement that fees from issuing licenses to administer psychophysiological detection of deception, lie detector or similar examinations be deposited in the General Revenue Fund; authorizing the commissioner to charge fees for the registration of service persons and service agencies, and the registration of businesses that use weighing and measuring devices for commercial purposes and directing such fees to the Weights and Measures Fund; authorizing the commissioner to promulgate emergency legislative rules to administer and enforce fees on service persons and service agencies and businesses using weighing and measuring devices; directing civil penalty fees to the Weights and Measures Fund; removing requirement that the commissioner approve applications for sterilization permits held in states other than West Virginia only after personal inspection of such sterilizer or disinfectant; increasing fees for the issuance of certificates of operation of elevators; establishing late fees; establishing reissuance fee for revoked or expired permits; increasing registration fees for manufacturers of bedding, upholsters and renovators; increasing permitting fees for sterilizers; authorizing the commissioner to promulgate legislative rules; and making general edits and clarifications.

Be it enacted by the Legislature of West Virginia:

That §21-3-7 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §21-3C-11 of said code be

amended and reenacted; that §21-3D-8 of said code be amended and reenacted; that §21-5-5c of said code be amended and reenacted; that §21-9-9 of said code be amended and reenacted; that §21-10-4 of said code be amended and reenacted; that §21-11-17 of said code be amended and reenacted; that §21-14-9 of said code be amended and reenacted; that §21-15-7 of said code be amended and reenacted; that §21-16-10 of said code be amended and reenacted; that §47-1-8, §47-1-20, §47-1-21 and §47-1-22 of said code be amended and reenacted; and that §47-1A-10 and §47-1A-14 of said code be amended and reenacted, all to read as follows:

CHAPTER 21. LABOR.

ARTICLE 3. SAFETY AND WELFARE OF EMPLOYEES.

§21-3-7. Regulation of operation of steam boilers.

1 (a) Any person owning or operating a steam boiler
2 carrying more than fifteen pounds pressure per square inch
3 (except boilers on railroad locomotives subject to inspection
4 under federal laws; portable boilers used for agricultural
5 purposes; boilers on automobiles; boilers of steam fire
6 engines brought into the state for temporary use in times of
7 emergency for the purpose of checking conflagrations;
8 boilers used in private residences which are used solely for
9 residential purposes; any sectional boilers; small portable
10 boilers commonly used in the oil and gas industry about
11 their wells and tool houses; and boilers under the
12 jurisdiction of the United States) in this state shall first
13 obtain a permit to operate a steam boiler from the
14 Commissioner of Labor, or from an inspector working
15 under his or her jurisdiction.

16 (b) Applications for permits to operate a steam boiler
17 must be accompanied by a sworn statement made by the
18 owner or operator of such boiler, setting forth the condition
19 of the boiler and its appurtenances at which time, if the facts
20 disclosed by such statement meet the safety requirements
21 established under this article, the Commissioner of Labor
22 shall issue a temporary permit, which shall be valid until

23 such boiler has been inspected by a boiler inspector
24 authorized by the state Commissioner of Labor; thereupon,
25 if the boiler meets the safety requirements established under
26 this article, the Commissioner of Labor shall issue an annual
27 permit to operate such steam boiler: *Provided*, That boilers
28 which are insured by an insurance company operating in this
29 state and which are inspected by such insurance company's
30 boiler inspector shall not be subject to inspection by the state
31 Division of Labor, during any twelve-month period during
32 which an inspection is made by the insurance company's
33 boiler inspector.

34 (c) The Commissioner of Labor or state boiler inspector
35 shall have the authority to inspect steam boilers in this state.
36 To carry out the provisions of this section, the
37 Commissioner of Labor shall prescribe rules and regulations
38 under which boilers may be constructed and operated,
39 according to their class. The Commissioner of Labor may
40 revoke any permit to operate a steam boiler if the rules
41 prescribed by the Commissioner of Labor, or his or her
42 authorized representative, are violated or if a condition shall
43 prevail which is hazardous to the life and health of persons
44 operating or employed at or around the boiler. Any person
45 or corporation who shall operate a steam boiler for which a
46 permit is necessary under the provisions of this section,
47 without first obtaining such permit to operate a steam boiler,
48 is guilty of a misdemeanor, and, upon conviction thereof,
49 shall be fined not less than \$100 nor more than \$500. Every
50 day a steam boiler requiring a permit to operate is operated
51 without the permit is a separate offense.

52 (d) The commissioner shall charge an annual fee to be
53 established by legislative rule for the inspection of boilers
54 by the division, for the processing of inspection reports from
55 insurance companies, for the issuing of annual permits to
56 operate boilers and for the commissioning of insurance
57 company boiler inspectors. The commissioner shall propose
58 rules for legislative approval, in accordance with article
59 three, chapter twenty-nine-a of this code for the

60 implementation and enforcement of this section. No fee may
61 be charged for the inspection of boilers used on mobile
62 equipment or vehicles used for occasional entertainment or
63 display purposes.

64 (e) All fees paid pursuant to this section shall be paid to
65 the Commissioner of Labor and deposited in an
66 appropriated special revenue account hereby created in the
67 State Treasury to be known as the Steam Boiler Fund and
68 expended for the implementation and enforcement of this
69 section. Amounts collected which are found from time to
70 time to exceed funds needed for the purposes set forth in this
71 section may be utilized by the commissioner as needed to
72 meet the division's funding obligations.

ARTICLE 3C. ELEVATOR SAFETY.

§21-3C-11. Disposition of fees; legislative rules.

1 (a) The division shall propose rules for legislative
2 approval in accordance with article three, chapter twenty-
3 nine-a of this code, for the implementation and enforcement
4 of the provisions of this article, which shall provide:

5 (1) Standards, qualifications and procedures for
6 submitting applications, taking examinations and issuing
7 and renewing licenses, certificates of competency and
8 certificates of operation of the three licensure classifications
9 set forth in section ten-a of this article;

10 (2) For the renewal of a license, even if the licensee is
11 unemployed or not working in the industry: *Provided*, That
12 to engage or offer to engage in the business of erecting,
13 constructing, installing, altering, servicing, repairing or
14 maintaining an elevator or related conveyance covered by
15 this article, the licensee shall be a contractor, or be
16 employed by a contractor licensed pursuant to section six,
17 article eleven, chapter twenty-one of the code;

18 (3) Qualifications and supervision requirements for
19 elevator apprentices;

20 (4) Provisions for the granting of licenses without
21 examination, to applicants who present satisfactory
22 evidence of having the expertise required to perform work
23 as defined in this article and who apply for licensure on or
24 before July 1, 2010: *Provided*, That if a license issued under
25 the authority of this subsection subsequently lapses, the
26 applicant may, at the discretion of the commissioner, be
27 subject to all licensure requirements, including the
28 examination;

29 (5) Provisions for the granting of emergency licenses in
30 the event of an emergency due to disaster, act of God or
31 work stoppage when the number of persons in the state
32 holding licenses issued pursuant to this article is insufficient
33 to cope with the emergency;

34 (6) Provisions for the granting of temporary licenses in
35 the event that there are no elevator mechanics available to
36 engage in the work of an elevator mechanic as defined by
37 this article;

38 (7) Continuing education requirements;

39 (8) Procedures for investigating complaints and
40 revoking or suspending licenses, certificates of competency
41 and certificates of operation, including appeal procedures;

42 (9) Fees for testing, issuance and renewal of licenses,
43 certificates of competency and certificates of operation, and
44 other costs necessary to administer the provisions of this
45 article;

46 (10) Enforcement procedures; and

47 (11) Any other rules necessary to effectuate the
48 purposes of this article.

49 (b) The rules proposed for promulgation pursuant to
50 subsection (a) of this section shall establish the amount of
51 any fee authorized pursuant to the provisions of this article:

52 *Provided*, That in no event may the fees established for the
53 issuance of certificates of operation exceed \$90.

54 (c) All fees paid pursuant to this article shall be paid to
55 the Commissioner of Labor and deposited in an
56 appropriated special revenue account hereby created in the
57 State Treasury known as the Elevator Safety Fund and
58 expended for the implementation and enforcement of this
59 article. Amounts collected which are found from time to
60 time to exceed funds needed for the purposes set forth in this
61 article may be utilized by the commissioner as needed to
62 meet the division's funding obligations.

63 (d) The division may enter into agreements with
64 counties and municipalities whereby such counties and
65 municipalities be permitted to retain the inspection fees
66 collected to support the enforcement activities at the local
67 level.

68 (e) The commissioner or his or her authorized
69 representatives may consult with engineering authorities
70 and organizations concerned with standard safety codes,
71 rules and regulations governing the operation, maintenance,
72 servicing, construction, alteration, installation and the
73 qualifications which are adequate, reasonable and necessary
74 for the elevator mechanic and inspector.

ARTICLE 3D. CRANE OPERATOR CERTIFICATION ACT.

§21-3D-8. Crane Operator Certification Fund; fees; disposition of funds.

1 (a) All fees paid pursuant to this article shall be paid to
2 the Commissioner of Labor and deposited in an
3 appropriated special revenue account known as the Crane
4 Operator Certification Fund in the State Treasury and
5 expended for the implementation and enforcement of this
6 article. Amounts collected which are found from time to
7 time to exceed the funds needed for purposes set forth in this

8 article may be utilized by the commissioner as needed to
9 meet the division's funding obligations.

10 (b) The commissioner may set reasonable application
11 fees for the issuance or renewal of certificates and other
12 services associated with crane operator certification.

ARTICLE 5. WAGE PAYMENT AND COLLECTION.

§21-5-5c. License required for psychophysiological detection of deception examiners; qualifications; promulgation of rules governing administration of psychophysiological detection of deception examinations.

1 (a) No person, firm or corporation shall administer a
2 psychophysiological detection of deception examination, lie
3 detector or other similar examination utilizing mechanical
4 or electronic measures of physiological reactions to evaluate
5 truthfulness without holding a current valid license to do so
6 as issued by the Commissioner of Labor. No examination
7 shall be administered by a licensed corporation except by an
8 officer or employee thereof who is also licensed.

9 (b) A person is qualified to receive a license as an
10 examiner if he or she:

11 (1) Is at least twenty-one years of age;

12 (2) Is a citizen of the United States;

13 (3) Has not been convicted of a misdemeanor involving
14 moral turpitude or a felony;

15 (4) Has not been released or discharged with other than
16 honorable conditions from any of the armed services of the
17 United States or that of any other nation;

18 (5) Has passed an examination conducted by the
19 Commissioner of Labor or under his or her supervision to
20 determine his or her competency to obtain a license to
21 practice as an examiner;

22 (6) Has satisfactorily completed not less than six months
23 of internship training; and

24 (7) Has met any other qualifications of education or
25 training established by the Commissioner of Labor in his or
26 her sole discretion which qualifications are to be at least as
27 stringent as those recommended by the American Polygraph
28 Association.

29 (c) The Commissioner of Labor may designate and
30 administer any test he or she considers appropriate to
31 those persons applying for a license to administer
32 psychophysiological detection of deception, lie detector
33 or similar examination. The test shall be designed to
34 ensure that the applicant is thoroughly familiar with the
35 code of ethics of the American Polygraph Association
36 and has been trained in accordance with association rules.
37 The test must also include a rigorous examination of the
38 applicant's knowledge of and familiarity with all aspects
39 of operating psychophysiological detection of deception
40 equipment and administering psychophysiological
41 detection of deception examinations.

42 (d) The license to administer psychophysiological
43 detection of deception, lie detector or similar examinations
44 to any person shall be issued for a period of one year. It may
45 be reissued from year to year. The licenses to be issued are:

46 (1) "Class I license" which authorizes an individual to
47 administer psychophysiological detection of deception
48 examinations for all purposes which are permissible under
49 the provisions of this article and other applicable laws and
50 rules.

51 (2) "Class II license" which authorizes an individual
52 who is a full-time employee of a law-enforcement agency to
53 administer psychophysiological detection of deception
54 examinations to its employees or prospective employees
55 only.

56 (e) The Commissioner of Labor shall charge an annual
57 fee to be established by legislative rule. All fees paid
58 pursuant to this section shall be paid to the Commissioner
59 of Labor and deposited in an appropriated special revenue
60 account hereby created in the State Treasury to be known as
61 the Psychophysiological Examiners Fund and expended for
62 the implementation and enforcement of this section.
63 Amounts collected which are found from time to time to
64 exceed funds needed for the purposes set forth in this section
65 may be utilized by the commissioner as needed to meet the
66 division's funding obligations. In addition to any other
67 information required, an application for a license shall
68 include the applicant's Social Security number.

69 (f) The Commissioner of Labor shall propose rules for
70 legislative approval in accordance with article three, chapter
71 twenty-nine-a of this code governing the administration of
72 psychophysiological detection of deception, lie detector or
73 similar examination to any person: *Provided*, That all
74 applicable rules in effect on the effective date of sections
75 five-a, five-b, five-c and five-d of this article will remain in
76 effect until amended, withdrawn, revoked, repealed or
77 replaced. The legislative rules shall include:

78 (1) The type and amount of training or schooling
79 necessary for a person before which he or she may be
80 licensed to administer or interpret a psychophysiological
81 detection of deception, lie detector or similar examination;

82 (2) Testing requirements including the designation of
83 the test to be administered to persons applying for licensure;

84 (3) Standards of accuracy which shall be met by
85 machines or other devices to be used in psychophysiological
86 detection of deception, lie detector or similar examination;

87 (4) The conditions under which a psychophysiological
88 detection of deception, lie detector or similar examination
89 may be administered;

90 (5) Fees for licenses, renewals of licenses and other
91 services provided by the commissioner;

92 (6) Any other qualifications or requirements, including
93 continuing education, established by the commissioner for
94 the issuance or renewal of licenses; and

95 (7) Any other purpose to carry out the requirements of
96 sections five-a, five-b, five-c and five-d of this article.

ARTICLE 9. MANUFACTURED HOUSING CONSTRUCTION AND SAFETY STANDARDS.

§21-9-9. License required; fees; form of license; display of license; denial, suspension or revocation.

1 (a) No manufacturer, dealer, distributor or contractor
2 shall engage in business in this state without first having
3 applied for and received a license pursuant to this section.
4 The license shall authorize the holder to engage in the
5 business permitted by the license. All license applications
6 shall be accompanied by the required fee and surety bond or
7 other form of assurance or fee assessed in satisfaction of
8 assurance as required by rule or regulation promulgated by
9 the board.

10 (b) All licenses shall be granted or refused within thirty
11 days after proper and complete application. All licenses
12 shall expire on June 30 of each year, unless sooner revoked
13 or suspended. Applications shall be deemed valid for a
14 period of thirty days.

15 (c) The annual license fees shall be in the amounts
16 prescribed from time to time by rules promulgated by the
17 board but in no event less than the following amounts:

18 (1) For manufacturers, \$300;

19 (2) For dealers, \$100;

20 (3) For distributors, \$100; and

21 (4) For contractors, \$50: *Provided*, That if a contractor
22 has met the licensing requirements of this article and the
23 West Virginia Contractor Licensing Act in article eleven of
24 this chapter, has paid the annual license fee under section
25 eight of said article and has furnished bond or other
26 assurance or fee under section ten of this article, he or she
27 shall not be required to pay the annual license fee set forth
28 in this section.

29 (d) The board shall prescribe the form of license and
30 each license shall have affixed thereon the seal of the state
31 Division of Labor.

32 (e) Each licensee shall conspicuously display the license
33 in its established place of business.

34 (f) Pursuant to such rules and regulations as may be
35 promulgated by the board, the board may deny the issuance
36 of a license or revoke or suspend any license.

37 (g) All fees paid pursuant to this article shall be paid to
38 the Commissioner of Labor and deposited in an
39 appropriated special revenue account in the State Treasury
40 to be known as the State Manufactured Housing
41 Administration Fund. Expenditures from the fund shall be
42 for the administration and enforcement of this article.
43 Amounts collected which are found from time to time to
44 exceed funds needed for the purposes set forth in this article
45 may be utilized by the commissioner as needed to meet the
46 division's funding obligations.

ARTICLE 10. AMUSEMENT RIDES AND AMUSEMENT ATTRACTIONS SAFETY ACT.

§21-10-4. Inspection and permit fees.

1 (a) The division shall charge inspection and permit
2 fees. The annual permit fee is \$100 for each ride or
3 attraction. The annual inspection fee, if an inspection is
4 to be done by the division, is \$100 for each ride or
5 attraction. The annual inspection fee, if an inspection is

6 to be done by the division, is due at the time of application
7 for the annual permit. The division shall waive the
8 inspection fee for any ride or attraction whose owner
9 provides proof of nonprofit business status or for any ride
10 or attraction whose owner provides proof that an
11 inspection has been completed within the last year by a
12 certified special inspector as provided in section six of
13 this article.

14 (b) The division may charge additional inspection fees
15 equal to the annual inspection fee for additional inspections
16 required as the result of the condemnation of a device for
17 safety standards violations and for inspections required as a
18 result of accidents involving serious or fatal injury. If any
19 owner or operator requires an inspection as the result of a
20 violation of the permitting requirements of section six of
21 this article, the division shall charge the owner or operator
22 \$75 per hour in addition to the established inspection fee,
23 including travel time.

24 (c) All fees paid pursuant to this article shall be paid to
25 the Commissioner of Labor and deposited in an
26 appropriated special revenue account in the State Treasury
27 known as the Amusement Rides and Amusement
28 Attractions Safety Fund and expended for the
29 implementation and enforcement of this article. Amounts
30 collected which are found from time to time to exceed funds
31 needed for the purposes set forth in this article may be
32 utilized by the commissioner as needed to meet the
33 division's funding obligations.

34 (d) No inspection fee may be charged public agencies.

35 (e) The division shall issue, and the owner, operator
36 or both of the amusement rides and amusement
37 attractions shall visibly display to the public, inspection
38 stickers denoting and signifying that the inspection and
39 permit fee authorized by this section has been paid or
40 waived.

ARTICLE 11. WEST VIRGINIA CONTRACTOR LICENSING ACT.**§21-11-17. Recordkeeping; fees.**

1 (a) The division shall keep a record of all actions taken
2 and account for moneys received. All fees paid pursuant to
3 this article shall be paid to the Commissioner of Labor and
4 deposited in an appropriated special revenue account in the
5 State Treasury to be known as the West Virginia Contractor
6 Licensing Board Fund and expended for the implementation
7 and enforcement of this article. Amounts collected which
8 are found from time to time to exceed the funds needed for
9 purposes set forth in this article may be utilized by the
10 commissioner as needed to meet the division's funding
11 obligations.

12 (b) The division shall maintain at its principal office,
13 open for public inspection during regular office hours, a
14 complete indexed record of all applications, licenses issued,
15 licenses renewed and all revocations, cancellations and
16 suspensions of licenses. Applications shall show the date of
17 application, name, qualifications, place of business and
18 place of residence of each applicant; and whether the
19 application was approved or refused.

20 (c) (1) All investigations, complaints, reports, records,
21 proceedings and other information received by the
22 commissioner and board and related to complaints made to
23 the commissioner or board or investigations conducted by
24 the commissioner or board pursuant to this article, including
25 the identity of the complainant or respondent, shall be
26 confidential and shall not be knowingly and improperly
27 disclosed by any member or former member of the board,
28 the commissioner or staff, except as follows:

29 (A) Upon a finding that probable cause exists to believe
30 that a respondent has violated the provisions of this article,
31 the complaint and all reports, records, nonprivileged and
32 nondeliberative materials introduced at any probable cause

33 hearing held pursuant to the complaint are thereafter not
34 confidential: *Provided*, That confidentiality of such
35 information shall remain in full force and effect until the
36 respondent has been served with a copy of the statement of
37 charges.

38 (B) Any subsequent hearing held in the matter for the
39 purpose of receiving evidence or the arguments of the
40 parties or their representatives shall be open to the public
41 and all reports, records and nondeliberative materials
42 introduced into evidence at such subsequent hearing, as well
43 as the board's and commissioner's orders, are not
44 confidential.

45 (C) The commissioner or board may release any
46 information relating to an investigation at any time if the
47 release has been agreed to in writing by the respondent.

48 (D) The complaint as well as the identity of the
49 complainant shall be disclosed to a person named as
50 respondent in any such complaint filed immediately upon
51 such respondent's request.

52 (E) Where the commissioner or board is otherwise
53 required by the provisions of this article to disclose such
54 information or to proceed in such a manner that disclosure
55 is necessary and required to fulfill such requirements.

56 (2) If, in a specific case, the commissioner or board
57 finds that there is a reasonable likelihood that the
58 dissemination of information or opinion in connection with
59 a pending or imminent proceeding will interfere with a fair
60 hearing or otherwise prejudice the due administration of
61 justice, the commissioner or board shall order that all or a
62 portion of the information communicated to the
63 commissioner or board to cause an investigation and all
64 allegations of violations or misconduct contained in a
65 complaint shall be confidential, and the person providing
66 such information or filing a complaint shall be bound to
67 confidentiality until further order of the board.

68 (d) If any person violates the provisions of subsection
69 (c) of this section by knowingly and willfully disclosing any
70 information made confidential by such section or by the
71 commissioner or board, such person is guilty of a
72 misdemeanor and, upon conviction thereof, shall be fined
73 not less than \$500 nor more than \$5,000, or confined in jail
74 not more than one month, or both fined and confined.

75 (e) The commissioner shall certify to the State Auditor
76 and to the board a detailed statement of all moneys received
77 and spent during the preceding fiscal year.

ARTICLE 14. SUPERVISION OF PLUMBING WORK.

§21-14-9. Disposition of fees.

1 All fees paid pursuant to this article shall be paid to the
2 Commissioner of Labor and deposited in a special revenue
3 account in the State Treasury to be known as the Plumbing
4 Work Fund and expended for the implementation and
5 enforcement of this article. Amounts collected which are
6 found from time to time to exceed funds needed for the
7 purposes set forth in this article may be utilized by the
8 commissioner as needed to meet the division's funding
9 obligations.

ARTICLE 15. ZIPLINE AND CANOPY TOUR RESPONSIBILITY ACT.

§21-15-7. Inspection and permit fees.

1 (a) The division shall charge inspection and permit fees.
2 The annual permit fee is \$100 for each zipline or canopy
3 tour.

4 (1) The annual inspection fee, if an inspection is to be
5 done by the division, is \$100 for each zipline or canopy tour.

6 (2) The annual inspection fee, if an inspection is to be
7 done by the division, is due at the time of application for the
8 annual permit.

9 (3) The division shall waive the inspection fee for a
10 zipline or canopy tour whose operator provides proof of
11 nonprofit business status or for any zipline or canopy tour
12 whose operator provides proof that an inspection has been
13 completed within the last year by a certified special
14 inspector as provided in section nine of this article.

15 (b) The division may charge additional inspection fees
16 equal to the annual inspection fee for additional inspections
17 required as the result of the condemnation of a device for
18 safety standards violations and for inspections required as a
19 result of accidents involving serious or fatal injury. If any
20 operator requires an inspection as the result of a violation of
21 the permitting requirements of section nine of this article,
22 the division shall charge the operator \$75 per hour in
23 addition to the established inspection fee, including travel
24 time.

25 (c) All fees paid pursuant to this article shall be paid to
26 the Commissioner of Labor and deposited in an
27 appropriated special revenue account in the State Treasury
28 known as the Amusement Rides and Amusement
29 Attractions Safety Fund and expended for the
30 implementation and enforcement of this article. Amounts
31 collected which are found from time to time to exceed funds
32 needed for the purposes set forth in this article may be
33 utilized by the commissioner as needed to meet the
34 division's funding obligations.

35 (d) No inspection fee may be charged public agencies.

ARTICLE 16. REGULATION OF HEATING, VENTILATING AND COOLING WORK.

§21-16-10. Disposition of fees.

1 All fees paid pursuant to this article shall be paid to the
2 Commissioner of Labor and deposited in an appropriated
3 special revenue account hereby created in the State Treasury
4 to be known as the HVAC Fund and expended for the
5 implementation and enforcement of this article. Amounts

6 collected which are found from time to time to exceed funds
7 needed for the purposes set forth in this article may be
8 utilized by the commissioner as needed to meet the
9 division's funding obligations.

CHAPTER 47. REGULATION OF TRADE.

ARTICLE 1. WEIGHTS AND MEASURES.

§47-1-8. Requirements for the registration of service persons and service agencies for commercial weighing and measuring devices.

1 (a) The uniform regulation for the voluntary registration
2 of service persons and service agencies for commercial
3 weighing and measuring devices as adopted by The
4 National Conference of Weights and Measures and
5 published in the National Institute of Standards and
6 Technology Handbook 130, Uniform Laws and Regulations
7 and supplements thereto or revisions thereof, shall apply to
8 the registration of service persons and service agencies in
9 the state, except insofar as modified or rejected by
10 legislative rule.

11 (b) Beginning January 1, 2018, the commissioner shall
12 charge an annual registration fee for service persons and
13 service agencies to be established by legislative rule. The
14 commissioner may file an emergency rule prior to January
15 1, 2018, to implement and administer the amendments made
16 to this section during the 2017 regular session. The
17 commissioner may also propose rules for legislative
18 approval, in accordance with article three, chapter twenty-
19 nine-a of this code for the implementation and enforcement
20 of this section.

21 (c) All fees paid pursuant to this section shall be paid to
22 the Commissioner of Labor and deposited in the Weights
23 and Measures Fund for use by the commissioner for the
24 implementation and enforcement of this article. Amounts
25 collected which are found from time to time to exceed funds
26 needed for the purposes set forth in this article may be

27 utilized by the commissioner as needed to meet the
28 division's funding obligations.

§47-1-20. State measurement laboratory.

1 (a) The commissioner shall operate and maintain a state
2 measurement laboratory certified and approved by the
3 National Institute of Standards and Technology. The
4 laboratory shall be used to both house and maintain the state
5 primary standards and secondary standards as traceable to
6 the national standards and to test or calibrate any secondary
7 or working standards which are submitted for test as
8 required by this article.

9 (b) The commissioner shall promulgate rules, pursuant
10 to chapter twenty-nine-a of this code to assess fees for
11 weights and measures laboratory calibration and testing. All
12 fees paid pursuant to this section shall be paid to the
13 Commissioner of Labor and deposited into an appropriated
14 special revenue account in the State Treasury to be known
15 as the Weights and Measures Fund and expended for the
16 implementation and enforcement of this article. Amounts
17 collected which are found from time to time to exceed the
18 funds needed for the purposes set forth in this article may
19 be utilized by the commissioner as needed to meet the
20 division's funding obligations.

21 (c) The commissioner shall provide such personnel as
22 required to operate the laboratory in a manner which is
23 consistent with the needs of this article. Personnel shall be
24 trained and certified to perform all such calibrations and
25 tests as required by the National Institute of Standards and
26 Technology to maintain traceability of the state standards to
27 national standards, and to properly maintain the laboratory
28 facility as certified and traceable to the National Institute of
29 Standards and Technology.

§47-1-21. Registration of business.

1 (a) On or before October 1, 1994, every commercial
2 business in the state which, in the course of conducting

3 business, utilizes weights, measures and weighing and
4 measuring devices covered by this article shall obtain a
5 certificate of device registration for the commercial devices
6 covered by this article, from the division. After October 1,
7 1994, it shall be unlawful in the state to conduct business
8 subject to the provisions of this article without having first
9 obtained a certificate of device registration from the
10 division. Application for a certificate of device registration
11 shall be made on a form provided by the division.

12 (b) A certificate of device registration is valid for twelve
13 months from the date of issue. The certificate of device
14 registration shall be posted within the place of business.

15 (c) Application for the renewal of a certificate of device
16 registration shall be made on a form provided by the
17 division at least thirty days prior to the renewal due date.
18 The commissioner may deny the renewal of device
19 registration for cause where the cause is the result of the
20 conviction of the applicant, in a court of competent
21 jurisdiction, for a violation of this article.

22 (d) Beginning January 1, 2018, the division shall charge
23 an annual device registration fee, to be established by
24 legislative rule. The commissioner may file an emergency
25 rule prior to January 1, 2018, to implement and administer
26 the amendments made to this section during the 2017
27 regular session. The commissioner may also propose rules
28 for legislative approval, in accordance with article three,
29 chapter twenty-nine-a of this code for the implementation
30 and enforcement of this section.

31 (e) All fees paid pursuant to this section shall be paid to
32 the Commissioner of Labor and deposited in the Weights
33 and Measures Fund for use by the commissioner for the
34 implementation and enforcement of this article. Amounts
35 collected which are found from time to time to exceed funds
36 needed for the purposes set forth in this article may be
37 utilized by the commissioner as needed to meet the
38 division's funding obligations.

§47-1-22. Civil penalties.

1 (a) No person may:

2 (1) Use or have in possession for use in commerce any
3 incorrect weight or measure;

4 (2) Sell or offer for sale for use in commerce any
5 incorrect weight or measure;

6 (3) Remove any tag, seal or mark from any weight or
7 measure, without specific authorization from the Weights
8 and Measures Section; or

9 (4) Violate any provisions of this article or rules
10 promulgated under it, not defined in subsection (a), section
11 twenty-three of this article.

12 (b) Any person who violates subsection (a) of this
13 section or any rule promulgated by the commissioner may
14 be assessed a civil penalty by the commissioner, which
15 penalty may not be more than \$1,000 for each violation.
16 Each violation shall constitute a separate offense. In
17 determining the amount of the penalty, the commissioner
18 shall consider the person's history of previous violations,
19 the appropriateness of such penalty to the size of the
20 business of the person charged, the gravity of the violation
21 and the demonstrated good faith of the person charged in
22 attempting to achieve rapid compliance after notification of
23 a violation.

24 (c) All civil penalties paid pursuant to this section shall
25 be paid to the Commissioner of Labor and deposited in the
26 Weights and Measures Fund for use by the commissioner
27 for the implementation and enforcement of this article.
28 Amounts collected which are found from time to time to
29 exceed funds needed for the purposes set forth in this article
30 may be utilized by the commissioner as needed to meet the
31 division's funding obligations.

32 (d) A civil penalty may be assessed by the commissioner
33 only after the commissioner has given at least ten days'
34 notice to the person. Notice shall be in writing, shall contain
35 a short, plain statement of the matter asserted and shall
36 designate a time and place for a hearing where the person
37 may show cause why the civil penalty should not be
38 imposed. Notice of hearing shall be sent by certified mail.
39 The person may, at the time designated for the hearing,
40 produce evidence on his or her behalf and be represented by
41 counsel.

42 (e) Any person aggrieved by a decision of the
43 commissioner has the right to a contested case hearing under
44 article five, chapter twenty-nine-a of this code, *et seq.*

ARTICLE 1A. REGULATION AND CONTROL OF BEDDING AND UPHOLSTERY BUSINESSES.

***§47-1A-10. Sterilization processes; annual permits.**

1 (a) Any sterilization process used in connection herewith
2 shall be approved by the commissioner. Every person
3 desiring to operate such sterilization process shall first obtain
4 a numbered permit from the commissioner and shall not
5 operate such process unless such permit is kept
6 conspicuously posted in his or her establishment. Application
7 for such permit shall be accompanied by the specifications
8 for the sterilization process to be employed by the applicant,
9 in such form as the commissioner shall require. Such permit
10 shall expire one year from date of issue.

11 (b) The commissioner may revoke or suspend any permit
12 for violation of the provisions of this article. Upon notification
13 of such revocation or suspension, the person to whom the
14 permit was issued, or his or her successor or assignee, shall
15 forthwith return such permit to the commissioner.

*NOTE: This section was also amended by H. B. 2948 (Chapter 113),
which passed prior to this act.

§47-1A-14. Annual registration and permit fees.

1 (a) The annual registration fee for all manufacturers
2 shipping or selling articles of bedding and for upholsterers
3 or renovators, as defined in this article, in the State of West
4 Virginia shall be \$90, payable on the first day of the fiscal
5 year. Any manufacturer, upholsterer or renovator who
6 submits an annual registration fee on or after July 16 shall
7 pay a \$25 late fee in addition to the annual fee.

8 (b) The annual sterilizer permit fee shall be \$90, payable
9 on the first day of the fiscal year. Any sterilizer who
10 submits an annual permit fee on or after July 16 shall pay a
11 \$25 late fee in addition to the annual fee.

12 (c) The fee for reissuing a revoked or expired
13 registration or permit shall be \$90.

14 (d) All fees paid pursuant to this article shall be paid to
15 the Commissioner of Labor and deposited in an
16 appropriated special revenue account hereby created in the
17 State Treasury to be known as the Bedding and Upholstery
18 Fund and expended for the implementation and enforcement
19 of this article. Amounts collected which are found from
20 time to time to exceed funds needed for the purposes set
21 forth in this article may be utilized by the commissioner as
22 needed to meet the division's funding obligations.

CHAPTER 136

**(Com. Sub. for H. B. 2857 - By Delegates G. Foster,
Westfall, White, Walters, Moore and Summers)**

[Passed April 8, 2017; in effect ninety days from passage.]
[Approved by the Governor on April 26, 2017.]

AN ACT to amend the Code of West Virginia, 1931, as amended,
by adding thereto a new article, designated §21-3E-1, §21-3E-2,

§21-3E-3, §21-3E-4, §21-3E-5, §21-3E-6, §21-3E-7, §21-3E-8, §21-3E-9, §21-3E-10, §21-3E-11, §21-3E-12, §21-3E-13, §21-3E-14, §21-3E-15 and §21-3E-16, all relating to creating West Virginia Safer Workplaces Act; permitting employers to test employees and prospective employees for drugs and alcohol under certain circumstances; providing a short title; defining terms; declaring public policy; providing for exceptions to the applicability of the West Virginia Safer Workplaces Act for employers covered by other drug and alcohol testing statutes; clarifying the right of privacy as defined by the West Virginia Supreme Court is outweighed by the public policy set forth in the West Virginia Safer Workplaces Act if an employer complies with the act; providing for the collection of samples, scheduling of tests and testing procedures; requiring employers to adhere to the accuracy and fairness safeguards of the West Virginia Safer Workplaces Act to qualify for the bar from being subjected to legal claims for acting in good faith on the results of a drug or alcohol test; providing for an employee's ability to request split sample be tested to challenge a positive test result; requiring employers to pay for certain drug or alcohol tests and transportation expenses, if any; requiring employer to conduct tests during or immediately before or after a regular work period; providing that testing by an employer is worked time for purposes of compensation and benefits for current employees; establishing responsibility for cost of split sample testing; setting forth testing policy requirements; requiring confirmatory tests before disciplinary action may be taken under the West Virginia Safer Workplaces Act; establishing requirements for confirmatory drug tests; providing for disciplinary procedures; addressing disciplinary action for sensitive employees; describing sensitive employees; providing employers who are obligated to perform drug testing under a federal or state mandated drug testing statute will be required to follow whatever additional requirements are mandated by those statutes; providing protection from liability for certain legal claims under certain circumstances; clarifying that no causes of action for certain acts exists under the West Virginia Safer Workplaces Act; addressing potential causes of action related to false positive test results; addressing claims for defamation arising from

circumstances covered by the West Virginia Safer Workplaces Act; clarifying employers are not required to adopt a drug and alcohol testing policy or to conduct drug or alcohol tests of employees or prospective employees; providing for confidentiality and exceptions to confidentiality requirement; addressing discipline for positive drug or alcohol tests including but not limited to termination of employment; providing for forfeiture of certain benefits under certain circumstances including unemployment compensation and workers' compensation benefits; clarifying that the drug and alcohol testing provisions of the West Virginia Safer Workplace Act cannot be used to show intoxication pursuant to section two, article four, chapter twenty-three of this code; requiring employers to provide notice to employees of the potential forfeiture of certain benefits; providing employers waive the right to assert eligibility for benefits is forfeited if notice is not provided; and requiring employers to have written drug and alcohol testing policies and procedures when implementing drug and alcohol testing.

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 §21-3E-1, §21-3E-2, §21-3E-3, §21-3E-4, §21-3E-5, §21-3E-6, §21-3E-7, §21-3E-8, §21-3E-9, §21-3E-10, §21-3E-11, §21-3E-12, §21-3E-13, §21-3E-14, §21-3E-15 and §21-3E-16, all to read as follows:

ARTICLE 3E. THE WEST VIRGINIA SAFER WORKPLACE ACT.

§21-3E-1. Short title.

- 1 This article is known as and may be cited as the West
- 2 Virginia Safer Workplace Act.

§21-3E-2. Definitions.

- 1 For the purposes of this article:
- 2 "Alcohol" means ethanol, isopropanol, or methanol.

3 “Drugs” means any substance considered unlawful for
4 nonprescribed consumption or use under the United States
5 Controlled Substances Act (21 U. S. C. §812).

6 “Employer” means any person, firm, company,
7 corporation, labor organization, employment agency or
8 joint labor-management committee, which has one or more
9 full-time employee employed in the same business, or in or
10 about the same establishment, under any contract of hire,
11 express or implied, oral or written in the state. “Employer”
12 does not include, for purposes of this article, the United
13 States, the state, any of its subdivisions or any other public-
14 sector incorporated municipalities, counties, or other local
15 government entities, or any Native American tribe.

16 “Employee” means any person in the service of an
17 employer, as defined in this section.

18 “Good faith” means reasonable reliance on facts, or that
19 which is held to be factual without the intent to deceive or
20 be deceived and without reckless, malicious or negligent
21 disregard for the truth.

22 “Prospective employee” means any person who has
23 made application to an employer, whether written or oral, to
24 become an employee.

25 “Sample” means such sample of the human body
26 capable of revealing the presence of alcohol or other drugs
27 or other metabolites.

28 “Split sample” means a part of the sample that is sent to
29 a first laboratory and retained unopened, and which is
30 transported to a second laboratory in the event that the
31 employee requests that it be tested following a verified
32 positive test result of the primary specimen.

§21-3E-3. Public policy; applicability.

1 The Legislature declares that the public policy of this
2 state is to advance the confidence of West Virginia workers

3 that they are in a safe workplace and to enhance the viability
4 of the workplace they labor in by recognizing the right of
5 West Virginia's employers to require mandatory drug
6 testing, not only of applicants, but of current employees:
7 *Provided*, That this article does not abrogate the right of
8 privacy, including the right of an individual to be let alone
9 and to keep secret his or her private communications,
10 conversations and affairs, as stated in *Roach v. Harper*, 143
11 W. Va. 869, but rather determines that the right of privacy
12 is outweighed by the public policy stated in this section if
13 an employer meets the requirements set forth in this article.

14 This article applies only to employers, as defined in
15 section three of this article, not previously made subject of
16 drug and alcohol testing statutory provisions established by
17 the Legislature including, but not limited to, employers
18 covered by section one, article one-a, chapter twenty-two-a
19 of the code, *et seq.*, and section one, article one-d, chapter
20 twenty-one of the code *et seq.*

§21-3E-4. Employers may test current and prospective employees for drugs or alcohol.

1 It is lawful for an employer to test employees or
2 prospective employees for the presence of drugs or alcohol,
3 in accordance with the provisions of this article, as a
4 condition of continued employment or hiring. However, in
5 order to qualify for a bar from being subjected to legal
6 claims for acting in good faith on the results of a drug or
7 alcohol test, employers must adhere to the accuracy and
8 fairness safeguards outlined in this article.

§21-3E-5. Collection of samples.

1 In order to test reliably for the presence of drugs or
2 alcohol, an employer may require samples from its
3 employees and prospective employees, and may require
4 presentation of reliable individual identification from the
5 person being tested to the person collecting the samples.
6 Collection of the sample shall be in conformance with the

7 requirements of this article. The employer may designate
8 the type of sample to be used for this testing.

§21-3E-6. Scheduling of tests.

1 Regarding the timing and costs of drug and/or alcohol
2 tests, and in order for an employer to qualify for the benefits
3 of this article:

4 (1) Any drug or alcohol testing by an employer of
5 employees shall occur during, or immediately before or
6 after, a regular work period. Testing by an employer is
7 worked time for the purposes of compensation and benefits
8 for current employees.

9 (2) An employer shall pay all actual costs for drug
10 and/or alcohol testing required by the employer of
11 employees and prospective employees.

12 (3) An employer is required to provide transportation or
13 to pay reasonable transportation costs to current employees
14 if their required tests are conducted at a location other than
15 the employee's normal work site(s).

§21-3E-7. Testing procedure.

1 All sample collection and testing of drugs and alcohol
2 under this article shall be performed in accordance with the
3 following conditions:

4 (1) The collection of samples shall be performed under
5 reasonable and sanitary conditions.

6 (2) Any observer of the collection of urine samples shall
7 be of the same sex as the employee.

8 (3) Sample collections shall be documented, and these
9 documentation procedures shall include:

10 (A) Labeling of samples so as to reasonably preclude
11 the possibility of misidentification of the person tested in
12 relation to the test result provided and handling of samples

13 in accordance with reasonable chain-of-custody and
14 confidentiality procedures; and

15 (B) An opportunity for the employee, or prospective
16 employee, to voluntarily provide notification of any
17 information which may be considered as relevant to the test,
18 including, but not limited to, identification of currently or
19 recently used prescriptions or nonprescription drugs, or
20 other relevant medical information. This may be
21 accomplished by providing procedures for review by a
22 qualified medical professional to verify a laboratory sample
23 which tests positive in a confirmatory test.

24 (4) Sample collection, storage and transportation to the
25 place of testing shall be performed so as to reasonably
26 preclude the possibility of sample contamination,
27 adulteration, or misidentification.

28 (5) Confirmatory drug testing shall be conducted at a
29 laboratory: (i) Certified by the U. S. Department of Health
30 and Human Services' Substance Abuse and Mental Health
31 Services Administration; (ii) approved by the U. S.
32 Department of Health and Human Services under the
33 Clinical Laboratory Improvements Act; or (iii) approved by
34 the College of American Pathologists.

35 (6) Drug and alcohol testing shall include confirmation
36 of any positive test results. For drug testing, confirmation
37 will be by use of a different chemical process than was used
38 by the employer in the initial drug screen. The second
39 confirmatory drug test shall be a chromatographic technique
40 such as gas chromatography/mass spectrometry, or another
41 comparably reliable analytical method. An employer may
42 take any adverse employment action, including job denial to
43 a prospective employee, based only on a confirmed positive
44 drug or alcohol test.

45 In the event a person desires to challenge the results of
46 his or her initial sample test result, that person shall have the
47 right to have the split sample tested by another laboratory as

48 set forth in subsection four. The cost associated with the
49 testing of the split sample shall be the responsibility of the
50 person challenging the initial sample test results.

§21-3E-8. Testing policy requirements.

1 (a) Testing or retesting for the presence of drugs or
2 alcohol by an employer shall be carried out within the terms
3 of a written policy which has been distributed to every
4 employee subject to testing, and is available for review by
5 prospective employees.

6 (b) In order to comply with the provisions of this article,
7 employers must provide employees, when requested and/or as
8 appropriate, with information as to the existence and
9 availability of counseling, employee assistance, rehabilitation
10 and/or other drug abuse treatment programs which the
11 employer offers, if any. The employer is not required to offer
12 any of the benefits listed above by this article.

13 (c) Within the terms of the written policy, an employer
14 may require the collection and testing of samples for, among
15 other legitimate drug abuse prevention and/or treatment
16 purposes, the following:

17 (1) Deterrence and/or detection of possible illicit drug
18 use, possession, sale, conveyance, or distribution, or
19 manufacture of illegal drugs, intoxicants, or controlled
20 substances in any amount or in any manner, on or off the
21 job, or the abuse of alcohol or prescription drugs;

22 (2) Investigation of possible individual employee
23 impairment;

24 (3) Investigation of accidents in the workplace or
25 incidents of workplace theft or other employee misconduct;

26 (4) Maintenance of safety for employees, customers,
27 clients or the public at large; or

28 (5) Maintenance of productivity, quality of products or
29 services, or security of property or information.

30 (d) The collection and testing of samples shall be
31 conducted in accordance with this article and need not be
32 limited to circumstances where there are indications of
33 individual, job-related impairment of an employee or
34 prospective employee.

35 (e) The employer's use and disposition of all drug or
36 alcohol test results are subject to the limitations of this
37 article and federal and state law if the employer is to qualify
38 for the legal protections available under this article.

39 (f) Nothing in this article may be construed to
40 encourage, discourage, restrict, limit, prohibit or require on-
41 site drug or alcohol testing.

§21-3E-9. Disciplinary procedures.

1 Upon receipt of a confirmed positive drug or alcohol test
2 result which indicates a violation of the employer's written
3 policy, or upon the refusal of an employee or prospective
4 employee to provide a testing sample, an employer may use
5 that test result or test refusal as a valid basis for disciplinary
6 and/or rehabilitative actions, which may include, among
7 other actions, the following:

8 (1) A requirement that the employee enroll in an
9 employer-provided or approved rehabilitation, treatment
10 and/or counseling program, which may include additional
11 drug and/or alcohol testing, participation in which may be a
12 condition of continued employment, and the costs of which
13 may or may not be covered by the employer's health plan or
14 policies;

15 (2) Suspension of the employee, with or without pay, for
16 a designated period of time;

17 (3) Termination of employment;

18 (4) Refusal to hire a prospective employee; and/or

19 (5) Other adverse employment action in conformance
20 with the employer's written policy and procedures,
21 including any relevant collective bargaining agreement
22 provisions.

§21-3E-10. Sensitive employees.

1 If the confirmatory drug or alcohol test of an employee
2 is "positive," and the employee is in a sensitive position
3 where an accident could cause loss of human life, serious
4 bodily injury, or significant property or environmental
5 damage, the employer may permanently remove the
6 employee from the sensitive position and transfer or
7 reassign the employee to an available nonsensitive position
8 with comparable pay and benefits, or may take any other
9 action, including termination or other adverse employment
10 action, consistent with the employer's policy for confirmed
11 positive drug or alcohol test for employees in sensitive
12 positions, provided there are not applicable contractual
13 provisions that expressly prohibit such action.

14 Employers obligated to perform drug testing under a
15 federal or state mandated drug testing statute will be
16 required to follow whatever additional requirements are
17 mandated by those statutes.

§21-3E-11. Protection from liability.

1 No cause of action is or shall be established for any
2 person against any employer who has established a policy
3 and initiated a testing program in accordance with this
4 article, for any of the following:

5 (1) Actions based on the results of a confirmed positive
6 drug or alcohol test, or the refusal of an employee or job
7 applicant to submit to a drug test;

8 (2) Failure to test for drugs or alcohol, or failure to test
9 for a specific drug or other controlled substance;

10 (3) Failure to test for, or if tested for, failure to detect,
11 any specific drug or other substance, any medical condition,
12 any mental, emotional, or psychological disorder or
13 condition; or

14 (4) Termination or suspension of any substance abuse
15 prevention or testing program or policy.

§21-3E-12. Cause of action.

1 (a) No cause of action is or shall be established for any
2 person against an employer who has established a program
3 of drug or alcohol testing in accordance with this article,
4 unless the employee's action was based on a false positive
5 test result, and the employer had actual knowledge that the
6 result was in error, and ignored the true test result because
7 of disregard for the truth and/or the willful intent to deceive
8 or be deceived.

9 (b) In any claim, including a claim under this article,
10 where it is alleged that an employer's action was based on a
11 false positive test result:

12 (1) There is a rebuttable presumption that the test result
13 was valid if the employer complied with the provisions of
14 this article; and

15 (2) The employer is not liable for monetary damages if
16 its reliance on a false positive test result was reasonable and
17 in good faith.

18 (c) There is no employer liability for any action taken
19 related to a false negative drug or alcohol test.

§21-3E-13. Defamation.

1 No cause of action for defamation of character, libel,
2 slander or damage to reputation is or shall be established for
3 any person against any employer who has established a
4 program of drug or alcohol testing in accordance with this
5 article, unless:

6 (1) The results of that test were disclosed to a person
7 other than the employer, an authorized employee, agent or
8 representative of the employer, the tested employee, or the
9 tested prospective employee, or the authorized agent or
10 representative of the employee; and

11 (2) All elements of an action for defamation of
12 character, libel, slander or damage to reputation as
13 established by the relevant state statute or common law are
14 satisfied.

§21-3E-14. No requirement to implement a testing policy.

1 No cause of action arises in favor of any person against
2 an employer based upon the failure of the employer to
3 establish a program or policy on substance abuse
4 prevention, or to implement drug or alcohol testing.

§21-3E-15. Confidentiality.

1 All communications received by an employer relevant
2 to employee or prospective employee drug or alcohol test
3 results and received through the employer's drug testing
4 program are confidential communications and may not be
5 used or received in evidence, obtained in discovery or
6 disclosed in any public or private proceeding, except in a
7 proceeding related to an action taken by an employer under
8 this article.

§21-3E-16. Employer testing; notice; termination; forfeiture.

1 If an employer implements a drug-free workplace
2 program in accordance with this article, which includes
3 notice, education and procedural requirements for testing
4 for drugs and alcohol pursuant to this law, the employer may
5 require the employee to submit to a test for the presence of
6 drugs or alcohol. If a drug or alcohol is found to be present
7 in the employee's system at a level proscribed by the
8 employer's policy, the employee may be terminated and
9 forfeits his or her eligibility for unemployment
10 compensation benefits and, if injured at the time of the

11 intoxication, indemnity benefits under the Worker
12 Compensation Laws. However, the employer's drug-free
13 workplace program must notify all employees that it is a
14 condition of employment for an employee to refrain from
15 reporting to work or working with the presence of drugs or
16 alcohol in his or her body and that policy must also state that
17 if an injured employee refuses to submit to a test for drugs
18 or alcohol, that employee forfeits eligibility for
19 unemployment compensation benefits, and if injured, for
20 indemnity benefits under the Worker Compensation Laws.
21 Employers who do not notify their employees of this
22 condition of employment waive their right to assert that
23 eligibility for benefits is entirely forfeited.

24 Nothing herein may be construed or deemed to affect
25 subsection (a), section two, article four, chapter twenty-
26 three of this code and the provisions of said section shall be
27 the sole manner in which intoxication may be proven to
28 establish such intoxication as the proximate cause of an
29 injury for purposes of said chapter.

CHAPTER 137

**(Com. Sub. for S. B. 224 - By Senators Hall, Azinger
and Trump)**

[Passed April 8, 2017; in effect ninety days from passage.]
[Approved by the Governor on April 24, 2017.]

AN ACT to amend and reenact §21-5-14 and §21-5-15 of the Code of West Virginia, 1931, as amended, all relating to the requirement of a bond for wages and benefits for certain designated employers, persons, firms or corporations generally; lowering period of time for the requirement that certain designated employers, persons, firms or corporations shall furnish a bond for wages and benefits to at least one year;

providing exemptions for employers, persons, firms or corporations who have been in business in another state for at least five years, employers, persons, firms or corporations who have at least \$100,000 in assets or employers, persons, firms or corporations who are a subsidiary of a parent company that has been in business for at least five years; lowering period of time in which a person, firm or corporation is required to file a statement or copy with the Bureau of Employment Programs; lowering period of time employer must have been doing business in order to terminate bond; increasing the maximum criminal fine for any person, firm or corporation who knowingly, willfully and fraudulently disposes of or relocates assets with the intent to deprive employees of their wages and fringe benefits from \$30,000 to \$60,000; and making corrections to current code.

Be it enacted by the Legislature of West Virginia:

That §21-5-14 and §21-5-15 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 5. WAGE PAYMENT AND COLLECTION.

§21-5-14. Employer's bond for wages and benefits.

1 (a) *Bond required.* — With the exception of those who
2 have been doing business in this state actively and actually
3 engaged in construction work, or the severance, production
4 or transportation of minerals for at least one year next
5 preceding the posting of the bond required by this section,
6 every employer, person, firm or corporation engaged in or
7 about to engage in construction work, or the severance,
8 production or transportation (excluding railroads and water
9 transporters) of minerals, shall, prior to engaging in any
10 construction work, or the severance, production or
11 transportation of minerals, furnish a bond on a form
12 prescribed by the commissioner, payable to the State of
13 West Virginia, with the condition that the person, firm or
14 corporation pay the wages and fringe benefits of his or her

15 or its employees when due. The amount of the bond shall be
16 equal to the total of the employer's gross payroll for four
17 weeks at full capacity or production, plus fifteen percent of
18 the said total of employer's gross payroll for four weeks at
19 full capacity or production. The amount of the bond shall
20 increase or decrease as the employer's payroll increases or
21 decreases: *Provided*, That the amount of the bond shall not
22 be decreased, except with the commissioner's approval and
23 determination that there are not outstanding claims against
24 the bond: *Provided, however*, That if the employer, person,
25 firm or corporation meets one of the following, then such
26 employer, person, firm or corporation shall be exempt from
27 the requirements of this subsection:

28 (1) Has been in business in another state for at least five
29 years;

30 (2) Has at least \$100,000 in assets; or

31 (3) Is a subsidiary of a parent company that has been in
32 business for at least five years.

33 (b) *Waiver*. — The commissioner shall waive the
34 posting of any bond required by subsection (a) of this
35 section upon his or her determination that an employer is of
36 sufficient financial responsibility to pay wages and fringe
37 benefits. The commissioner shall promulgate rules and
38 regulations according to the provisions of chapter twenty-
39 nine-a of this code which prescribe standards for the
40 granting of such waivers.

41 (c) *Form of bond; filing in office of circuit clerk*. — The
42 bond may include, with the approval of the commissioner,
43 surety bonding, collateral bonding (including cash and
44 securities), letters of credit, establishment of an escrow
45 account or a combination of these methods. The
46 commissioner shall accept an irrevocable letter of credit in
47 lieu of any other bonding requirement. If collateral bonding
48 is used, the employer may deposit cash, or collateral
49 securities or certificates as follows: Bonds of the United

50 States or its possessions, or of the federal land bank, or of
51 the homeowner's loan corporation; full faith and credit
52 general obligation bonds of the State of West Virginia or
53 other states, and of any county, district or municipality of
54 the State of West Virginia or other states; or certificates of
55 deposit in a bank in this state, which certificates shall be in
56 favor of the state. The cash deposit or market value of such
57 securities or certificates shall be equal to or greater than the
58 sum of the bond. The commissioner shall, upon receipt of
59 any such deposit of cash, securities or certificates, promptly
60 place the same with the State Treasurer whose duty it shall
61 be to receive and hold the same in the name of the state in
62 trust for the purpose for which such deposit is made. The
63 employer making the deposit shall be entitled from time to
64 time to receive from the State Treasurer, upon the written
65 approval of the commissioner, the whole or any portion of
66 any cash, securities or certificates so deposited, upon
67 depositing with him or her in lieu thereof, cash or other
68 securities or certificates of the classes herein specified
69 having value equal to or greater than the sum of the bond.
70 The commissioner shall cause a copy of the bond to be filed
71 in the office of the clerk of the county commission of the
72 county wherein the person, firm or corporation is doing
73 business to be available for public inspection.

74 (d) *Employee cause of action.* — Notwithstanding any
75 other provision in this article, any employee, whose wages
76 and fringe benefits are secured by the bond, as specified in
77 subsection (c) of this section, has a direct cause of action
78 against the bond for wages and fringe benefits that are due
79 and unpaid.

80 (e) *Action of commissioner.* — Any employee having
81 wages and fringe benefits unpaid may inform the
82 commissioner of the claim for unpaid wages and fringe
83 benefits and request certification thereof. If the
84 commissioner, upon notice to the employer and
85 investigation, finds that such wages and fringe benefits or a
86 portion thereof are unpaid, he or she shall make demand of

87 such employer for the payment of such wages and fringe
88 benefits. If payment for such wages and fringe benefits is
89 not forthcoming within the time specified by the
90 commissioner, not to exceed thirty days, the commissioner
91 shall certify such claim or portion thereof, and forward the
92 certification to the bonding company or the State Treasurer,
93 who shall provide payment to the affected employee within
94 fourteen days of receipt of such certification. The bonding
95 company, or any person, firm or corporation posting a bond,
96 thereafter shall have the right to proceed against a defaulting
97 employer for that part of the claim the employee paid. The
98 procedure specified herein shall not be construed to
99 preclude other actions by the commissioner or employee to
100 seek enforcement of the provisions of this article by any
101 civil proceedings for the payment of wages and fringe
102 benefits or by criminal proceedings as may be determined
103 appropriate.

104 (f) *Posting and reporting by employer.* — With the
105 exception of those exempt under subsection (a) of this
106 section, any employer who is engaged in construction work
107 or the severance, production or transportation (excluding
108 railroad and water transporters) of minerals shall post the
109 following in a place accessible to his or her or its employees:

110 (1) A copy of the bond or other evidence of surety
111 specifying the number of employees covered as provided
112 under subsection (a) of this section, or notification that the
113 posting of a bond has been waived by the commissioner;
114 and

115 (2) A copy of the notice in the form prescribed by the
116 commissioner regarding the duties of employers under this
117 section. During the first year that any person, firm or
118 corporation is doing business in this state in construction
119 work, or in the severance, production or transportation of
120 minerals, such person, firm or corporation shall on or before
121 February 1, May, August and November of each calendar
122 year file with the department a verified statement of the
123 number of employees, or a copy of the quarterly report filed

124 with the Bureau of Employment Programs showing the
125 accurate number of employees, unless the commissioner
126 waives the filing of the report upon his or her determination
127 that the person, firm or corporation is of sufficient stability
128 that the reporting is unnecessary.

129 (g) *Termination of bond.* — The bond may be
130 terminated, with the approval of the commissioner, after an
131 employer submits a statement, under oath or affirmation
132 lawfully administered, to the commissioner that the
133 following has occurred: The employer has ceased doing
134 business and all wages and fringe benefits have been paid,
135 or the employer has been doing business in this state for at
136 least one year and has paid all wages and fringe benefits.
137 The approval of the commissioner will be granted only after
138 the commissioner has determined that the wages and fringe
139 benefits of all employees have been paid. The bond may
140 also be terminated upon a determination by the
141 commissioner that an employer is of sufficient financial
142 responsibility to pay wages and fringe benefits.

§21-5-15. Violations; cease and desist orders and appeals therefrom; criminal penalties.

1 (a) Any person, firm or corporation who knowingly and
2 willfully fails to provide and maintain an adequate bond as
3 required by section fourteen of this article is guilty of a
4 misdemeanor, and, upon conviction thereof, shall be fined
5 not less than \$200 nor more than \$5,000, or imprisoned in
6 the county jail not more than one month, or both fined and
7 imprisoned.

8 (b) Any person, firm or corporation who knowingly,
9 willfully and fraudulently disposes of or relocates assets
10 with intent to deprive employees of their wages and fringe
11 benefits is guilty of a felony and, upon conviction thereof,
12 shall be fined not less than \$5,000 nor more than \$60,000,
13 or imprisoned in the state correctional facility not less than
14 one nor more than three years, or both fined and imprisoned.

15 (c) (1) At any time the commissioner determines that a
16 person, firm or corporation has not provided or maintained
17 an adequate bond, as required by section fourteen of this
18 article, the commissioner shall issue a cease and desist order
19 which is to be issued and posted requiring that said person,
20 firm or corporation either post an adequate bond or cease
21 further operations in this state within a period specified by
22 the commissioner; which period shall be not less than five
23 nor more than fourteen days. The cease and desist order may
24 be issued by the commissioner at his or her own instance or
25 at his or her direction, with or without application to or the
26 approval of any other officer, agent, department or
27 employee of the state or application to any court for
28 approval thereof. Any person, firm or corporation who
29 continues to engage in construction work or the severance,
30 production or transportation of minerals without an
31 approved bond after such specified period shall be guilty of
32 a felony, and, upon conviction thereof, shall be fined not
33 less than \$5,000 nor more than \$30,000, or imprisoned in
34 the penitentiary not less than one nor more than three years,
35 or both fined and imprisoned. Any cease and desist order
36 issued by the commissioner pursuant to this subsection may
37 be directed by the commissioner to the sheriff of the county
38 wherein the business activity of which the order is the
39 subject, or to any officer or employee of the department,
40 commanding such sheriff, officer or employee to serve such
41 order upon the business in question within seventy-two
42 hours and to make proper return thereof.

43 (2) Any other provision of law to the contrary
44 notwithstanding, any person against whom a cease and
45 desist order has been directed shall be entitled to judicial
46 review thereof by filing a verified petition taking an appeal
47 therefrom within fifteen days from the date of service of
48 such order. Such verified petition shall be filed in the circuit
49 court of the county wherein service of the order was
50 completed, at the option of the petitioner, or in the circuit
51 court of Kanawha County, West Virginia. If the appeal is
52 not perfected within such fifteen-day period, the cease and

53 desist order shall be final and shall not thereafter be subject
54 to judicial review. No appeal shall be deemed to have been
55 perfected except upon the filing with the clerk of the circuit
56 court of the county wherein the appeal is taken, of a bond or
57 other security to be approved by the court, in an amount of
58 not less than the amount of the bond otherwise required to
59 be posted under the provisions of section fourteen of this
60 article. The person so filing a petition of appeal shall cause
61 a copy of the petition and bond or other posted security to
62 be served upon the commissioner by certified mail, return
63 receipt requested, within seven days after the date upon
64 which the petition for appeal is filed.

65 (d) Any person who threatens any officer, agent or
66 employee of the department or other person authorized to
67 assist the commissioner in the performance of his or her
68 duties under any provision of section fourteen of this article
69 or of this section or who shall interfere with or attempt to
70 prevent any such officer, agent, employee or other person in
71 the performance of such duties shall be guilty of a felony
72 and, upon conviction thereof, shall be fined in an amount of
73 not less than \$1,000 nor more than \$3,000 or imprisoned in
74 the penitentiary not less than one nor more than three years,
75 or both such fine and imprisonment.

CHAPTER 138

(S. B. 330 - By Senators Trump, Boso and Blair)

[Passed March 17, 2017; in effect ninety days from passage.
Vetoed by the Governor. Repassed notwithstanding the objections of the Governor,
April 7, 2017.]

AN ACT to amend and reenact §21-5G-1 and §21-5G-7 of the Code of West Virginia, 1931, as amended, all relating to the West Virginia Workplace Freedom Act; eliminating the

term “state” from the definitions section; eliminating a provision regarding construction of the act as it relates to the building and construction industry; and clarifying dates of applicability.

Be it enacted by the Legislature of West Virginia:

That §21-5G-1 and §21-5G-7 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 5G. WEST VIRGINIA WORKPLACE FREEDOM ACT.

§21-5G-1. Definitions.

1 As used in this article:

2 (1) The term “person” means any individual,
3 proprietorship, partnership, firm, association, corporation,
4 labor organization or any other legal entity.

5 (2) The term “labor organization” means any
6 organization, agency, union or employee representation
7 committee of any kind that exists, in whole or in part, to
8 assist employees in negotiating with employers concerning
9 grievances, labor disputes, wages, rates of pay or other
10 terms or conditions of employment.

11 (3) The term “employer” means any person employing
12 at least one individual in the state or any agent of an
13 employer employing at least one individual in the state.

§21-5G-7. Applicability; severability.

1 (a) *Applicability.* — This article applies to any written
2 or oral contract or agreement entered into, modified,
3 renewed or extended on or after July 1, 2016: *Provided,*
4 That the provisions of this article do not otherwise apply to
5 or abrogate a written or oral contract or agreement in effect
6 on or before June 30, 2016.

7 (b) *Severability*. — If any provision of this article or the
8 application of any such provision of this article to any
9 person or circumstance is held invalid by a court of
10 competent jurisdiction, the remainder of this article or the
11 application of its provisions to persons or circumstances
12 other than those to which it is held invalid is not affected
13 thereby.

CHAPTER 139

(Com. Sub. for S. B. 151 - By Senator Maynard)

[Passed April 4, 2017; in effect from passage.]
[Approved by the Governor on April 18, 2017.]

AN ACT to amend and reenact §64-2-1 and §64-2-2 of the Code of West Virginia, 1931, as amended, all relating generally to the promulgation of legislative rules by various executive or administrative agencies of the state; authorizing certain agencies to promulgate certain legislative rules with various modifications presented to and recommended by the Legislative Rule-Making Review Committee; authorizing the Board of Risk and Insurance Management to promulgate a legislative rule relating to the Patient Injury Compensation Fund; authorizing the Board of Risk and Insurance Management to promulgate a legislative rule relating to mine subsidence insurance; and authorizing the Ethics Commission to promulgate a legislative rule relating to the use of office for private gain, including nepotism.

Be it enacted by the Legislature of West Virginia:

That §64-2-1 and §64-2-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

**ARTICLE 2. AUTHORIZATION FOR DEPARTMENT OF
ADMINISTRATION TO PROMULGATE LEGISLATIVE
RULES.**

§64-2-1. Board of Risk and Insurance Management.

1 (a) The legislative rule filed in the State Register on
2 August 22, 2016, authorized under the authority of section
3 two, article twelve-d, chapter twenty-nine of this code,
4 modified by the Board of Risk and Insurance Management
5 to meet the objections of the Legislative Rule-Making
6 Review Committee and refiled in the State Register on
7 December 12, 2016, relating to the Board of Risk and
8 Insurance Management (Patient Injury Compensation Fund,
9 115 CSR 07), is authorized.

10 (b) The legislative rule filed in the State Register on
11 August 22, 2016, authorized under the authority of section
12 fifteen, article thirty, chapter thirty-three of this code,
13 modified by the Board of Risk and Insurance Management
14 to meet the objections of the Legislative Rule-Making
15 Review Committee and refiled in the State Register on
16 December 12, 2016, relating to the Board of Risk and
17 Insurance Management (mine subsidence insurance, 115
18 CSR 01), is authorized.

§64-2-2. Ethics Commission.

1 The legislative rule filed in the State Register on August
2 23, 2016, authorized under the authority of section two,
3 article two, chapter six-b of this code, modified by the
4 Ethics Commission to meet the objections of the Legislative
5 Rule-Making Review Committee and refiled in the State
6 Register on December 19, 2016, relating to the Ethics
7 Commission (use of office for private gain, including
8 nepotism, 158 CSR 06), is authorized.